

CFTC Letter No. 00-104**November 16, 2000****No-Action****Division of Trading & Markets**

David R. Selmer, Esq.
Barack Ferrazano Kirschbaum Perlman & Nagelberg
333 West Wacker Drive
Suite 2700
Chicago, IL 60606

Re: Sections 5 and 5a—Eurex Zürich Ltd.; Request for No-Action Relief From the Contract
Market Designation Requirement

Dear Mr. Selmer:

This is in response to your letter dated November 24, 1999, to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”).¹ By your correspondence, you request, on behalf of Eurex Zurich Ltd. (“Eurex CH” or the “Exchange”) that the Division grant no-action relief to permit Eurex CH to make its electronic order matching system (“System”) available to Eurex CH members² in the United States³ (“No-Action Request”). Specifically, Eurex CH wishes to make the System available to: (i) Eurex CH members who wish to trade for their proprietary accounts⁴ through the System in the United States; (ii) Eurex CH members who are registered with the Commission as futures commission merchants (“FCMs”) or who are exempt from such registration pursuant to Rule 30.10 (“Rule 30.10 Firms”)⁵ and who wish to submit the orders of United States customers⁶ for transmission to the System; and/or (iii) Eurex CH members who are registered with the Commission as FCMs or who are Rule 30.10 firms who wish to accept orders from United States customers through automated order routing systems (“AORS”)⁷ for submission to the System. You request that the Division confirm that it will not recommend enforcement action to the Commission against Eurex CH or its members if Eurex CH does not seek designation as a contract market pursuant to Sections 5 and 5a of the Commodity Exchange Act, as amended (“Act”),⁸ or comply with those Commission regulations that specifically relate to contract markets, in connection with the installation and use of the System in the United States.

As you know, on March 24, 1999, the Commission published proposed rules that would have governed the circumstances under which foreign futures exchanges could be accessed from electronic trading devices in the United States.⁹ On June 2, 1999, the Commission issued an order that withdrew those proposed rules and directed the Commission staff to begin considering requests from foreign exchanges for interim no-action relief to allow them to place trading systems in the United States on a temporary basis until the Commission itself promulgates rules or guidelines in this area (“June 2 Order”).¹⁰ In accordance with this instruction, the Division has reviewed Eurex CH’s No-Action Request and the materials submitted in support thereof.

In connection with its No-Action Request, Eurex CH forwarded the following information to the Division:

- General information regarding Eurex CH (*e.g.*, a description of its location, organization, and activities in the

United States);

- The Swiss Federal Act on Stock Exchanges and Securities Trading (“SESTA”);
- The following four Implementing Ordinances of the SESTA (collectively, the “Implementing Ordinances”):
 - The Ordinance issued by the Federal Council (“SESTO”);
 - The Ordinance issued by the Swiss Federal Banking Commission (“SESTO-FBC”);
 - The Ordinance issued by the Takeover Board (“Takeover Ordinance-TB”);
 - The Implementing Regulation of the Takeover Board;
- Articles 11 through 11d of the Implementing Ordinance of the Federal Law Relating to Banks and Savings Banks, as revised on December 8, 1997;
- The Memorandum of the Swiss Federal Banking Commission on International Cooperation under SESTA; and
- The Eurex CH Rules.

Representations made by Eurex CH regarding Eurex CH’s activities in the United States, Eurex CH’s membership criteria, the System, the relevant regulatory regime in Switzerland, and the information-sharing arrangements applicable to Eurex CH are summarized in Sections I through VI below. For purposes of its response to the No-Action Request, the Division has relied upon Eurex CH’s representations and has not conducted an independent review to confirm their accuracy.¹¹

I. GENERAL INFORMATION REGARDING EUREX CH

Eurex CH is an aktiengesellschaft¹² organized under Swiss law.¹³ It was established in 1986 as a stock exchange, as defined in SESTA,¹⁴ and is currently operated as such. Trading on the predecessor to the Exchange began in May 1988. Eurex CH currently offers trading in futures and option contracts on interest rates and equity indices,¹⁵ and options on individual stocks.

The management and administration of Eurex CH are located in Zurich, Switzerland. Eurex CH, Eurex D and EFAG share one representative office in the United States. The office is located in Chicago, Illinois and has five employees. The purposes of this office are to promote and develop Eurex products in the United States; carry out representational activities with the Commission and the media; provide information to existing and prospective members, industry groups, seminars, and trade shows; and to reply to general public inquiries. Eurex also has entered into a formal alliance with the Chicago Board of Trade (“CBOT”) to operate a common international network based on the System for the electronic trading of derivative products. In this regard, certain Eurex personnel are relocating to Chicago to serve the entity which has been created by the parties to implement the alliance. Eurex CH represents that no order-matching or trade-clearing activities are performed from its Chicago office or by relocated Eurex personnel. It also represents that the employees of its Chicago office and relocated personnel do not provide investment advice or technical support; nor do they solicit, receive, or direct orders with respect to the products traded on Eurex CH. DBAG is considering establishing a similar representative office in New York, New York. The New York office would focus on representing the Frankfurt Stock

Exchange and would employ approximately six employees. One or more of these employees would be expected to engage in representative activities with respect to Eurex CH and Eurex D as well, but would not solicit, receive, or direct orders with respect to products traded on Eurex CH or Eurex D.

II. MEMBERS AND TRADERS

To execute trades through the System, an institution must be a member of Eurex CH. At present, the Exchange has 89 members, 46 of which are domiciled in Switzerland. All Eurex CH members are members of Eurex D, and those Eurex D members who are based in Germany or Switzerland similarly are members of Eurex CH. All members of Eurex CH are connected electronically to the System.

To become a member of Eurex CH, a person must: (i) be a securities dealer¹⁶ authorized by the Swiss Federal Banking Commission (“SFBC”) pursuant to SESTA; (ii) hold a Brokers License (the institution also may apply for a Market Maker License); and (iii)(a) possess and maintain capital of at least 1.5 million Swiss francs (US\$848,250)¹⁷ if a Swiss domestic securities dealer; or (b) fulfill the minimum capital requirements of its home country if not domiciled in Switzerland. Foreign securities dealers who wish to become members of a Swiss exchange must meet the following requirements: (i) the securities dealer must be subject to appropriate supervision, (ii) the competent foreign supervisory authorities must not object to the foreign securities dealer’s activities in Switzerland, and (iii) the competent foreign supervisory authority must be in a position to offer the SFBC administrative assistance.

Individuals who are authorized to enter into futures and option transactions on behalf of Eurex CH members are known as Exchange Traders (“Traders”). According to Eurex CH Rules, to be admitted as a Trader, the individual must be reliable and possess specific “professional qualifications” (*e.g.*, technical knowledge and experience). Passing the Eurex CH Exchange Trader examination constitutes sufficient evidence of technical knowledge. Individuals may be admitted as Traders on behalf of only one entity.

III. OVERVIEW OF THE SYSTEM

At the outset, the Division notes that the description of the System included herein is based upon representations made by Eurex CH or its representatives. The Division has not conducted an independent assessment of the security or soundness of the System.

A. Technical Aspects

1. System Architecture

The System architecture is the same as the architecture of the Eurex D system which, in turn, is similar in all material respects to the system that was subject of the no-action relief received by DTB in February, 1996.¹⁸ The main components of the System are: (i) a central host processor; (ii) the network; (iii) network access devices; and (iv) user devices.

The central host processor is located in Germany and processes transactions. Among other things, it performs trade matching, order maintenance, clearing, and information inquiry functions. The central host processor also collects and distributes price changes and other market information. The network is a private wide-access network that links all of the System’s components. Network access devices are communication servers and external interfaces. User devices provide the trader interface (*e.g.*, screen handling, order entry, and local validation processing). User devices also interface with members’ in-house and back office applications, pricing models, trade confirmations, reports, and AORSs. They are located at member sites and evenly distributed among communication servers. Messages from the central host processor

are replicated and distributed through the network and picked up by the user devices connected to the network through the network access devices. Likewise, any messages from user devices are delivered back to the central host processor through the network.

2. System Interface and Order Processing

The System feeds trading information and other data to the back-office systems of Eurex CH members via the main interface, and transfers trading data in real time to members' front office systems via additional interfaces. A Trader can receive the ten best bid and ask prices, the number of contracts bid or offered, and other market-relevant data at any time during trading sessions. Eurex CH's "Margin Parameter Monitoring System" shows the implied volatility and significant price movements of all Eurex CH contracts on a daily basis. Eurex CH's "Front Market System" calculates and publishes the implied volatility of the last price of all contracts. Significant price movements also can be monitored on-line on the "Traders Support Menu," which shows the actual price and daily high and low for all futures and option contracts traded on Eurex.

The System is designed to process and execute trades in an equitable manner, and to provide accurate and timely trade and quotation information. All orders and quotes are entered in Eurex CH's electronic order book where they are sorted automatically by type, price, and entry time. The System matches market orders first and then sorts limit orders and quotes, ranking them by the highest bid price and lowest ask price. Generally, orders entered at the same price are executed on a first-come, first-served basis. When buy and sell orders match, the System automatically executes the transaction. The System employs a pro-rata trade matching function for the three-month Euribor futures contract due to its low volume. Under this function, all orders entered with the same price are executed on the basis of each order's percentage share of the total order volume at that price.¹⁹ An Exchange member may enter orders on its own behalf through two separate "Principal Position Accounts," but must enter orders on behalf of customers through a separate "Agent Position Account." After trading hours, Eurex performs batch processing, including reporting, margining, exercise, assignment, notification, allocation, and database maintenance.

Eurex CH permits its members to employ AORSs to receive orders from customers for subsequent submission to the System through the member. Members that use AORSs must ensure that they comply with Eurex CH Rules. Eurex CH Rules require, among other things, that: (i) the AORS is used exclusively for the transmission of customer orders; (ii) the number, operating location, and identity of the users of input devices connected to the AORS who are not members are forwarded to Eurex CH; (iii) before an order transmitted via an AORS is channeled into the System, it passes through an electronic filter installed in the AORS that checks the order to ensure that it falls within certain parameters defined by the Eurex CH member ("Electronic Filter"); (iv) the Electronic Filter has been allocated to a Trader who is responsible for maintaining the trading parameters and controlling and monitoring the Electronic Filter and who manually can halt further transmission of orders at any time; and (v) the Eurex CH member has informed the Exchange, in writing, of the personal user identification of the allocated Trader.

3. Audit Trail and Price Reporting Requirements

Since all trades are executed on Eurex CH through a computer system, the prices of all transactions and the times that such transactions are executed are recorded automatically.²⁰ The System automatically creates a printed trade confirmation immediately after execution that contains the date of the transaction, a description of the contract, the quantity transacted, whether the member was acting as agent or principal, and the price of execution. The trade confirmations are forwarded to Exchange members. Eurex CH members also must report to their respective customers every transaction on Eurex CH executed on behalf of the particular customer.

Eurex CH also creates extensive records of all entries made in the System. These records include the following information: (i) the terms and conditions of any order and any modification or cancellation of the order; (ii) the member's

account to which the order or order instruction relates; (iii) the Trader's identification number; (iv) the time of order entry and execution or cancellation; (v) the price of execution; and (vi) whether the member entered the order in its capacity as principal or agent. Eurex CH members are required to maintain customer transaction records for a minimum of six years. Eurex CH retains extensive records of all entries made in the System for ten years. The SFBC also has the authority to require Eurex CH members to notify the SFBC of each derivatives transaction.

4. Security

The System incorporates several security features. Only Traders may access the private network. A Trader cannot access the communications architecture without a password assigned by Eurex CH. Trader passwords are neither visible nor changeable by Eurex CH members. Unauthorized access to the central host processor or between customers is blocked by appropriate network parameter and security router configurations. Additionally, transaction data are compressed by a bit level data compression algorithm before being sent over the network, providing a means of encryption and reducing network load. Other data sent to customers on the network, such as files and reports, are encrypted using a customer-specific software password.

Eurex CH employs other features that can restrict access to the System. Eurex CH will require electronic trading devices that provide access to the System from the United States and those that provide access to the System from outside of the United States to be connected to the System through separate links. The use of separate links to the System will ensure that Eurex CH members operating in the United States will abide by any restrictions on the products that can be traded from electronic trading devices that provide access to the System in the United States and the terms of any no-action relief granted to Eurex CH.

5. Settlement and Clearing

Eurex Clearing manages the clearing, margining, and settlement of all transactions executed on Eurex CH. The members of Eurex Clearing are categorized as either: (i) Direct Clearing Members ("DCMs") or (ii) General Clearing Members ("GCMs"). DCMs are permitted to clear transactions only on their own behalf and on behalf of affiliated non-clearing members ("NCMs"). GCMs are the only clearing members who may clear transactions on behalf of non-affiliated NCMs.²¹

Only Swiss or German credit institutions, banks, and certain German branches of banks and financial institutions that are domiciled in other EU member states may become clearing members. DCMs are required to have at least EUR 12.5 million (\$10,663,750)²² in regulatory equity capital, calculated in accordance with the laws and regulations applicable to the relevant branch of the institution acting as a clearing member. GCMs must have at least EUR 125 million (\$106,637,500) in regulatory equity capital, as similarly calculated. Eurex Clearing may demand from its clearing members such information and evidence as may be necessary for it to verify the net equity of any clearing member. Eurex Clearing may revoke or suspend any member's clearing status if such firm fails to satisfy the qualifications necessary for clearing membership.

The primary function of Eurex Clearing is to centralize credit risk by becoming the counterparty to each contract traded through the System. Consequently, cleared transactions on Eurex CH are made between Eurex Clearing and the member firm that holds a clearing license. Each clearing member must provide collateral as required, in cash or securities, and must effect any daily settlement payments on the trading day following the final settlement day. In turn, clearing members must require collateral and daily settlement payments from their customers in an amount at least equal to the amount determined by Eurex Clearing. Eurex Clearing maintains the authority to demand that any clearing firm deposit supplemental margin to retain its clearing status. Each clearing member also must provide guarantees to the Clearing Guarantee Fund ("CGF"). Each GCM must provide clearing guarantees to the CGF in the amount of EUR 5 million

(\$4,265,500); and each DCM must provide clearing guarantees to the CGF in the amount of EUR 1 million (\$853,100). Any clearing guarantee that is drawn upon must be raised to its original amount within ten trading days. In its discretion, Eurex Clearing may use funds from its annual surplus to set aside reserves to contribute to the performance of the commitments of any defaulting clearing member. If a clearing member defaults, resulting losses are covered by these sources in the following order of priority:

1. Margin funds of the defaulting clearing member;
2. The clearing guarantee of the defaulting clearing member;
3. The discretionary reserve fund created by Eurex Clearing; and
4. The clearing guarantees of the other clearing members of Eurex Clearing.

6. Reliability and Failure Recovery

Eurex CH represents that, in the event of a network disruption, the System employs an immediate fail-over mechanism that prevents the loss of any transactions. The retransmission facility built into the communications architecture, together with the transaction logging onto the central host, ensures that transactions entered by Traders are processed and processed only once. To avoid a single point of failure, the System relies on hardware component redundancy. All components are at least doubled and most Exchange members have two leased lines to two different access points to cope with line drops and communication server failures. Furthermore, Eurex maintains a backup central host processor in a different location than the main central host processor.

7. System Response Times

Eurex CH represents that discrepancies in cross-border transmission times result from the differences in distance across the network among Exchange members in different locations.²³ However, the network is configured to provide a relative equality of response time among all Traders, subject to differences that amount to less than human reaction time. Eurex CH constantly monitors the network for transmission time anomalies and has appropriate procedures in place to correct such anomalies. If communication delays occur, Eurex CH can verify whether the delay results from the network or the Exchange member's own system. Upon detection of a network delay or failure, the Trader is automatically switched over to the backup network connection. The System also is monitored to detect automatically delays in confirming messages sent through the System. If a delay occurs, the System automatically reroutes the affected traffic to the backup network connection. If a Trader continues to have difficulty entering trades due to a technical problem, Eurex CH offers "Trading on Behalf" to its members. This alternative allows Exchange members to submit their orders via telephone through Eurex CH personnel on a real-time basis until System access is restored. All trades using this alternative are confirmed in writing. Eurex CH Rules also provide that Eurex CH may interrupt or extend trading hours, if necessary, to maintain orderly trading conditions.

B. Adherence to IOSCO Principles

In operating the System, Eurex CH has adhered to, and will continue to adhere to, the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products ("IOSCO Principles") developed by the Technical Committee of the International Organization of Securities Commissions ("IOSCO").²⁴ As discussed below, the SFBC generally is authorized by the SESTA to monitor the System for, among other things, its compliance with IOSCO Principles and applicable legal requirements. The SFBC is also authorized to require Eurex CH to modify the System, as necessary, to prevent violations of Swiss law relevant to exchanges and to eliminate or prevent irregularities that could impair the

orderly conduct, settlement, or supervision of trading on the Exchange. Moreover, Eurex CH is obligated to notify the SFBC of material changes to the System. Changes to certain Eurex CH Rules relevant to the System must be submitted to the SFBC before such rules become effective.

C. Demarcation of Responsibilities and Liabilities

Eurex CH Rules provide that Eurex CH is not liable for injury or damage caused by disruption in its service as a result of force majeure, riot, events resulting from war or natural disaster, or other circumstances beyond Eurex's CH control. Eurex CH is liable for damages suffered by an Exchange member in connection with its use of the System only to the extent that it can be demonstrated that Eurex CH or third parties assisting in its performance committed intentional misconduct or gross negligence (unless the damage results from a culpable breach by Eurex CH of its principal duties). In the case of ordinary negligence, Eurex CH is liable only for the amount of damages typically foreseeable at the time of execution of the agreement. If Eurex CH delegates to third parties the performance of the obligations assigned to it in a manner authorized by Eurex CH Rules, the liability of Eurex CH is limited to the cautious selection and instruction of the third parties retained. Eurex CH is not liable for the accuracy, completeness, availability, and timeliness of the prices of the underlying assets and other data obtained from third parties.

IV. REGULATORY STRUCTURE IN SWITZERLAND

A. Introduction

The SFBC assumed regulatory authority over Swiss securities dealers and exchanges, including Eurex CH, in 1997. The SFBC is elected by the Federal Council, the highest executive authority in Switzerland,²⁵ and has the duty to report to the Federal Council annually. The SFBC makes such decisions as may be necessary to implement SESTA and supervises compliance with SESTA's provisions.

B. Regulation of Exchanges

On January 28, 1998, the SFBC²⁶ granted SOFFEX, Eurex CH's predecessor in interest, authority to operate as a stock exchange. To receive approval to operate as a stock exchange, an exchange must satisfy the following conditions: (i) the exchange's regulations and organizational structure must comply with the relevant provisions of SESTA; (ii) the exchange and its senior officials must demonstrate that they possess the necessary professional knowledge and provide assurances of proper business conduct; and (iii) the governing bodies of the exchange must meet such minimum regulations as the Federal Council may set. In addition, an exchange must submit to the SFBC for approval its exchange rules and any amendments thereto. The SFBC examines whether the regulations ensure market transparency, treat all customers equitably and require the securities markets to function properly. All other exchange rules, such as contract specifications, are not required to be pre-approved. However, the SFBC may enjoin an exchange from introducing any rule if such an injunction would be in the public interest. Eurex CH satisfied the conditions necessary to become a stock exchange, and the SFBC has approved Eurex CH's Rules.

The SFBC also is authorized to investigate Eurex CH and persons under the supervision of Eurex CH, including persons who hold a qualified participation in the capital of a stock exchange or a securities dealer, auditors, and persons and companies that are subject to a duty of disclosure. These investigations may be performed on behalf of the SFBC by third parties, *e.g.*, Eurex CH's supervisory body or auditors.

V. INTERNAL SUPERVISION

As an SRO, Eurex CH has its own comprehensive set of rules. Pursuant to Eurex CH Rules, the Exchange's Board of

Management (the “Management Board”) is responsible for handling the day-to-day management of Eurex CH, while the Administrative Council supervises the Management Board and is responsible for fundamental decision-making regarding the Exchange. These entities have the same composition as the Boards of Management and Administrative Councils, respectively, of EFAG and Eurex Clearing.

The Management Board is authorized to temporarily exclude from trading persons that disturb the orderly conduct of trading, violate applicable rules, or fail to comply with the Management Board’s orders. Additionally, the Management Board is authorized to temporarily suspend or revoke the admission to trading of any person who fails to satisfy the conditions for admission or suspend trading in any derivative product as it deems necessary to protect the public. The Management Board also has the authority to set position limits. Finally, the Management Board may require Exchange members to provide information and may examine their business activities, either directly or through auditors or other agents.

Eurex CH Rules also establish an autonomous Independent Surveillance unit (“Independent Surveillance”) that is responsible for monitoring trading on the Exchange and the settlement of Exchange transactions. Independent Surveillance is required to record and evaluate data regarding exchange trading and the settlement of exchange transactions systematically and completely and to conduct investigations, as necessary. Independent Surveillance can observe Exchange member positions in the clearing system and daily reports. Unusual trading activities (*e.g.* frontrunning, crossing, or prearranged trading) can be identified and reconstructed through the Eurex CH data bank and through the day-to-day monitoring of the market. Eurex CH also utilizes an on-line “Member Position Risk-Monitoring System” that lists the positions in futures and/or option contracts by member. This enables Eurex CH to portray different profit and loss scenarios for its members at any time of the day and allows Eurex Clearing to assess its risk as counterparty. Eurex CH conducts the same level of surveillance and monitoring activities for members and electronic trading devices that provide access to the System from outside of Switzerland as for those located within Switzerland.

Independent Surveillance also monitors prevailing market prices and settlement of transactions with a view to detecting any misuse of insider information, price manipulation and other breaches of law. In particular, Independent Surveillance: (i) verifies compliance with the provisions of the relevant laws, statutes and rules; (ii) monitors the activities of Eurex CH in controlling its members; (iii) is the contact for Eurex CH members or third parties should they have complaints concerning the Exchange or the members or traders of the Exchange; and (iv) acts upon any information from third parties concerning possible violations of insider trading prohibitions and the relevant provisions of exchange law.

The head of Independent Surveillance regularly reports to the Administrative Council and the SFBC. If Independent Surveillance discovers that violations of Exchange Rules are occurring or that other conditions exist that may impair the orderly conduct of trading or the settlement of Exchange transactions, it is required to report such violations to the SFBC and the Management Board. Upon suspicion of any violation of law, rule breach or other irregularity, Independent Surveillance informs the SFBC, which will then order the necessary investigations to be undertaken by Independent Surveillance and/or outside experts. If the investigation discovers any potential breaches of law, Independent Surveillance will report its findings to the District Attorney for possible prosecution. If the evidence demonstrates a possible breach of the Exchange Rules, Independent Surveillance will refer the matter to the Eurex CH Disciplinary Committee. Eurex CH and its Disciplinary Committee have discretion to take a range of disciplinary actions for failure to comply with Exchange Rules, including a written reprimand, fines or a suspension from trading on Eurex CH for up to thirty trading days.

Eurex Clearing also conducts surveillance of its members and their open positions. Each institution that holds a clearing license is required to notify Eurex Clearing immediately if it is no longer in compliance with any of the requirements for holding a Clearing License, or as soon as possible if it is unable to meet any financial obligation to Eurex Clearing or any other party. Additionally, each member must submit, upon request, annual audited financial statements to Eurex Clearing. Eurex Clearing also may require its members to instruct the member’s internal or external auditors (which must be

authorized by the SFBC or an analogous foreign regulator to audit banks) to conduct investigations to ascertain whether the member is in compliance with Exchange Rules. Finally, Eurex Clearing reserves the right to analyze all data entered into the Eurex CH system by its members.

Swiss law provides a framework for the protection of customer interests in the trading of derivatives on Eurex CH. Among other things, the fraudulent manipulation of trading prices and insider trading are violations of Swiss criminal law, which falls under the purview of the Swiss district attorney. Additionally, SESTA contains provisions that prohibit insider trading, offsetting customer orders against other customer orders, and bucketing customer orders. Moreover, all securities dealers subject to SESTA must observe the Code of Conduct of the Swiss Bankers Association, which substantiates the duties of disclosure, due diligence, and loyalty to customers as set forth in SESTA.²⁷ Swiss law and Exchange Rules also mandate that customer funds be segregated. Accordingly, Eurex CH members dealing on behalf of customers must have an account with Eurex CH for their own trades and an account for trades executed on behalf of their customers and Eurex CH members that are banks must maintain clients' funds and securities separate from their own.

VI. INFORMATION-SHARING

Pursuant to the terms and conditions of the no-action relief requested herein, the Division will be entitled to receive directly from Eurex CH certain information regarding the System. In the No-Action Request, Eurex CH has confirmed that it will provide the Commission with sufficient information regarding the Exchange and its members operating pursuant to the no-action relief set forth herein: to evaluate the continued eligibility of Eurex CH or its members for the relief; to enforce compliance with the terms and conditions of that relief; and to enable the Commission to carry out its duties under the Act and Commission regulations. By letter dated October 10, 2000, the SFBC: (1) confirmed that Swiss law does not prohibit Eurex CH from sharing directly with the Commission such information; and (2) acknowledged that any relief granted pursuant to the No-Action Request will be conditioned on the consent by Eurex CH and its members operating pursuant to such relief to the provision of such information by Eurex CH to the Commission.²⁸ Swiss law also permits the SFBC to share information directly with the Commission.²⁹

VII. CONCLUSION

Consistent with the Commission's June 2 Order, the Division has reviewed and considered Eurex CH's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by Eurex CH indicate that Eurex CH has a single representative office in the United States and has relocated certain personnel to the United States in connection with its recently-formed alliance with CBOT, that the staff of that office and relocated personnel do not and will not provide investment advice nor solicit, receive, or direct trading orders, and that Eurex CH does not maintain order matching or clearing facilities in the United States. The materials also indicate that Eurex CH is a stock exchange, as defined in Swiss law; Eurex CH and its members are subject to oversight in Switzerland by legitimate regulatory authorities that are responsible for ensuring their compliance with an extensive regulatory regime; the System adheres to the IOSCO Principles; and the SFBC and Eurex CH have agreed to share with the Commission information in connection with the activities of Eurex CH and System participants.³⁰

Based specifically upon these and other representations made by Eurex CH in support of its No-Action Request, the Division has determined that granting no-action relief to Eurex CH and its members, pending the adoption by the Commission of rules or guidelines regarding access to foreign boards of trade from electronic trading devices in the United States, would not be contrary to the public interest. Accordingly, subject to compliance with the terms and conditions stated herein, the Division will not recommend that the Commission institute enforcement action against Eurex CH or its members solely based upon Eurex CH's failure to obtain contract market designation pursuant to Section 5 and 5a of the Act if: (i) Eurex CH members trade for their proprietary accounts through the System from the United States; (ii) Eurex CH members who are registered with the Commission as FCMs or who are Rule 30.10 firms submit

orders from United States customers for submission to the System; and/or (iii) Eurex CH members who are registered with the Commission as FCMs or who are Rule 30.10 firms accept orders through United States AORSs from United States customers for submission to the System.

The Division's no-action position is applicable only to the contracts described below, and shall become effective with respect to such contracts as follows:

(i) The relief is effective immediately with respect to the following contracts:

- Euro-BUND futures;
- Options on Euro BUND futures;
- Euro BOBL futures;
- Options on Euro BOBL futures;
- Euro SCHATZ futures;
- Options on Euro SCHATZ futures;
- One-Month EURIBOR futures;
- Three-Month EURIBOR futures;
- Options on Three-Month EURIBOR futures;
- Euro BUXL futures;
- CONF futures;
- Options on CONF futures; and
- Three-Month Euromark futures.

(ii) The relief will become effective with respect to the following contracts upon receipt of a no-action position from Commission staff that would permit the offer and sale of futures contracts on such foreign stock indices within the United States:³¹

- DAX futures;
- Dow Jones STOXX 50 futures;
- Dow Jones EURO STOXX 50 futures;
- SMI futures;

- FOX futures; and
- Dow Jones Nordic STOXX 30.³²

If additional futures and option contracts become available for trading through the System, Eurex CH may make such futures and option contracts available for trading through the System in the United States without obtaining written, supplemental no-action relief from Commission staff ("Supplemental Relief") in accordance with the terms, conditions, and exceptions of the Commission's Statement of Policy regarding the listing of new futures and option contracts by foreign exchanges that are operating electronic trading devices in the United States pursuant to Commission staff no-action relief.³³

The scope of the Division's no-action position is restricted to providing relief from the requirement that Eurex CH obtain contract market designation pursuant to Sections 5 and 5a of the Act and regulatory requirements that flow specifically from the contract market designation requirement if the above-referenced contracts are made available in the United States through the System, in the manner set forth herein. The Division's no-action position does not extend to any other provision of the Act, any other Commission regulations, or any National Futures Association ("NFA") rules and does not excuse Eurex CH or its members from compliance with any applicable requirements thereunder. Nor does the no-action position alter, restrict, or expand the coverage of existing Commission exemptions for particular products.

The Division specifically notes that its no-action position does not alter the requirement that a firm operating pursuant to the no-action relief provided herein must be a registered FCM or be operating pursuant to Rule 30.10 relief to engage in the offer or sale of a foreign futures contract or a foreign options transaction for or on behalf of a United States foreign futures or foreign options customer. For example, nothing in this request is intended to alter current Commission rules and staff interpretations that require generally that any foreign firm that clears trades on a fully-disclosed basis on behalf of United States persons (including where the United States person is a non-clearing member of a foreign board of trade trading solely for its proprietary account) be a registered FCM or a Rule 30.10 Firm unless the foreign firm solely carries accounts on behalf of United States customers that are proprietary accounts (as defined in Rule 1.3(y)) of the foreign firm.³⁴ If the foreign firm is either a member of the relevant foreign board of trade or is a foreign affiliate of a registered FCM in the United States and its sole contact with a United States customer is that it carries the FCM's omnibus account, the foreign firm need not register under Rule 30.4.³⁵

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the Act, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the United States. Thus, Rule 30.10 Firms cannot provide direct access to the System in the United States (although they would be permitted to accept orders overseas from customers located in the United States that submit such orders by telephone or through an AORS located in the United States). FCMs or Rule 30.10 Firms who solicit or accept orders from United States customers for trading on the System remain responsible for, among other things, complying with risk disclosure, the handling and allocation of customer orders, and the segregation of customer funds.

The Division's no-action position does not affect the Commission's ability to bring appropriate action for fraud or manipulation. The Division specifically notes that the use of AORSs to transmit orders to the System would be subject to all existing Commission rules and regulations and to any future rules or guidance promulgated by the Commission or the Division. Finally, this letter does not address issues that might arise under the Securities Act of 1933, the Securities Exchange Act of 1934, and other applicable federal securities laws or rules promulgated thereunder.

The Division's no-action position is subject to compliance with the following conditions:

- Eurex CH will continue to satisfy the criteria for approval as a stock exchange³⁶ under the applicable laws of Switzerland with respect to transactions effected through the System.
- The laws, systems, rules, and compliance mechanisms of Switzerland applicable to Eurex CH will continue to require Eurex CH to maintain fair and orderly markets; prohibit fraud, abusive practices, and market manipulation; and provide that such requirements are subject to the oversight of the appropriate regulatory authorities.
- The System will continue to adhere to the IOSCO Principles as updated, revised, or otherwise amended.
- Only members of Eurex CH will have direct access (*i.e.*, not through an AORS) to the System and Eurex CH will not provide, and will take reasonable steps to prevent, third parties from providing such access to the System to persons other than Eurex CH members.³⁷
- All orders that are transmitted through the System by a member of Eurex CH that is operating pursuant to the no-action relief requested herein and that is not registered with the Commission as an FCM or that is not a Rule 30.10 Firm will be solely for the “proprietary accounts,” as defined herein, of such Eurex CH member.
- All orders for United States customers accepted through an AORS and/or transmitted by Eurex CH members through the System will be intermediated by a Eurex CH member that is either registered with the Commission as an FCM or is a Rule 30.10 Firm.
- Eurex CH will require each current and future Exchange member that is not registered with the Commission as an FCM to file with Eurex CH a written representation, executed by a person with the authority to bind the member, stating that as long as the Eurex CH member operates pursuant to the no-action relief provided herein, the member agrees to and submits to the jurisdiction of the Commission with respect to activities that are conducted pursuant to the no-action relief. Eurex CH will obtain the foregoing representation before it permits the relevant member to operate pursuant to the no-action relief and will maintain the representation as long as the relevant member is operating pursuant to the no-action relief. Eurex CH will make such representations available to the Commission upon the request of a Commission representative.
- Eurex CH will require each current and future Exchange member that is not registered with the Commission as an FCM to file with Eurex CH a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of “communications”³⁸ that are issued by or on behalf of the Commission. Eurex CH will obtain the foregoing appointment before it permits the relevant member to operate pursuant to the no-action relief and will maintain the appointment as long as the relevant member is operating pursuant to that relief. Eurex CH will make such appointments available to the Commission upon the request of a Commission representative.
- Eurex CH will require each current and future Exchange member that is not registered with the Commission as an FCM to file with Eurex CH a written representation, executed by a person with the authority to bind the member, stating that, as long as the Eurex CH member operates pursuant to the no-action relief requested herein, the Eurex CH member will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, NFA, prompt access to original books and records maintained at their United States offices and to the premises where the System is installed or used in the United States. Eurex CH will obtain the foregoing representation before it permits the relevant member to operate pursuant to the no-action relief and will maintain the representation as long as the relevant member is operating pursuant to that relief. Eurex CH will make such representations available to the Commission upon the request of a Commission representative.

- Eurex CH will file with the Division a valid and binding appointment of a United States agent for service of process in the United States, pursuant to which the agent is authorized to accept delivery and service of “communications,” as defined above, that are issued to Eurex CH by or on behalf of the Commission. Eurex CH will maintain the foregoing representation as long as Eurex CH operates the System pursuant to the relief.
- Eurex CH will maintain the following updated information and submit such information to the Division on at least a quarterly basis, and at any time promptly upon the request of a Commission representative:
 - For each contract available to be traded on the System, the total trade volume originating from electronic trading devices providing access to the System in the United States (including volume originating from AORSs that route orders to the System) compared with the total trade worldwide volume for such products traded on Eurex CH.
 - A listing of the names, NFA ID numbers (if applicable) and main business addresses in the United States of all Eurex CH members that have access to the System in the United States.
- Eurex CH will promptly provide the Division with written notice of the following:
 - Any material change in the information provided in this No-Action Request, including any information contained in the documents submitted in support thereof.³⁹
 - Any material change in Eurex CH Rules or the laws, rules, and regulations in Switzerland relevant to futures and options.
 - Any matter known to Eurex CH or its representatives that, in Eurex CH’s judgment, may affect the financial or operational viability of Eurex CH, including, but not limited to, any significant System failure or interruption.
 - Any default, insolvency, or bankruptcy of any Eurex CH member known to Eurex CH or its representatives that may have a material, adverse impact upon the condition of Eurex CH, Eurex Clearing, or upon any United States customer or firm.
 - Any known violation by Eurex CH or any Eurex CH member of the terms or conditions of the no-action relief provided herein.
 - Any disciplinary action taken by Eurex CH against any member of Eurex CH operating pursuant to the no-action relief provided herein that involves any market manipulation, fraud, deceit, conversion or that results in suspension or expulsion and that involves the use of the System or an AORS to submit orders to the System.
- Eurex CH will require each current and future Exchange member to file with Eurex CH a written representation consenting to permit Eurex CH to provide to the Commission the information requested by the Commission in connection with the operation of Eurex CH pursuant to the relief set forth herein.
- Satisfactory information-sharing arrangements between the Commission and the SFBC will remain in effect.
- The Commission will be able to obtain sufficient information regarding Eurex CH and the members of Eurex CH operating pursuant to the no-action relief requested herein necessary to evaluate the continued eligibility of Eurex CH or its members for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the

Commission to carry out its duties under the Act and Commission regulations.

- Eurex CH will provide directly to the Commission information necessary to evaluate the continued eligibility of Eurex CH or its members for the relief, to enforce compliance with the terms and conditions of that relief, or to enable the Commission to carry out its duties under the Act and Commission regulations.
- Eurex CH employs reasonable procedures, to be determined by Eurex CH, for monitoring and enforcing compliance with the terms and conditions of the no-action relief provided herein.

This no-action position 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 CH's No-Action Request. Any materially different, changed, or omitted facts or circumstances may render this letter void. The

Division specifically notes that it will examine the trade volume information submitted as a condition to the no-action relief provided herein as well as any changes in the nature or extent of Eurex CH's activities in the United States to ascertain whether Eurex CH's presence in the United States has increased to a level that might warrant reconsideration of the no-action relief.

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. Finally, the Division wishes to emphasize that the no-action position set forth herein is intended to provide immediate, interim relief to Eurex CH and its members, pending any adoption of rules or guidelines by the Commission regarding the use and placement in the United States of automated trading systems or AORSs that provide access to the products of foreign boards of trade. Thus, this letter will cease to be effective if the Commission or its staff adopts generally applicable rules or general guidelines regarding the issues addressed herein, and Eurex CH will be subject to those rules or guidelines in that event.

If you have any questions concerning this correspondence, please do not hesitate to contact me or Andrew Chapin at (202) 418-5430.

Very
truly
yours,

John C.
Lawton
Acting
Director

cc: Daniel A. Driscoll, Vice-President, Compliance, NFA

Henry J. Matecki, Division, Chicago Regional Office

1 Letter from David R. Selmer, Barack, Ferrazzano, Kirschbaum, Perlman & Nagelberg, to John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission (November 24, 1999).

2 For the purposes of the No-Action Request and the relief provided herein, references to the members of Eurex CH shall include the "affiliates" of such members to the extent that such affiliates are granted access by the member to the System.

An “affiliate” of a Eurex CH member shall mean any person that: (i) owns 50% or more of the member; (ii) is owned 50% or more by the member; or (iii) is owned 50% or more by a third person that also owns 50% or more of the member. Eurex CH represents that, as a condition of access to the System, such affiliates will be required to comply with Eurex CH’s Rules and the member shall remain responsible to Eurex CH for ensuring its affiliate’s compliance with such rules. For the purposes of this letter and the relief provided herein, Eurex CH Rules shall include the Rules and Regulations of Eurex CH, the Trading Conditions, Clearing Conditions, Fee Regulations, Arbitration Rules, and any other regulations and documents governing Eurex CH or its members.

3 For the purposes of the No-Action Request and the relief provided herein, the term “United States” shall include the United States, its territories and possessions.

4 For purposes of the No-Action Request and the relief provided herein, the term “proprietary account” shall have the meaning set forth in Rule 1.3(y). Commission rules referred to herein are found at 17 C.F.R. Ch. I (2000).

5 Rule 30.10 permits a person affected by any of the requirements contained in Part 30 of the Commission’s rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (“SRO”) can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the Commodity Exchange Act, based upon the person’s substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act. Eurex CH has not petitioned the Commission for relief pursuant to Rule 30.10.

Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief to a foreign regulatory or self-regulatory authority are the authority’s: (i) requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States. *Interpretative Statement with Respect to the Commission’s Exemptive Authority Under § 30.10 of its Rules*, 17 C.F.R. pt. 30, Appendix A (1999).

6 For the purposes of this letter and the relief provided herein, the term “United States customers” shall have the same meaning as the term “foreign futures and options customers” as it is defined in Commission Rule 30.1(c).

7 For purposes of this letter and the relief provided herein, “AORS” shall be defined to include any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade’s computer or other automated device where, without substantial intervention, trade matching or execution takes place.

8 7 U.S.C. §§ 1 *et. seq.* (1994).

9 *Access to Automated Boards of Trade*, 64 Fed. Reg. 14159 (proposed March 24, 1999, *withdrawn*, June 2, 1999).

10 *Order of the CFTC Withdrawing Proposed Rules Regarding Access to Automated Boards of Trade*, Release No. 4274-99 (June 2, 1999).

11 As stated below, the no-action relief provided herein is contingent upon the accuracy of representations made by Eurex CH in support of the No-Action Request. Any materially different, changed, or omitted facts or circumstances may

render the no-action relief void or cause the Division, in its discretion, to condition further, modify, suspend, terminate, or otherwise restrict the relief.

12 An aktiengesellschaft (“AG”), also known as a Société anonyme (“SA”), is a share corporation that closely resembles the business corporation formed under state law in the United States.

13 The business combination between Deutsche Terminbörse’s (“DTB”) administrative and operating institution, Deutsche Börse AG (“DBAG”), and Swiss Stock Exchange (“SWX”), the parent company of the Swiss Options and Financial Futures Exchange (“SOFFEX”), on September 28, 1998, combined the operations of DTB, which was renamed Eurex Deutschland (“Eurex D”), and SOFFEX, which was renamed Eurex CH. As a consequence, Eurex CH is the owner of Eurex Frankfurt AG (“EFAG”), the newly-formed administrative and operating institution of Eurex D.

Eurex CH is 50% owned by SWX and 50% owned by DBAG. SWX is organized as an association under the Swiss Civil Code. Its membership is open to securities dealers that satisfy certain criteria set forth in SESTA. Most of SWX’s members are banks. Approximately 80% of DBAG shares are held by German credit institutions, including certain institutions that are Eurex D members. The remaining 20% of DBAG shares are held by other Eurex D members and members of the Frankfurt Stock Exchange and the German regional stock exchanges.

Eurex CH and Eurex D remain legally separate exchanges. However, both exchanges operate their respective electronic trading systems through a common electronic trading and clearing platform that is based upon the system used by DTB and have exchange rules which are, to a great extent, harmonized. Both exchanges also clear their transactions through Eurex Clearing AG (“Eurex Clearing”), a wholly-owned subsidiary of EFAG that is based in Frankfurt, Germany.

On August 10, 1999, the Division issued a no-action letter permitting Eurex D electronic trading terminals providing access to the Eurex D market to be placed in the United States without Eurex D having to acquire contract market designation pursuant to Sections 5 and 5a of the Act. CFTC Staff Letter No. 99-48, 2 Comm. Fut. L. Rep. (CCH) ¶26,669 (August 10, 1999).

14 A stock exchange as defined in SESTA also includes an organization set up for the purpose of trading derivatives.

15 Receipt of a no-action position from Commission staff is a necessary prerequisite to the offer and sale of foreign exchange-traded futures contracts on foreign stock indices within the United States. However, foreign exchange-traded futures contracts on foreign stock indices may be offered and sold to persons located outside of the United States absent a no-action position, and such contracts are available on the System to persons located outside of the United States.

16 Swiss law defines securities dealer to include those individuals or firms who trade in either the cash or derivatives markets.

17 For informational purposes only, the Division has indicated the approximate United States dollar equivalent of any sum of Swiss francs referenced herein, based upon the exchange rate as of October 13, 2000 (CHF1 = US\$0.5655). The Division notes, however, that the financial resource requirements set forth herein are not linked in any way to the United States dollar equivalents that have been provided.

18 CFTC Staff Letter No. 96-28, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,669 (February 29, 1996).

19 For example, if the System receives three orders to buy ten contracts at the same price and then receives an order to sell three contracts at that price, the System would assign one contract to each bidder, without regard to when each bidder’s contract was entered into the System.

20 Times are recorded in fractions of a second on both the System and AORSs linked to the System. Eurex CH recommends to its members that the time keeping function of an AORS be synchronized with the System's time keeping function. However, even where the timekeeping functions are not synchronized, members are obligated to maintain an accurate audit trail with respect to the member's receipt and entry of customer orders.

21 All NCMs must clear their transactions through a clearing member.

22 For informational purposes only, the Division has indicated the approximate United States dollar equivalent of any sum of Euros references herein, based on the exchange rate as of October 13, 2000 (EUR 1 = US\$0.8531). The Division notes, however, that the financial resource requirements set forth herein are not linked in any way to the United States dollar equivalents that have been provided.

23 Eurex CH's network extends from the central host processor to a port in each Trader's electronic trading device. The transmission distance between a device located in Switzerland and the central host processor is much less than the distance between a device located in the United States and the central host processor.

24 The Working Party 7 of IOSCO ("Working Party") identified certain issues related to screen-based trading systems for derivative products, including transparency, order execution algorithms, operational issues, security and system vulnerability, access, financial integrity, disclosure, and the role of system providers. The Working Party considered these issues and articulated for each a broad principle to assist regulatory authorities in overseeing screen-based trading systems. The IOSCO Principles were adopted by IOSCO on November 15, 1990 and set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products on November 21, 1990. *Policy Statement Concerning the Oversight of Screen-Based Trading Systems*, 55 Fed. Reg. 48670 (Nov. 21, 1990). In October 2000, the Technical Committee of IOSCO reaffirmed the 1990 IOSCO Principles and added four corollaries thereto. While the SFBC adheres to the IOSCO Principles, it has not formally endorsed them.

25 The Federal Council consists of seven persons that are elected to a four-year term of office by the United Federal Assembly.

26 Prior to the adoption of SESTA, which granted regulatory authority over Swiss securities exchanges to the SFBC, the Exchange Commission of the Directorate of Economy of the Canton of Zurich ("Exchange Commission") was responsible for supervising Eurex CH. The Exchange Commission no longer exists.

27 The Code of Conduct requires securities dealers to establish efficient business organization, professional training, and compliance rules appropriate to their corporate structure and activities. The Code of Conduct generally corresponds with the standards of the Investment Services Directive and, therefore, with the principles of IOSCO. The recognized auditors under SESTA have the duty to monitor and control overall compliance with the Code of Conduct.

28 Letter from Franz Stirnimann, Vice-Director, SFBC, to John C. Lawton, Acting Director, Division of Trading and Markets, Commodity Futures Trading Commission (October 10, 2000).

29 SESTA permits the SFBC to share information requested by a foreign regulatory authority, including the Commission, either informally or in writing, and without the prior consent of any dealer, provided that three conditions are satisfied: (i) the information is used solely for the purpose of the direct supervision of the securities markets and the securities dealers; (ii) the foreign regulatory authority is bound by official or professional secrecy; and (iii) the foreign regulatory authority does not furnish such information to other authorities without the prior consent of the SFBC. Prior to forwarding

information involving the customer of a bank or a securities dealer, however, the SFBC must issue a formal order subject to appeal by the affected party to the Swiss Federal Court of Justice.

30 The Division notes that the foregoing is not intended to be an exhaustive list of the factors relevant to its decision to grant the no-action relief requested by Eurex CH or of the factors that the Division might consider when analyzing no-action requests from other exchanges. No-action requests, by their nature, require case-by-case evaluation and the Division's conclusion regarding any particular no-action request will be based upon the facts and circumstances presented at the time of its review of that request.

31 Commission staff issued a no-action letter, which became effective on January 5, 1995, stating that it would not recommend any enforcement action against Eurex D in connection with the offer and sale of Eurex D's DAX futures contract within the United States. *See* CFTC Staff Letter No. 94-98, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,277 (Dec. 20, 1994). Eurex CH, however, must receive a separate no-action position from the Commission before it may offer within the United States the DAX futures contract or any other futures contracts based on a stock index.

32 To date, Eurex CH has not applied for a no-action position in connection with the offer and sale of any of these stock index futures contracts.

33 *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).

34 *See* CFTC Interpretative Letter No. 88-15, Comm. Fut. L. Rep. (CCH) ¶24, 296 (Aug. 10, 1988).

35 *See* CFTC Interpretative Letter No. 87-7, Comm. Fut. L. Rep. (CCH) ¶23,972 (Nov. 17, 1987).

36 A stock exchange as defined in SESTA also includes an organization set up for the purpose of trading derivatives.

37 The term "members" includes those persons identified in footnote 2 for the purposes of this no-action letter request and the conditions imposed upon the relief requested herein.

38 For purposes of these conditions, "communications" is defined to include any summons, complaint, order, subpoena, request or information, or notice or any other written or electronic documentation or correspondence issued on behalf of the Commission.

39 The Division notes that "material" changes in the information provided to it in support of this No-Action Request would include, without limitation, a modification of: Eurex CH's membership criteria; the location of Eurex CH's management, personnel, or operations (particularly changes that may suggest an increased nexus between Eurex CH's activities and the United States); the basic structure, nature, or operation of the System; or the regulatory or self-regulatory structure applicable to Eurex CH, the System, or System participants.