



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Phyllis Dietz
Acting Director

CFTC Letter No. 14-156
No-Action
December 23, 2014
Division of Clearing and Risk

Mr. Thomas Book, Chief Executive Officer
Mr. Oliver Haderup, Executive Director
Eurex Clearing AG
Mergenthalerallee 61
65760 Eschborn, Germany

Re: Extension of Time-Limited No-Action Relief with Regard to Sections 5b(a) and 2(h)(1)(A) of the Commodity Exchange Act and Implementing Regulations Thereunder

Dear Mr. Book and Mr. Haderup:

This is in response to your letter dated December 15, 2014 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) requesting a further extension of the no-action relief that the Division granted to Eurex Clearing AG (“Eurex Clearing”) in CFTC Letter 14-27 and that expires on December 31, 2014 (the “No-Action Relief”).¹ In CFTC Letter 14-27, the Division stated it would not recommend that the Commission take enforcement action against (1) Eurex Clearing for failure to register as a derivatives clearing organization (“DCO”) pursuant to the requirements of Section 5b(a) of the Commodity Exchange Act (“CEA”),² or (2) clearing members of Eurex Clearing that are U.S. persons (each, a “U.S. Clearing Member”) for failure to clear certain interest rate swaps (“IRS”) or certain credit default swaps (“CDS”) on a broad-based index of reference entities (“Index CDS”) through a

¹ CFTC Letter No. 14-27 (March 10, 2014) and its attachment, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-27.pdf> and <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/eurexattachmentnal031014.pdf>.

CFTC Letter No. 14-27 extended the no-action relief originally granted in CFTC Letter No. 13-44 (July 11, 2013).

² 7 U.S.C. § 7a-1(a).

registered or exempt DCO pursuant to the requirements of Section 2(h)(1)(A) of the CEA and the implementing regulations thereunder as applicable.³ You have requested that the No-Action Relief be extended until the earlier of September 30, 2015, or the date upon which Eurex Clearing becomes registered as a DCO with respect to its IRS clearing business.⁴

Eurex Clearing filed its initial application for DCO registration on May 17, 2011 and amended applications on September 14, 2012 and September 21, 2012. Subsequently, Eurex Clearing has submitted additional materials, which further support its application, most recently on October 20, 2014. The review period for consideration of the application has been extended to September 30, 2015.⁵

Eurex Clearing requests the further extension of the No-Action Relief in order to maintain the status quo during the pendency of its application for registration. Eurex Clearing further states that such extension of the No-Action Relief is an appropriate means of promoting competition and enhancing choice in clearing services and is in the public interest.

In view of the foregoing, the Division has decided to extend the No-Action Relief, subject to the conditions described below, until the earlier of the date on which Eurex Clearing becomes registered as a DCO with respect to its IRS clearing business or September 30, 2015.

Extension of Grant of No-Action Relief

Based on the facts presented and the representations you have made, the Division will not recommend that the Commission take enforcement action against (i) Eurex Clearing for failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA, or (ii) U.S. Clearing Members for failure to clear IRS through a registered or exempt DCO, pursuant to the requirements of Section 2(h)(1)(A) of the CEA and the implementing regulations thereunder as applicable, subject to the following conditions:

- (1) Product Scope. This relief is limited to IRS currently accepted for clearing by Eurex Clearing for U.S. Clearing Members and identified in the attachment to this letter;

³ 7 U.S.C. § 2(h)(1)(A); 17 C.F.R. pt 50.

⁴ Eurex Clearing is not requesting an extension of the No-Action Relief with respect to its Index CDS business. A list of IRS products offered for clearing by Eurex Clearing for U.S. Clearing Members is in the attachment to this letter. Moreover, Eurex Clearing is no longer pursuing registration as a DCO for the clearing of Index CDS.

⁵ By separate letter dated December 15, 2014, Eurex Clearing requested that the review period for its DCO application be extended until September 30, 2015.

- (2) Participant Scope. The relief applies to Eurex Clearing and to its prospective U.S. Clearing Members in connection with their proprietary⁶ IRS clearing businesses (Eurex Clearing will not accept, and no Eurex clearing member will offer for clearing through Eurex Clearing, IRS on behalf of a U.S. customer⁷);
- (3) Limited Duration. The no-action relief shall expire at the earlier of: (i) September 30, 2015, or (ii) the date upon which Eurex Clearing becomes registered as a DCO with respect to its IRS clearing business;⁸ and
- (4) Reporting. If a U.S. Clearing Member clears through Eurex Clearing a swap (referred to as the “alpha swap”) that has been reported to a Commission-registered swap data repository (“SDR”) pursuant to Part 45 of the Commission’s regulations,⁹ then Eurex Clearing must report to an SDR, pursuant to Part 45, data regarding the two swaps resulting from the novation of the alpha swap that had been submitted to Eurex Clearing for clearing (referred to as “beta” and “gamma” swaps).¹⁰

⁶ The term “proprietary account” is defined in § 1.3(y) of the Commission’s regulations, 17 C.F.R. § 1.3(y). The relief granted herein to U.S. Clearing Members includes transactions of a parent or affiliate of a U.S. Clearing Member.

⁷ The scope of the relief provided herein does not extend to customer clearing by U.S. Clearing Members or U.S. customer clearing by any clearing member of Eurex Clearing. The term “customer” is defined in § 1.3(k) of the Commission’s regulations, 17 C.F.R. § 1.3(k).

⁸ Should the Commission deny Eurex Clearing’s application for DCO registration, the Division will provide Eurex Clearing and its U.S. Clearing Members with guidance and, as appropriate, no-action relief to facilitate the orderly disposition of open positions.

⁹ See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012) (adopting Part 45).

¹⁰ Pursuant to Commission Regulation 39.12(b)(6), during the clearing process, a swap submitted for clearing to a DCO (the alpha swap) is extinguished or terminated, and two new swaps (the beta and gamma swaps) are created. The DCO must then report the beta and gamma swaps to an SDR under Part 45 and associate the unique swap identifier (USI) of the alpha swap with the beta and gamma swap in order for the Commission to confirm that such alpha swap was cleared.

See Statement of the Commission concerning CME Rule 1001 (March 6, 2013), page 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

See also Commission Regulation 45.4(a) (“[R]eporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap.”); 77 Fed. Reg. at 2153 (“[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.”); see also Commission Regulation 49.11 (Confirmation of data accuracy).

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The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter and in Eurex Clearing's DCO application, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, 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.

Should you have any questions, please do not hesitate to contact Eileen Donovan at (202) 418-5096, or Alicia Lewis, Special Counsel, at (202) 418-5862.

Sincerely,

Phyllis Dietz
Acting Director

Attachment

In order to avoid duplicative reporting for such transactions, Eurex Clearing should have rules that prohibit the Part 45 reporting of the beta and gamma swaps by the original counterparties to the alpha swap. These rules should make it clear to market participants that Eurex Clearing is reporting the beta and gamma swaps as if it were a registered DCO under the Part 45 rules.

ATTACHMENT A – Products Offered for Clearing by Eurex Clearing AG for U.S. Persons

Interest Rate Swaps:

Products:

- Single currency interest rate swaps ("IRS")
- Forward rate agreements ("FRA")
- Overnight index swap ("OIS"), except in Japanese yen
- Single currency basis swaps
- Zero coupon swaps
- Spot and forward starts
- Compounding - flat and straight (for IRS and basis swaps)
- Linear interpolation of stub periods
- Front and back stubs (for IRS and OIS)
- Negative interest rates
- Variable notional - amortizing and roller coaster (for IRS and basis swaps)
- Variable index spread on floating rates that can differ period per period (IRS and basis swaps)
- Fixed coupon rates that can differ period per period (IRS and basis swaps)
- IMM - International Monetary Markets - roll dates

Currencies:

Euro, U.S. dollar, British pounds, Swiss franc, and Japanese yen

Terms:

Swaps entered into under ISDA® 2000/2006 and German Master Agreements – standard swaps and forward rate agreement with standard day count and business day conventions, fee legs, constant notionals, front or back stubs and floating rate indexes for each currency.

Type	Currencies	Maturity	Supported types	Other characteristics
IRS	EUR, GBP, USD	Up to 50 years	Plain vanilla (fixed/float) Basis/toner (cost/float)	ISDA, German framework Constant notionals Front, end stubs, forward starts
	CHF, JPY	Up to 30 years		EUR (Euribor) and GBP (Libor), 1m, 3m, 6m, 12m
OIS	EUR, GBP, USD, CHF	Up to 30 years	Plain vanilla (fixed/float)	USD, CHF and JPY (Libor) 1m, 3m, 6m Zero Coupon Variable notional – amortizing & roller coaster
FRA	EUR, GBP, USD, CHF, JPY	Up to 2 years	Plain vanilla (fixed/float)	Negative interest rates IMM roll dates Variable spreads & fixed coupons Compounding