



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

CFTC Letter No. 08-13
August 18, 2008
No-Action
Office of General Counsel

Paul M. Architzel, Esq.
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

Re: Eurex Deutschland's Request for No-Action Relief in Connection with the Offer and Sale in the United States of its Futures Contracts Based on the SLI Swiss Leader Index, the Swiss Market Index Midcap, the Dow Jones Euro STOXX Select Dividend 30 Stock Index and the TecDAX Index

Dear Mr. Architzel:

This is in response to your letters, attachments, facsimiles and electronic mail dated from November 7, 2007 to March 7, 2008, requesting on behalf of Eurex Deutschland ("Eurex"), that the Office of General Counsel ("Office") of the Commodity Futures Trading Commission ("Commission" or "CFTC") issue a "no-action" letter concerning the offer and sale in the United States of Eurex's futures contracts based on the SLI Swiss Leader Index ("SLI"), the Swiss Market Index Midcap ("SMIM"), the Dow Jones Euro STOXX Select Dividend 30 Stock Index ("Select Dividend 30") and the TecDAX Index ("TecDAX")(collectively, "Indices").

We understand the facts to be as follows. Eurex is a futures and options exchange located in Frankfurt, Germany and operated by Eurex Frankfurt AG.¹ Eurex is regulated by and subject to active market surveillance by German regulatory agencies, including the Exchange Supervisory Authority in the State of Hesse, where Eurex is located, and by the German Federal Financial Supervisory Agency (Bundesanstalt für Finanzdienstleistungsaufsicht) (the "BaFin"). Pursuant to the German Securities Trading Act, the BaFin has responsibility for the supervision of German securities and derivatives trading and has the authority to cooperate with competent authorities of other countries in connection with the supervision of securities and derivatives

¹ This Office previously has granted no-action relief to Eurex in connection with the offer and sale in the U.S. of a number of Eurex's futures contracts based on non-narrow-based security indices, most recently *see* CFTC Staff Letter No. 08-05, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,801 (Mar. 6, 2008).

markets and trading activity thereon, including by sharing non-public market surveillance information.²

The SLI and SMIM, the Select Dividend 30 and the TecDAX, together with their respective Eurex futures contracts based thereon, are described below.

SLI and SMIM

The SLI and SMIM are subsets of the SPI Index (“SPI”), which is a broad-based, free-float market-capitalization-weighted index comprised of approximately 230 stocks of Swiss-domiciled companies traded on the SWX Swiss Exchange (“SWX”), and its subsidiary, SWX Europe Limited (“SWX Europe”),³ a Recognized Investment Exchange located in the United Kingdom. The SLI includes the 30 largest (by market capitalization) and most liquid stocks traded in the Swiss equity market represented in the SPI. The SMIM includes 30 of the largest and most liquid mid-cap stocks of the SPI.⁴ Component weights of stocks in the SLI are “capped,” so that each of the top four shares make up at most 9%, and each of the other shares make up at most 4.5%, of the SLI. A capping formula is not applied to the SMIM.⁵

Based on data supplied by Eurex, the capped and free-float adjusted market capitalization of the SLI was approximately U.S.\$ 376 billion as of August 31, 2007. The free-float adjusted market capitalization of the SMIM was approximately U.S.\$ 103 billion on that date.⁶ The largest single security by weight represented 10.44% of the SLI and 7.03% of the SMIM.⁷ The five most heavily-weighted securities represented 41.23% of the SLI and 30.82% of the SMIM.⁸

² See letter from Paul M. Architzel, Alston & Bird LLP to Terry S. Arbit, General Counsel, CFTC, dated November 7, 2007, (“SLI/SMIM letter”) at 9.

³ SWX Europe was formerly the Virt-x Exchange.

⁴ *Id.* at 1-2. The SMIM is one of three indices in the “SMI Family,” which includes the Swiss Market Index (“SMI”) and the SMI Expanded. The SMI comprises the 20 largest and most liquid equities in the SPI. The SMIM Index tracks the next 30 largest and most liquid securities. The SMI Expanded includes stocks of both the SMI and SMIM.

⁵ *Id.* at 5-6 and Attachment A, Rule 4. Changes are made to the SLI and SMIM once a year, following two months notice of impending changes. Ordinary adjustments to the number of shares and the free-float are made bi-annually on the third Friday in March and September after the close of trading. The capping factor is applied to the SLI on a quarterly basis. Extraordinary adjustments are made in response to a corporate event as necessary to maintain the integrity of the index. Notice of forthcoming extraordinary corporate events that will result in an adjustment to the index is provided by electronic mail prior to the adjustment being made.

⁶ See electronic mail from Paul M. Architzel, Alston & Bird LLP to Julian E. Hammar, Assistant General Counsel, CFTC, dated November 16, 2007 (attached spreadsheet).

⁷ *Id.*

⁸ *Id.*

The securities comprising the lowest 25% of the SLI and SMIM had six-month aggregate dollar values of average daily trading volume in excess of U.S.\$ 30 million: approximately U.S.\$ 1.02 billion and U.S.\$ 219.8 million, respectively, for the 6-month period ending August 31, 2007.⁹ The Indices are calculated in real time and are disseminated by electronic means through major data vendors, including Bloomberg and Reuters.¹⁰

With the exception of the index underlying each contract, the terms and conditions for Eurex's futures contracts on the SLI and SMIM largely are identical. Both contracts provide for cash settlement. Prices for each contract are quoted in index points, with each index point equal to 10 Swiss Francs ("CHF") per contract.¹¹ Eurex lists for trading the three nearest months of the March quarterly cycle (March, June, September and December). The final settlement day of the contracts is the third Friday of the relevant expiration month (or, if such day is not a trading day, the trading day immediately preceding such Friday). The last trading day is the business day prior to the final settlement day. Cash settlement occurs on the final settlement day. The final cash settlement price for each contract is the value of the relevant underlying index calculated based on opening prices of the component stocks on the final settlement day.¹²

Select Dividend 30

The Select Dividend 30 is part of the Dow Jones World Index family of indices and is derived from the constituent stocks of the DJ STOXX 600 Index. The Select Dividend 30 is calculated by STOXX Limited, a joint venture of Deutsche Boerse AG, Dow Jones & Company and the SWX Group. The Dow Jones STOXX Select Dividend family of indices tracks the highest-dividend-yielding companies in the included geographic area. It includes a global index and various regional indices tracking the highest-dividend-yielding companies in the world's and in each region's markets, respectively.¹³

The Select Dividend 30, which is the subject of this no-action request, is a broad-based, dividend and price weighted index that tracks the highest-dividend-yielding companies in the 12

⁹ *Id.*

¹⁰ *See* SLI/SMIM letter at 8.

¹¹ The contracts differ with respect to their minimum price movement. For the SLI futures contract, the minimum price fluctuation is one-half of one index point, equal to CHF 5 per contract. For the SMIM futures contract, the minimum price fluctuation is one Index point, equal to CHF 10 per contract. *See* SLI/SMIM letter, Attachment D.

¹² *Id.*

¹³ *See* letter from Paul M. Architzel, Alston & Bird LLP to Terry Arbit, General Counsel, CFTC, ("Select Dividend 30 letter"), at 4.

Euro Zone countries.¹⁴ By definition, there are 30 stocks comprising the Select Dividend 30, which are selected annually. The universe of eligible stocks are those companies included in the DJ STOXX 600 Index that pay a dividend, have a non-negative historical five-year dividend growth rate, and a non-negative payout ratio of less than or equal to 60%. An out-performance factor is then calculated for every stock.¹⁵

Based on data supplied by Eurex, the total free-float market capitalization of the stocks in the Select Dividend 30 was approximately U.S.\$ 1.326 trillion as of October 22, 2007.¹⁶ Also as of that date, the largest single security by weight represented about 6.05%, and the five largest securities by weight represented about 26%, of the Select Dividend 30.¹⁷ The securities comprising the lowest 25% of the Select Dividend 30 had aggregate values of average daily trading volume of about U.S.\$ 2.42 billion over the six-month period ending October 22, 2007.¹⁸ The Select Dividend 30 is calculated in real time and disseminated by electronic means through major data vendors, including Bloomberg and Reuters.¹⁹

Eurex's futures contract on the Select Dividend 30 provides for cash settlement. Prices are quoted in index points, with each index point equal to €10 per contract. The minimum price movement is one-half of one index point, equal to €5 per contract. Eurex lists for trading the three nearest months of the March quarterly cycle (March, June, September and December). The

¹⁴ Those countries are Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

¹⁵ *Id.* at 4-5. The out-performance factor is calculated by taking the company's net dividend yield and dividing it by the net yield of the respective Dow Jones Total Market Index for the home country of the particular stock, minus 1. The stocks are then ranked by this out-performance factor. The current constituents of the Select Dividend 30 ranked 60 or above are retained in the index and new components are added until a total of 30 stocks is reached. The cap on the weighting of any individual component stock of the index, which is currently 15%, is also reviewed during the annual review. The component announcement is generally made four weeks before implementation.

The composition of the Select Dividend 30 is reviewed quarterly. Selection lists are produced quarterly in order to indicate possible changes in the composition of the index at the time of the next annual review and to determine replacements for stocks that may be deleted during the interim period. The Select Dividend 30 also may be adjusted at times other than during the annual review to respond to extraordinary corporate events, including spin-offs, mergers, delistings and bankruptcies. Where possible, notification of such adjustments is made at least two trading days prior to implementation. *Id.* at 5.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.* and Attachment B.

¹⁹ *Id.* at 6.

last trading day is the third Friday of the delivery month. Cash settlement occurs on the first business day after the last trading day. The final cash settlement price is calculated on the last trading day and is the arithmetic mean of the index levels that are calculated and disseminated every fifteen seconds between 11:50 a.m. and 12:00 noon Central European Time (CET) (41 values).²⁰

TecDAX

The TecDAX is a broad-based, free-float-market-capitalization-weighted, total-return index of 30 technology company stocks that are the largest and most liquid issues from the various technology sectors of the Prime Standard Segment of the Deutsche Boerse beneath the issues included in the DAX Index.²¹ The TecDAX is comprised of companies that either have their legal or operational headquarters in Germany or are European Union or European Free Trade Association based companies that have the major share of their stock exchange turnover on the Frankfurt Stock Exchange. Only share prices derived from trading on the Frankfurt Stock Exchange, and its electronic trading platform, Xetra®, are included in calculating the TecDAX.

The TecDAX, together with the DAX Index and the MDAX Index, are part of the Prime Standard, which is the segment of companies with the highest listing and reporting standards at Deutsche Boerse. The constituent issuers that are eligible for inclusion in the TecDAX are selected according to their sector classification, their rank in market capitalization and trading volume. The weighting of each component stock in the TecDAX is capped at 10% of the total index on a quarterly basis.²²

Based on data supplied by Eurex, the TecDAX Index had a free-float market capitalization of approximately U.S.\$ 21 billion, as of February 12, 2008.²³ The most highly weighted stock comprised approximately 11.12%, and the five most heavily weighted stocks

²⁰ *Id.* at 8-9 and Attachment C.

²¹ *See* letter from Paul M. Architzel, Alston & Bird LLP to Terry Arbit, General Counsel, CFTC, dated December 7, 2007, (“TecDAX letter”) at 4-5. The DAX Index consists of the 30 German companies with the highest volume and largest free-float market capitalization without regard to sector classification. Indexes beneath the DAX Index are divided according to their sector classification. Companies that are classified according to Deutsche Boerse’s classification system as technological are eligible for the TecDAX.

²² *Id.* at 5. The composition of the TecDAX is reviewed quarterly in March, June, September and December. In addition to the quarterly review, the TecDAX may be adjusted at other times for extraordinary corporate events, including spin-offs, mergers, delistings and bankruptcies. Where possible, notification of such adjustments is made at least two trading days prior to implementation by Deutsche Boerse.

²³ *See* letter from Paul M. Architzel, Alston & Bird LLP to Julian E. Hammar, Assistant General Counsel, CFTC, dated March 6, 2008, Attachment 2.

comprised approximately 41.78%, of the TecDAX.²⁴ The securities comprising the lowest 25% by weight of the TecDAX had an aggregate dollar value of average daily trading volume of approximately \$121 million for the six-month period ending January 31, 2008.²⁵

Eurex's futures contract on the TecDAX provides for cash settlement. Prices are quoted in index points with each index point equal to €10 per contract. The minimum price fluctuation is one index point. Eurex lists for trading the three nearest months of the March quarterly cycle (March, June, September and December). The last trading day is the third Friday of the delivery month (or, if such day is not a trading day, the trading day immediately preceding such Friday). Cash settlement occurs on the first business day after the last trading day. Trading ceases with the start of the call phase of the intra-day auctions on Xetra®, which is at 1:00 p.m. CET on the last trading day. The contract is cash settled based on the value of the underlying index as calculated using the Xetra® auction prices of the respective index component shares. The intraday auction starts at 1:00 p.m. CET and ends at 1:02 p.m. CET.

The Commodity Exchange Act ("CEA"),²⁶ as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"),²⁷ provides that the offer or sale in the U.S. of futures contracts based on a group or index of securities, including those contracts traded on or subject to the rules of a foreign board of trade, is subject to the Commission's exclusive jurisdiction,²⁸ with the exception of security futures products,²⁹ over which the Commission shares jurisdiction with the Securities and Exchange Commission ("SEC").³⁰ Thus, the Commission's jurisdiction remains exclusive with regard to futures contracts on a group or index of securities that are broad-based pursuant to CEA Section 1a(25).³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ 7 U.S.C. § 1 *et seq.*

²⁷ Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

²⁸ *See* CEA Section 2(a)(1)(C)(ii).

²⁹ A security futures product is defined as a security future or any put, call, straddle, option, or privilege on any security future. *See* CEA Section 1a(32). A security future is defined as a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, with certain exceptions. *See* CEA Section 1a(31).

³⁰ *See* CEA Section 2(a)(1)(D).

³¹ *See* CEA Section 2(a)(1)(C)(ii).

CEA Section 2(a)(1)(C)(iv) generally prohibits any person from offering or selling a futures contract based on a security index in the U.S., except as permitted under CEA Section 2(a)(1)(C)(ii) or CEA Section 2(a)(1)(D).³² By its terms, CEA Section 2(a)(1)(C)(iv) applies to futures contracts on security indices traded on both domestic and foreign boards of trade. CEA Section 2(a)(1)(C)(ii) sets forth three criteria to govern the trading of futures contracts on a group or index of securities on designated contract markets and registered derivatives transaction execution facilities (“DTEFs”):

- (1) the contract must provide for cash settlement;
- (2) the contract must not be readily susceptible to manipulation nor to being used to manipulate any underlying security; and
- (3) the group or index of securities must not constitute a narrow-based security index.³³

While Section 2(a)(1)(C)(ii) provides that no contract market or DTEF may trade a security index futures contract unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to a foreign security index futures contract traded on a foreign board of trade. This Office has applied those same three criteria in evaluating requests by foreign boards of trade to allow the offer and sale within the U.S. of their foreign security index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a DTEF to trade those products.³⁴

³² CEA Section 2(a)(1)(D) governs the offer and sale of security futures products.

³³ The first two criteria under CEA Section 2(a)(1)(C)(ii) were unchanged by the CFMA. With regard to the third criterion, an index is a “narrow-based security index” under both the CEA and the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78a et seq., if it has any one of the following four characteristics: (1) it has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities in the aggregate comprise more than 60% of the index’s weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index’s weighting, have an aggregate dollar value of average daily trading volume of less than \$50 million (or in the case of an index with 15 or more component securities, \$30 million). *See* CEA Section 1a(25)(A)(i)-(iv); Exchange Act Section 3(a)(55)(B)(i)-(iv). Thus, an index that does not have any of these elements is not a narrow-based security index for purposes of CEA Section 2(a)(1)(C)(ii). *See also* CEA Section 1a(25)(B); Exchange Act Section 3(a)(55)(C).

³⁴ With regard to the third criterion, the CFTC and SEC jointly promulgated Rule 41.13 under the CEA and Rule 3a55-3 under the Exchange Act, governing security index futures contracts traded on foreign boards of trade. These rules provide that “[w]hen a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market or registered

Accordingly, Commission staff has examined the SLI, the SMIM, the Select Dividend 30 and the TecDAX, and Eurex's respective futures contracts based thereon, to determine whether the Indices and the futures contracts meet the requirements enumerated in CEA Section 2(a)(1)(C)(ii). Based on the information noted herein and as set forth in the letter, attachments, facsimiles and electronic mail cited above, we have determined that the Indices, and Eurex's respective futures contracts based thereon, conform to these requirements.³⁵

In determining whether a foreign futures contract based on a foreign security index is not readily susceptible to manipulation or being used to manipulate any underlying security, one preliminary consideration is the requesting exchange's ability to access information regarding the securities underlying the index. With regard to the SLI and SMIM, all of the constituent shares of the SLI are traded on SWX's subsidiary SWX Europe which, as noted above, is a Recognized Investment Exchange and is regulated by the U.K. Financial Services Authority ("FSA"). The constituent shares of the SMIM are traded on SWX Europe and SWX, the latter of which is supervised by the Swiss Federal Banking Commission ("SFBC").

Eurex represents that it may request that the German regulator, the BaFin, obtain surveillance information from the respective regulators of the SWX Europe and SWX pursuant to BaFin's information sharing arrangements. With regard to the shares traded on SWX Europe in the U.K., both the BaFin and the FSA are members of the Committee of European Securities Regulators ("CESR"). Members of CESR have entered into a Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance Activities that provides for sharing of certain market surveillance data among CESR members. FSA and BaFin also are signatories to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions ("IOSCO MOU"). With respect to the shares traded on SWX in Switzerland, the BaFin and the SFBC have entered into a bilateral information sharing memorandum of understanding.³⁶ In addition, Eurex's Trading Surveillance Office is authorized under the

derivatives transaction execution facility." CFTC Rule 41.13, 17 C.F.R. § 41.13; Exchange Act Rule 3a55-3, 17 C.F.R. § 240.3a55-3.

³⁵ In making this determination, Commission staff has concluded that the SLI, the SMIM, the Select Dividend 30 and the TecDAX do not have any of the elements of a narrow-based security index as enumerated in CEA Section 1a(25)(A). Accordingly, the Indices would not be narrow-based security indices if traded on a designated contract market or DTEF.

³⁶ Eurex notes that the SFBC is legally authorized to cooperate with foreign supervisory authorities, even in the absence of an explicit agreement to do so. If the cooperation involves the exchange of sensitive data, the SFBC in the absence of a prior agreement requests an ad hoc declaration of the requesting authority that the information is for the monitoring of supervised institutions, that the requesting authority is bound by confidentiality provisions, and that the information will be forwarded to other authorities only with the approval of the SFBC. Eurex also notes that the CFTC may request assistance from Switzerland under the U.S.-Swiss Treaty on Mutual Assistance in Criminal Matters. *See* SLI/SMIM letter at 9.

German Exchange Act to obtain information directly from, and share information directly with, similar trading surveillance offices of other exchanges or regulators inside and outside of Germany.³⁷

With regard to the Select Dividend 30, all of the constituent stocks, as noted above, are contained in the Dow Jones STOXX 600 Index, which was the subject of a no-action letter by this Office in July 2007. In issuing that letter, this Office concluded that Eurex should have access to information necessary to detect and deter manipulation with respect to the securities underlying the Dow Jones STOXX 600 Index.³⁸ We see no reason to alter that conclusion based on the information submitted with regard to the applications for no-action relief concerning Eurex's futures contract on the Select Dividend 30, which is based on the Dow Jones STOXX 600 Index.

Concerning the TecDAX, all of its underlying shares are listed on the Frankfurt Stock Exchange, and only share prices derived from trading on the Frankfurt Stock Exchange and its Xetra® trading platform are used in calculating the TecDAX.³⁹ Accordingly, you represent that

³⁷ *Id.* at 10. In an SEC staff no-action letter to permit, among other things, Eurex and its participants to familiarize eligible broker-dealers and eligible institutions in the U.S. with options traded on Eurex, including Swiss equity, index and exchange-traded fund options, without Eurex or Eurex participants registering with the SEC, the SEC staff noted that SWX has access to surveillance information concerning the trading of Swiss equity securities on both its own market and on SWX Europe (then known as the Virt-x Exchange). SEC staff noted that SWX had agreed to share with Eurex Zürich AG, the parent company of Eurex Frankfurt AG, relevant market surveillance information concerning trading activity in Swiss equities underlying Eurex Swiss equity, index and exchange-traded fund options traded on the SWX and the Virt-x Exchange. It was further noted that Eurex's Trading Surveillance Office may, in turn, request from Eurex Zürich AG market surveillance information that Eurex Zürich AG receives from SWX for the purposes of fulfilling the Trading Surveillance Office's monitoring, compliance, and examination responsibilities with respect to Eurex participants, and that Eurex Zürich AG could provide this information to Eurex's Trading Surveillance Office. *See* Eurex, SEC Division of Market Regulation No-Action Letter, 2005 WL1844502 at *18 n.11 (July 27, 2005).

Eurex has confirmed that this surveillance-sharing arrangement applies to the SLI, the SMIM, and their underlying component securities. *See* letter from Paul M. Architzel, Alston & Bird LLP to Julian E. Hammar, Assistant General Counsel, CFTC, dated March 7, 2008, at 2.

³⁸ *See* CFTC Staff Letter No. CFTC Staff Letter No. 07-11, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,579 (July 18, 2007).

³⁹ Six of the TecDAX's constituent stocks are also listed on other European or U.S. exchanges, specifically Wiener Borse, SWX Europe, Borsa Italiano, Euronext Amsterdam, and U.S. NASDAQ. However, the Frankfurt Stock Exchange must be the primary market for trading in these shares, and share prices from these other exchanges are not used in calculating the TecDAX. Nonetheless, Eurex represents that it may obtain surveillance information with respect

the Frankfurt Stock Exchange would have direct surveillance authority with respect to every trade that is used in determining the price of the TecDAX with respect to the component stocks of the TecDAX. You also note that the Exchange Supervisory Authority of the State of Hesse and BaFin conduct active market surveillance of the Frankfurt Stock Exchange. Moreover, Eurex's Trading Surveillance Office may obtain information directly from, and share information directly with, the Frankfurt Stock Exchange's Trading Surveillance Office.⁴⁰

Accordingly, Eurex should have access to information with respect to the securities underlying the SLI, SMIM, the Select Dividend 30 and the TecDAX, necessary to detect and deter manipulation. In the event that Eurex is unable to obtain access to adequate surveillance data in this regard, or is unable, either directly or through the BaFin, to share such data with the CFTC, this Office reserves the right to reconsider the position we have taken herein.⁴¹

In light of the foregoing, this Office will not recommend enforcement action to the Commission based on Sections 2(a)(1)(C)(iv), 4(a), or 12(e) of the CEA, as amended, if Eurex's futures contracts based on the SLI, SMIM, the Select Dividend 30 and the TecDAX, are offered or sold in the U.S. Because this position is based upon facts and representations contained in the letters, attachments, facsimiles and electronic mail cited above, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion. This position also is contingent on the continued compliance by Eurex with all regulatory requirements imposed by the BaFin, and the applicable laws and regulations of Germany and the

to trading on SWX Europe through the arrangement described above, and the other exchanges upon request to the BaFin, which in turn may obtain such information through various bilateral and multilateral information-sharing arrangements to which the BaFin is a party, including the CESR Multilateral Memorandum of Understanding and the IOSCO MOU mentioned above. In addition, Eurex's Trading Surveillance Office is authorized to obtain information directly from exchanges or regulators outside of Germany. See letter from Paul M. Architzel, Alston & Bird LLP to Julian E. Hammar, Assistant General Counsel, CFTC, dated March 6, 2008, at 34.

⁴⁰ *Id.* at 3, 33-34.

⁴¹ Eurex has confirmed that it is willing and able to cooperate with the Commission through information sharing and other means in relation to the trading of Eurex's SLI, SMIM, Select Dividend 30 and TecDAX futures contracts, respectively. See SLI/SMIM letter at 10; Select Dividend 30 letter at 8; and TecDAX letter at 8. Eurex also is a signatory to the International Information Sharing Memorandum of Understanding and Agreement signed on March 15, 1996, at Boca Raton, Florida. Moreover, the BaFin's predecessor, the BAWe, and the CFTC entered into a Memorandum of Understanding concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws on October 17, 1997. As noted above, the BaFin is a signatory to the IOSCO MOU, to which the Commission also is a signatory. In addition, the BaFin, through its predecessor, is a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations for the sharing of large exposure information, signed on March 15, 1996, at Boca Raton, Florida.

State of Hesse. In addition, this position may be affected by any rules that the Commission may adopt regarding futures contracts based on non-narrow-based security indices.

Eurex also has requested that, upon issuance of the relief granted herein, it be permitted to make its futures contracts on the Indices available for trading through the electronic trading terminals of its U.S. members in accordance with the terms of the August 10, 1999 foreign terminals no-action letter, as amended (“August 10, 1999 letter”), issued by Commission staff to Eurex.⁴² In this regard, Eurex has certified that it is in compliance with the terms of the August 10, 1999 letter and that Eurex’s futures contracts on the Indices will be traded in accordance with the terms and conditions of the August 10, 1999 letter.⁴³ We have consulted with the Commission’s Division of Market Oversight (“Division”), which is the Division in the Commission that administers foreign terminal no-action letters. The Division has concluded that allowing Eurex to make its futures contracts on the Indices available for trading pursuant to the August 10, 1999 letter would not be contrary to the public interest. Accordingly, on behalf of the Division, this Office hereby confirms that the no-action relief granted to Eurex in the August 10, 1999 letter extends to Eurex’s futures contracts on the Indices.⁴⁴

The offer and sale in the U.S. of Eurex’s futures contracts on the Indices is, of course, subject to Part 30 of the Commission’s regulations, which governs the offer and sale of foreign futures and foreign option contracts in the U.S.⁴⁵

Sincerely,

Terry S. Arbit
General Counsel

⁴² See CFTC Staff Letter No. 99-48 [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,572 (Aug. 10, 1999).

⁴³ See SLI/SMIM letter (Attachment D); Select Dividend 30 letter (Attachment D); and TecDAX letter (Attachment D).

⁴⁴ Please be advised that if Eurex intends to list options on its futures contracts based on the Indices, it may offer and sell those options in the U.S. with no further action from this Office, *see* 61 Fed. Reg. 10891 (March 18, 1996). However, if Eurex intends to make such options available for trading via direct access from electronic trading terminals in the U.S., Eurex must notify the Division in accordance with the Notice of Revision 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 Provide Direct Access to Their Automated Trading Systems From Locations in the United States, issued on April 18, 2006. *See* 71 Fed. Reg. 19877 (April 18, 2006).

⁴⁵ *See* 17 C.F.R. Part 30.