

August 10, 1999

Edward J. Rosen, Esq.

Cleary, Gottlieb, Steen & Hamilton

One Liberty Plaza

New York, NY 10006-1470

Re: Sections 5 and 5a—Eurex Deutschland; Request to Install Additional Electronic Trading Terminals in the U.S. and to List Certain New Contracts for Trading____

Dear Mr. Rosen:

This is in response to your letter on behalf of Eurex Deutschland (“Eurex”), dated May 12, 1999, to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”). By your correspondence, Eurex requests confirmation that the Division would not recommend enforcement action against Eurex or its members if current and future Eurex members install additional Eurex electronic trading terminals in members’ offices located in the United States (“U.S.”) or if Eurex makes available for trading on Eurex electronic trading terminals (“Eurex Terminals”) located in the U.S. certain additional contracts under the terms of the no-action letter issued to its predecessor, Deutsche Terminbörse (“DTB”) without obtaining contract market designation pursuant to Sections 5 and 5a of the Commodity Exchange Act (“CEA” or “Act”) (“No-Action Request”). By letter dated July 23, 1999, Eurex also requests no-action relief so that Eurex may make available automated order routing systems (“AORSs”) to Eurex members to accept orders from U.S. customers for transmission to the Eurex electronic trading system, consistent with its rules.

In February 1996, the Division issued a no-action letter permitting DTB electronic trading terminals (“DTB Terminals”) providing access to the DTB market to be placed in the U.S. without DTB having to acquire contract market designation pursuant to Section 5 of the CEA and allowing DTB members to execute transactions involving DTB futures and option products from U.S.-based DTB Terminals (“1996 No-Action Letter”). The relief was limited to DTB contracts that were “otherwise approved for trading by U.S. persons” and was subject to compliance with specified terms and conditions.

On September 28, 1998, DTB combined with SOFFEX to form Eurex. In light of the business combination, and of the fact that the Commission was in the process of drafting proposed rules that would govern the placement of the electronic trading systems of foreign exchanges in the U.S., the Division issued a letter on June 3, 1998 that modified the terms of the 1996 No-Action Letter. Under the revised terms of that no-action relief, Eurex members who were not already operating U.S.-based Eurex Terminals generally were prevented from placing Eurex Terminals in the U. S. absent written

authorization from the Division, pending adoption of Commission rules regarding electronic access to foreign exchanges. Likewise, the Division required Eurex to obtain prior written approval before offering for trading any new contracts via U.S.-based Eurex Terminals, including any SOFFEX contracts. As the Division noted in a subsequent letter to Eurex in which it declined to extend the relief provided by the 1996 No-Action Letter to allow the trading of EURIBOR and Euro LIBOR futures and option contracts on U.S.-based Eurex Terminals: “[P]ending the Commission’s adoption of rules in this area, it remains necessary to maintain the status quo to maintain equity among all boards of trade that wish to make their products available in the U.S. via automated systems.”

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 U.S. 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 U.S. on a temporary basis until the Commission itself promulgates rules or guidelines in this area (“June 2 Order”). In accordance with this instruction, the Division has reviewed Eurex’s No-Action Request and the materials submitted in support thereof, the information and representations provided by DTB in connection with the 1996 No-Action Letter, and the materials submitted by DTB in connection with its application for Rule 30.10 relief. Among other things, DTB forwarded the following information to the Division in connection with its 1996 request for exemptive relief:

A description of DTB’s order processing network;

A description of the DTB system integrity and architecture;

A description of the DTB clearing process;

A description of the regulatory structure governing DTB’s activities; and

A description of the contracts that were to be traded initially on DTB Terminals located in the U.S.

Among other things, Eurex furnished the following information to the Division in connection with its current No-Action Request:

An analysis of certain factors that were new or had changed since the issuance of the 1996 No-Action Letter;

Information regarding the activities conducted from Eurex’s U.S.-based office;

The German Securities Trading Act, Exchange Act, and Banking Act (translated into English);

The Rules and Regulations of Eurex (collectively, “Eurex Rules”) (translated into English);

Information regarding Eurex's Year 2000 readiness program;

A Eurex product brochure; and

A list of the futures and option contracts that Eurex wishes to make available for trading through Eurex Terminals located in the U.S.

Representations made by Eurex regarding the structure of Eurex, Eurex's membership criteria, the Eurex trading system ("System"), the activities conducted from Eurex's representative office in the U.S., the relevant regulatory regime in the Federal Republic of Germany ("Germany"), and the information-sharing arrangements applicable to Eurex are summarized below. For purposes of its response to this No-Action Request, the Division has relied upon Eurex's representations and has not conducted an independent review to confirm their accuracy.

I. OVERVIEW OF EUREX AND THE GERMAN REGULATORY STRUCTURE

A. Introduction

Eurex is an all-electronic futures and option exchange that is an incorporated German public-law institution. It is headquartered in Frankfurt, Germany and has been in operation since 1990. As of August 1, 1999, it had 367 exchange members. In contrast to traditional open outcry exchanges, Eurex members trade exclusively via computer terminals. Eurex Terminals are linked to Eurex's computer center so that members can trade in futures and option contracts directly from their offices. Eurex restricts the installation of Eurex Terminals in the U.S. to the offices of its members because only Eurex members are permitted to participate in futures and options trading on Eurex.

Eurex Zurich AG ("Eurex CH"), the Swiss futures and option exchange formerly known as SOFFEX, currently owns Eurex's administrative and operating institution, EFAG, as a result of the business combination between DTB's administrative and operating institution, Deutsche Borse AG ("DBAG"), and Eurex CH's parent company, Swiss Exchange, on September 28, 1998. As a result of the business combination, Eurex CH is 50% owned by DBAG and 50% owned by Swiss Exchange. DBAG transferred its responsibility for operating DTB, which was renamed Eurex Deutschland ("Eurex" in this letter), to EFAG and its responsibility for the clearance and settlement of transactions executed on DTB to Eurex Clearing AG ("Eurex Clearing"), a German entity and wholly-owned subsidiary of EFAG. The management structure of Eurex CH, EFAG, and Eurex Clearing are identical. Eurex and Eurex CH operate their respective electronic trading systems through a common electronic trading and clearing platform that is based upon the DTB system and both exchanges clear their transactions through Eurex Clearing. However, Eurex and Eurex CH remain legally separate exchanges.

Although EFAG is owned by the Swiss entity Eurex CH, the operations of Eurex, EFAG, and Eurex Clearing are not subject to Swiss law or regulation with respect to transactions conducted on Eurex and

cleared by Eurex Clearing. Thus, while the products of each exchange are listed on both exchanges, all transactions on Eurex and the clearing of such transactions, including the transactions and the clearing of transactions in connection with Eurex CH products on Eurex, are governed by the law of Germany and Eurex Rules and procedures. At this time, Eurex is not requesting relief for the trading of Eurex or Eurex CH contracts on Eurex CH. Therefore, this letter does not address, nor is it based upon any examination of, Swiss laws or regulations or Eurex CH rules, and the no-action relief granted herein does not extend to Eurex CH or the placement of Eurex CH electronic trading systems in the U.S.

B. Members and Traders

Eurex has a single category of exchange membership, which is limited to commercially organized business entities. Individuals are not permitted to hold exchange memberships. Some exchange members are permitted to trade on behalf of customers. Other members may trade solely for their own accounts. An entity having a principal office outside of Germany may apply for membership in Eurex, provided that the entity is subject to banking or exchange supervision in its home country and that its regulator has the authority to exchange information with the German regulatory authorities.

German law prohibits members from entering into transactions on behalf of customers unless the member is: (i) a credit institution, a financial services institution, the branch of an enterprise domiciled outside of Germany that conducts banking business, or an enterprise domiciled in another European Union (“EU”) member state that conducts banking business and (ii) authorized to engage in “financial commission business” or to render financial services within the meaning of the Banking Act. All other members may enter into transactions for their own account and must maintain minimum equity capital of EUR 51,129 (\$55,219).

Individuals who are authorized to enter into futures and option transactions on behalf of members are known as Exchange Traders (“Traders”). According to Eurex 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 Exchange Trader examination constitutes sufficient evidence of technical knowledge. Individuals may only be admitted as Traders at Eurex on behalf of one entity.

C. Trading System

1. Introduction

Currently, the following contracts are available for trading on U.S.-based Eurex Terminals: Euro-Bund futures, options on Euro-Bund futures, Euro BOBL futures, options on Euro BOBL futures, Euro SCHATZ futures, and options on Euro SCHATZ futures. Futures contracts on the German Deutscher Aktienindex (“DAX”) stock index and the Three-month Euromark are also available for trading on U.S.-based Eurex Terminals. Eurex now seeks no-action relief to permit trading on the following additional contracts through its U.S.-based Eurex Terminals: MDAX futures, Dow Jones STOXX 50 futures, Dow Jones Euro STOXX 50 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 Swiss Market Index (“SMI”) futures. Eurex also requests relief to make available the following contracts for trading from Eurex Terminals in the U.S. upon final Eurex approval and the receipt of a no-action position from Commission staff: FOX (Finnish Equity Index) futures and Nordic Stock (index of Swedish, Finnish, and Norwegian stocks) futures.

2. System Architecture

Eurex represents that the architecture of the System is similar in all material respects to the DTB system as described in the 1996 No-Action Letter and in the materials provided to the Division in support of DTB’s request for that relief. 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 (*i.e.*, among other things, it performs trade matching, order maintenance, clearing functions, 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 System components. Network access devices are communication servers and external interfaces. User devices, which are located at member sites and evenly distributed among communication servers, provide the trader interface (*e.g.*, screen handling, order entry, and local validation processing). The user devices also interface with members’ in-house applications, back office applications, pricing models, trade confirmations, reports, and AORSs.

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. Moreover, asynchronous messages, such as back office data, are forwarded to the corresponding user device.

3. Order Processing

Eurex represents that the System is designed to process and execute trades and to provide accurate and timely trade and quotation information in an equitable manner. The order processing aspects of the System operate as follows. All orders and quotes are entered in Eurex’s electronic order book where they are automatically sorted 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. 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. After trading hours, Eurex performs batch processing, including reporting, margining, exercise, assignment, notification, allocation, and database maintenance.

The System feeds trading information and other data to the members’ back-office systems via the main interface. It transfers trading data in real time to members’ front office systems via additional

interfaces. A System user can call up the ten best bid and ask prices, the number of contracts, and other market-relevant data at any time during trading. Eurex's "Margin Parameter Monitoring System" shows the implied volatility and significant price movements of all Eurex contracts on a daily basis. Eurex's "Front Market System" calculates and publishes to Eurex member firms 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.

When the 1996 No-Action Letter was issued, DTB Rules required that all trades be entered into the System by a Trader and prohibited customer orders from being routed directly into the System. Members were permitted to use an electronic order routing system only as a tool to transmit customer orders to a particular Trader, who would then enter the orders into the System. Accordingly, the 1996 No-Action Letter did not authorize AORS transmission of customer orders directly into the System. Eurex has since promulgated a rule that permits members to apply for authorization to connect AORSs to the System through which customers using input devices connected to the AORS can transmit orders directly into the System for execution.

Eurex members that are permitted to employ an AORS must ensure that it is used in accordance with Eurex Rules. Among other things, these Rules require 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; (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 member; (iv) the electronic filter has been allocated to a Trader who is responsible for maintaining the trading parameters and controlling and monitoring the filter and who manually can halt further transmission of the orders at any time; and (v) the member has informed Eurex, in writing, of the personal user identification of the allocated Trader.

4. Security

The System incorporates several security features. Only authorized users may access the network, which is private. Unauthorized access to the central host processor or between customers is blocked by appropriate network parameter and security router configurations. A user cannot access the communications architecture without a password, which is assigned by Eurex. User passwords are neither visible nor changeable by members. 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 the customer specific software password.

Eurex employs other features that can restrict access to the System. Eurex requires U.S.-based Eurex Terminals to be connected to the System through a separate link from the terminals of members located outside of the U.S. This configuration permits Eurex to restrict the trading from U.S.-based Eurex

Terminals to those contracts that are currently available to be traded from U.S.-based Eurex Terminals. Additionally, this capability will help to ensure that Eurex members operating in the U.S. will abide by the terms of any no-action relief granted to Eurex or any restrictions on the products that can be traded from U.S.-based Eurex Terminals.

Settlement and Clearing

Eurex Clearing has assumed the clearing functions previously performed by DBAG and now manages the clearing, margining, and settlement of all transactions executed on Eurex. The approximately 90 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 nonaffiliated NCMs. Only German or Swiss credit institutions, banks, and certain German branches of banks and financial institutions that are domiciled in other EU member states may become clearing members. Eurex Clearing may revoke or suspend any firm’s clearing status if such firm fails to satisfy the qualifications necessary for clearing membership.

DCMs are required to have at least EUR 12.5 million (approximately \$13.5 million) 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 (approximately \$135 million) 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.

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 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.

Additionally, each clearing member must provide guarantees to the Clearing Guarantee Fund (“CGF”). Each GCM must provide clearing guarantees in the amount of EUR 5 million (approximately \$5.4 million) to the CGF and each DCM must provide clearing guarantees in the amount of EUR 1 million (approximately \$1.08 million). 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:

Margin funds of the defaulting clearing member;

The clearing guarantee of the defaulting clearing member;

The discretionary reserve fund created by Eurex Clearing; and

The clearing guarantees of the other clearing members of Eurex Clearing.

6. Adherence to IOSCO Principles

Eurex represents that in developing and operating the System, it 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”). The IOSCO Principles, as adopted by the Commission, are as follows:

1. The system sponsor should be able to demonstrate to the relevant regulatory authorities that the system meets and continues to meet applicable legal standards, regulatory policies, and/or market custom or practice where relevant.

2. The system should be designed to ensure the equitable availability of accurate and timely trade and quotation information to all system participants and the system sponsor should be able to describe to the relevant regulatory authorities the processing, prioritization, and display of quotations within the system.

3. The system sponsor should be able to describe to the relevant regulatory authorities the order execution algorithm used by the system (*i.e.*, the set of rules governing the processing, including prioritization, and execution of orders).

4. From a technical perspective, the system should be designed to operate in a manner which is equitable to all market participants and any differences in treatment among classes of participants should be identified.

5. Before implementation, and on a periodic basis thereafter, the system and system interfaces should be subject to an objective risk assessment to identify vulnerabilities (*e.g.*, the risk of unauthorized access, internal failures, human errors, attacks, and natural catastrophes) which may exist to the system design, development, or implementation.

6. Procedures should be established to ensure the competence, integrity, and authority of system users, to ensure that system users are adequately supervised, and that access to the system is not arbitrarily or discriminatorily denied.

7. The relevant regulatory authorities and the system sponsor should consider any additional risk management exposures pertinent to the system, including those arising from interaction with related financial systems.
8. Mechanisms should be in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the system sponsor and the relevant regulatory authorities on a timely basis.
9. The relevant regulatory authorities and/or the system sponsor should ensure that system users and system customers are adequately informed of the significant risks particular to trading through the system. The liability of the system sponsor, and/or the system providers to system users and system customers should be described, especially any agreements that seek to vary the allocation of losses that otherwise would result by operation of law.
10. Procedures should be developed to ensure that the system sponsor, system providers, and system users are aware of and will be responsive to the directives and concerns of relevant regulatory authorities.

As discussed more fully below, the highest competent state authority in the State of Hesse, the Ministry for Economics, Transport and Development (“Exchange Supervisory Authority”), generally is authorized by the Exchange Act to monitor the System for, among other things, its compliance with applicable legal requirements and the IOSCO Principles. The Exchange Supervisory Authority is also authorized to require Eurex to modify the System as necessary to prevent violations of German law relevant to exchanges and to eliminate or prevent irregularities that could impair the orderly conduct, settlement, or supervision of trading. Moreover, Eurex is obligated to notify the Exchange Supervisory Authority of material changes to the System and changes to certain Eurex Rules relevant to the System must be submitted before such rules become effective.

7. Reliability and Failure Recovery

Eurex 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 where all components are at least doubled and most 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 geographic location than the main central host processor.

Eurex also represents that discrepancies in cross-border transmission times result from the differences in distance across the network among members in different locations. However, the network is configured to provide a relative equality of response time among all System users, subject to differences that

amount to less than human reaction time. Furthermore, Eurex constantly monitors the network for transmission time anomalies and has appropriate procedures in place to correct such anomalies. If communication delays occur, Eurex can verify whether the delay results from the network or the member's own system. In the event of a network delay or failure, the user is automatically switched over to the backup network connection upon detection. Additionally, the System is monitored to automatically detect 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 member continues to have difficulty entering trades due to a technical problem, Eurex offers "Trading on Behalf" to its members. This alternative allows members to submit their orders via telephone through Eurex personnel on a real-time basis until System access is restored. All trades using this alternative are confirmed in writing. Eurex Rules also provide that Eurex may interrupt or extend trading hours, if necessary, to maintain orderly trading conditions.

8. Year 2000 Readiness

DBAG management has declared that Year 2000 ("Y2K") compliance is its top priority for 1999 and Eurex has instituted a Y2K compliance project with respect to the hardware, software, communications network, and other facilities comprising the System. Eurex has devoted, and intends to continue to devote through the end of 1999, substantial personnel and other resources to this project. Project managers report regularly to DBAG's senior management, the Bundesbank, and the Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen ("BAKred")) on Y2K issues. As of April 15, 1999, remediation and internal future date testing of all critical and non-critical systems applications and network elements is complete. Testing with respect to all hardware elements and facilities elements also is complete. Furthermore, Eurex members that are German credit institutions are required under German law to have completed testing of their own computer systems by the end of June 1999. Moreover, the Securities Industry Association's April 1999 Y2K Risk Review Assessment of the Deutsche Borse Group indicated a favorable assessment of the Y2K compliance of both Eurex and DBAG.

9. Demarcation of Responsibilities and Liabilities

Eurex Rules provide that Eurex 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 control. For damages suffered by a member in connection with its use of the System, Eurex is liable only to the extent that intentional misconduct or gross negligence committed by Eurex or third parties assisting in its performance can be demonstrated, unless the damage results from a culpable breach by Eurex of its principal duties. In the case of ordinary negligence, Eurex is liable only for the amount of damages typically foreseeable at the time of execution of the agreement. If Eurex delegates to third parties the performance of the obligations assigned to it in a manner authorized by Eurex Rules, the liability of Eurex is limited to the cautious selection and instruction of the third parties retained. Eurex is not liable for the accuracy, completeness, availability, and timeliness of the prices of the underlyings and other data obtained from third parties.

D. The Activities and Trading Volume of Eurex in the U.S.

Currently, Eurex has one representative office in the U.S. This office is located in Chicago, Illinois and has five employees. Eurex represents that the purposes of its Chicago office are to promote and develop Eurex's products in the U.S.; carry out representational activities with the Commission and the press; provide information to existing and prospective members, industry groups, seminars, and trade shows; and to reply to general public inquiries. Eurex represents that no order matching or clearing activities are performed from its Chicago office. It also represent that the employees of its Chicago office do not provide investment advice or technical support nor do they solicit, receive, or direct orders with respect to the products traded on Eurex. DBAG is considering establishing a similar representative office in New York, New York. The New York office would focus upon 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 as well, but would not solicit, receive, or direct orders with respect to products traded on Eurex.

The terms of the 1996 No-Action Letter require Eurex to submit to the Commission information reflecting the volume of trades originated from U.S.-based terminals compared to DTB's overall trading volume. Consequently, Eurex requires Traders who trade on behalf of Eurex members through U.S.-based Eurex Terminals to use special identification numbers indicating that transactions entered by them into the System have originated from U.S.-based Eurex Terminals. Data submitted for the fourth quarter of 1998 shows that U.S.-originated trading volume was 5,259,444 contracts (half turn) compared to overall trading volume of 120,633,464 contracts (half turn), or less than five percent of Eurex's overall trading volume.

E. Regulatory Structure

1. Federal Oversight of Financial Services Activities

Eurex represents that German laws and regulations applicable to the trading of commodity futures or options have not changed materially since the issuance of the 1996 No-Action Letter. The oversight of German derivatives markets and entities engaged in, among other things, financial commission business activities in those markets involves the close interaction of federal and state legislation and exchange rules and regulations. Generally, the activities of banks, broker-dealers, and other financial companies are governed by federal law. Responsibility for regulatory oversight is allocated between two federal agencies, the BAKred and the Federal Supervisory Office for Securities Trading, the Bundesaufsichtsamt für den Wertpapierhandel ("BAWe"). The BAKred is responsible for the interpretation of prudential rules and the prudential supervision of credit and financial institutions operating within the German derivatives markets. Any German enterprise that intends to commence, among other business activities, financial commission business in the German derivatives markets must apply for admission with the BAKred pursuant to the Banking Act. After admission, the entity must be in continuous compliance with the capital and organizational requirements of the Banking Act.

2. Federal Oversight of Derivatives Trading

All derivatives trading activities are subject to the Securities Trading Act. The BAWe, established pursuant to the Securities Trading Act, is the comprehensive authority for the supervision of German securities and derivatives markets, including the supervision of the business conduct of all financial service providers. The BAWe is responsible for the prevention of abuses that “impair the orderly conduct of securities markets.” Additionally, the BAWe has the authority to cooperate with competent authorities of other countries with respect to the supervision of securities and futures markets and transactions.

3. State Oversight of Exchanges

The organization, regulation, and supervision of exchanges are governed by the Exchange Act. Under the Exchange Act, each federal state in Germany is responsible for approving the establishment of the exchanges within its jurisdiction and supervising those exchanges. Each federal state acts through its State Exchange Supervisory Authority. In the State of Hesse, where Eurex is located, this authority is the State of Hesse’s Ministry for Economics, Transport and Development (“Exchange Supervisory Authority”). The Exchange Supervisory Authority oversees Eurex’s compliance with the Exchange Act and other relevant laws and regulations governing the proper conduct of trading on the exchange and the settlement of exchange transactions. In its supervision of Eurex, the Exchange Supervisory Authority may, without specific reason, demand information and documents from Eurex and its market participants and may conduct its own inspections. The Exchange Supervisory Authority also has the power to issue orders to Eurex or a Eurex member to prevent violations of regulations or orders or to eliminate or prevent abuses that may impair orderly trading or settlement of transactions on Eurex.

4. Internal Oversight

As an SRO, Eurex has its own comprehensive set of rules. The Exchange Supervisory Authority must approve Eurex’s Exchange Rules. Although other Eurex Rules are not subject to similar approval, the Exchange Supervisory Authority may require Eurex to modify or supplement any Eurex Rule to the extent necessary to fulfill the duties of Eurex or of the Exchange Supervisory Authority under applicable law. Eurex Rules must ensure that the exchange is able to fulfill its duties with due consideration for the interests of the public and trading participants. At a minimum and subject to Exchange Supervisory Authority approval, Eurex must have rules in effect regarding the scope of business of the exchange, the organization of the exchange, and the publication of prices and trading volume by contract.

Eurex is governed by a 24-member Exchange Council (“Council”). The Council is comprised of: (i) Exchange members who are credit institutions (12 seats); (ii) exchange members who are not credit institutions (2 seats); (iii) private issuers of securities underlying options traded on

Eurex (8 seats); and (iv) investors (2 seats). The Exchange Rules also establish a Board of Management for Eurex (“Board”) that is responsible for handling the day-to-day management of the exchange and that reports to the Council. The Board temporarily may exclude from trading enterprises or individuals that disturb the orderly conduct of trading, violate applicable rules, or fail to comply with Board orders. In addition, the Board may temporarily suspend or revoke the admission to trading of any person who fails to satisfy the conditions for admission, including conditions relating to minimum capitalization. The Board also may suspend trading in any derivative product as it deems necessary to protect the public. The Board has the authority to set position limits applicable not only to each broker but also to each individual trader and all accounts controlled by any one person. Finally, the Board, acting in conjunction with EFAG, may at any time require members to provide information and may examine their business activities, either directly or through auditors or other agents. This may include an investigation of position limit compliance by a member, including with respect to a member’s client.

The Exchange Rules also establish an independent Trading Supervisory Office (“Supervisory Office”) that is responsible for monitoring trading on Eurex and the settlement of exchange transactions. The Supervisory Office 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. The head of the Supervisory Office regularly reports to the Exchange Supervisory Authority. If the Supervisory Office discovers that violations of exchange regulations or orders are occurring or that other conditions exist that may impair the orderly conduct of trading or the settlement of exchange transactions, the Supervisory Office must report such violations to the Board and the Exchange Supervisory Authority. Both the Board and the Supervisory Office are required to inform the public prosecutor if they detect manipulation, fraud, or other illegal activities on Eurex that may constitute a breach of the Exchange Act or of other criminal law.

Among other investigatory means at its disposal, the Supervisory Office can observe 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 data bank and through the day-to-day monitoring of the market. Furthermore, Eurex utilizes an on-line “Member Position Risk-Monitoring System” that lists the positions in futures and/or option contracts by member. This enables Eurex to portray different profit/loss scenarios for its members at any time of the day and allows Eurex Clearing to assess its risk as counterparty. Eurex conducts the same level of surveillance and monitoring activities for members and user devices located outside of Germany as for those located within Germany.

5. Customer Protection

The Securities Trading Act contains provisions regarding prohibitions on insider trading and “Rules of Conduct” that provide a framework for the protection of customer interests in the trading of derivatives on Eurex. Among other things, the Rules of Conduct forbid advising customers to enter transactions contrary to their interests and proscribe frontrunning or trading

ahead of customer orders. Members that trade on behalf of customers are obligated to ensure that all customer orders are executed in the customer's interest. Additionally, German law requires that customer funds and positions must be accounted for separately from the proprietary funds of the exchange member. Furthermore, brokers may not offset one customer order against another.

6. Audit Trail and Price Reporting Requirements

Since all trades are executed through a computer system, the prices of all transactions and the times that such transactions are executed are recorded automatically. Moreover, the System automatically creates a printed trade confirmation immediately after execution which 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. Trade confirmations are forwarded to the members. Eurex members must notify the BAWe of each derivatives transaction no later than one working day following execution of the transaction. Eurex members also must report to their respective customers every transaction on Eurex executed on behalf of the particular customer.

Eurex also creates extensive records of all entries made in the System. The information maintained includes: the terms and conditions of any order and any modification or cancellation of the order; the member's account to which the order or instruction relates; the trader's identification number; the time of entry and execution or cancellation; the price of execution; and whether the member entered the order in its capacity as principal or agent. Eurex members are required to maintain customer transaction records for a minimum of six years and Eurex retains extensive records of all entries made in its System for ten years.

II. INFORMATION-SHARING

As set forth more fully below, pursuant to the terms and conditions of the no-action relief provided herein, the Division will be entitled to receive certain information regarding the System directly from Eurex. Additional information relevant to the System and System participants will be available to the Commission and its staff under the terms of certain information-sharing arrangements to which both the CFTC and BAWe are parties. These include, without limitation, a *Memorandum of Understanding Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws* entered into on October 17, 1997; the *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations*, as amended, March 1998 (commonly known as the "Boca Declaration"); and the *Tokyo Communiqué on Supervision of Commodity Futures Markets* issued on October 31, 1997. As noted above, the BAWe is authorized to cooperate with the authorities of other countries with respect to the supervision of securities and futures markets and transactions. This authority extends to sharing relevant non-public information. In a letter to the Division dated August 2, 1999, the BAWe confirms that the information-sharing arrangements extend to information requested by the Commission in connection with the activities to be conducted by Eurex and its

members related to the no-action relief provided herein.

The Commission does not have a formal information-sharing arrangement with the BAKred. However, by letter dated August 5, 1999, the BAKred has confirmed that it is authorized to collect and share with the Commission information regarding any activities conducted by Eurex members pursuant to the relief granted herein.

III. CONCLUSION

Consistent with the Commission's June 2 Order, the Division has reviewed and considered Eurex's No-Action Request and the information and documentation forwarded to the Division in support thereof. Among other things, the materials furnished by Eurex indicate that Eurex has a single representative office in the U.S., but the staff of that office does not and will not provide investment advice nor solicit, receive, or direct trading orders; Eurex does not maintain order matching or clearing facilities in the U.S.; Eurex and its members are subject to oversight in Germany by legitimate regulatory authorities that are responsible for ensuring their compliance with an extensive regulatory regime; Eurex adheres to the IOSCO Principles; and the

Commission and the BAWe are parties to various information-sharing arrangements applicable to the activities of Eurex.

Based specifically upon these and other representations made by Eurex in support of its No-Action Request, its application for the 1996 No-Action Letter, and its application for relief pursuant to Rule 30.10, the Division has determined that expanding the relief granted by the 1996 No-Action Letter, pending the adoption by the Commission of rules or guidelines regarding access to foreign boards of trade from electronic trading devices in the U.S., 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 or its members solely based upon Eurex's failure to obtain contract market designation pursuant to Section 5 and 5a of the CEA if: (i) Eurex members use Eurex Terminals located in the U.S. to trade for their proprietary accounts through the System; (ii) Eurex members who are registered with the Commission as FCMs use Eurex Terminals located in the U.S. to submit orders from U.S. customers for transmission to the System; (iii) Eurex members who are registered with the Commission as FCMs or who are Rule 30.10 firms accept orders through U.S. AORSs from U.S. customers for transmission to the System; and/or (iv) the additional contracts listed below are made available for trading through the System in the manner set forth in clauses (i), (ii), or (iii) above.

The Division's no-action position is only applicable 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;

Three-Month Euromark futures;

DAX futures;

One-Month EURIBOR futures;

Three-Month EURIBOR futures;

Options on Three-Month EURIBOR futures;

Euro BUXL futures;

CONF futures;

Options on CONF futures.

(ii) The relief will become effective with respect to the following contracts when Eurex receives a no-action position from Commission staff that would permit the offer and sale of futures contracts on such foreign stock indices within the U.S.:

MDAX futures;

Dow Jones STOXX 50 futures;

Dow Jones Euro STOXX 50 futures; and

SMI futures.

(iii) The relief will become effective with respect to the following contracts when: (a) such contracts become eligible for trading on Eurex and (b) Eurex receives a no-action position from Commission staff that would permit the offer and sale of futures contracts on such foreign stock indices within the U.S.:

FOX futures; and

Nordic Stock futures.

If additional contracts or products become available for trading through Eurex and Eurex wishes to make such contracts or products available in the U.S. through the System, Eurex must request in writing and receive supplementary no-action relief prior to offering such contracts or products. In the event that a supplemental request for relief is made by Eurex, Eurex will not be required to submit materials already received by the Division in connection with the request addressed herein, unless there has been a material change in the structure, operation, or regulation of Eurex or the System such that the information that already has been provided to the Division no longer remains accurate. Any supplemental request for expanded no-action relief to cover different Eurex products need only be accompanied by a certification to the effect that material information previously submitted to the Division remains accurate and by a description of the contracts or products available for trading on Eurex to which Eurex wishes to extend the Division's no-action relief.

The scope of the Division's no-action position is restricted to providing relief from the requirement that Eurex obtain contract market designation pursuant to Sections 5 and 5a of the CEA and regulatory requirements that flow specifically from the contract market designation requirement if the above-referenced contracts are made available in the U.S. through the System, in the manner set forth herein. The Division's no-action position does not extend to any other provision of the CEA, any other Commission regulations, or any NFA rules and does not excuse Eurex 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. As noted previously, this relief is restricted to Eurex Deutschland ("Eurex") and does not cover Eurex Zurich AG ("Eurex CH") and does not authorize the placement in the U.S. of electronic trading systems that provide access to Eurex CH.

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 U.S. foreign futures or foreign options customer. For example, nothing in this letter 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 U.S. persons (including where the U.S. 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 U.S. customers that are its proprietary accounts (as defined in Rule 1.3(y)) of the foreign firm. 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 U.S. and its sole contact with a U.S. customer is that it carries the FCM's omnibus account, it need not register under Rule 30.4.

Moreover, the Division's no-action position does not amend, revise, or negate the obligations of FCMs and Rule 30.10 Firms under the CEA, Commission regulations, or Rule 30.10 orders. For example, Rule 30.10 Firms continue to be prohibited from maintaining a presence in the U.S. Thus, Rule 30.10 Firms cannot maintain electronic terminals providing direct access to the System in the U.S. (although they would be permitted to accept orders overseas from customers located in the U.S. that submit such orders by telephone or through an AORS located in the U.S). FCMs or Rule 30.10 Firms who solicit or accept orders from U.S. customers for trading on the System remain responsible for, among other things, complying with the regulatory requirements governing 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 shall be subject to all existing Commission rules and regulations and to any future rules or guidance propounded 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 conditions outlined below. These conditions replace and supersede the conditions that were imposed on DTB in connection with the 1996 No-Action Letter:

Eurex will continue to satisfy the criteria for approval as an exchange under the applicable laws of Germany with respect to transactions effected through the System.

The laws, systems, rules, and compliance mechanisms of Germany applicable to Eurex will continue to require Eurex 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.

Eurex will continue to adhere to the IOSCO Principles as updated, revised, or otherwise amended, to the extent consistent with U.S. and German law.

Only members of Eurex will have direct access (*i.e.*, not through an AORS) to the System and Eurex will not provide, and will take reasonable steps to prevent, third parties from providing such access to Eurex to persons other than Eurex members.

All orders that are transmitted through the System by a member of Eurex that is operating pursuant to the no-action relief provided 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" of such Eurex member.

All orders for U.S. customers accepted through an AORS and/or transmitted by Eurex members through the System will be intermediated by a Eurex member that is either registered with the Commission as an FCM or is a Rule 30.10 Firm, to the extent required under Commission regulations.

Prior to their operating pursuant to the no-action relief provided herein, Eurex will require current and future members of Eurex who are not registered with the Commission as FCMs to file with Eurex a written representation, executed by a person with the authority to bind the member, stating that as long as the Eurex 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 will maintain the foregoing representations as long as the relevant member is operating pursuant to the no-action relief and shall make such representations available to the Commission upon the request of a Commission representative. If a Eurex member has had access to Eurex Terminals under the 1996 No-Action Letter, such member shall have ninety days to comply with this condition.

Prior to their operating pursuant to the no-action relief provided herein, Eurex will require current and future members of Eurex who are not registered with the Commission as FCMs to file with Eurex a valid and binding appointment of a U.S. agent for service of process in the U.S. pursuant to which the agent is authorized to accept delivery and service of "communications" that are issued by or on behalf of the Commission. Eurex will maintain the foregoing appointments as long as the relevant member is operating pursuant to the no-action relief and shall make such appointments available to the Commission upon the request of a Commission representative. If a Eurex member has had access to Eurex Terminals under the 1996 No-Action Letter, such member shall have ninety days to comply with this condition.

Prior to their operating pursuant to the no-action relief provided herein, Eurex will require current and future members of Eurex who are not registered with the Commission as FCMs to file with Eurex a written representation, executed by a person with the authority to bind the member, stating that as long as the member operates pursuant to the no-action relief provided herein, the member will provide, upon the request of the Commission, the U.S. Department of Justice and, if appropriate, the National Futures Association ("NFA"), prompt access to original books and records maintained at their U.S. offices and to the premises where Eurex Terminals are installed

or used in the U.S. Eurex will maintain the foregoing representation as long as the relevant member is operating pursuant to the no-action relief. If a Eurex member has had access to Eurex Terminals under the 1996 No-Action Letter, such member shall have ninety days to comply with this condition.

Prior to operating pursuant to the no-action relief provided herein, Eurex will file with the Division, and maintain thereafter as long as Eurex, its members, or the System operates pursuant to the no-action relief, a valid and binding appointment of a U.S. agent for service of process in the U.S., pursuant to which the agent is authorized to accept delivery and service of "communications," as defined above, that are issued to Eurex by or on behalf of the Commission.

Eurex 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 Eurex Terminals in the U.S. (including volume originating from AORSs that route orders to the System) compared with the total trade worldwide volume for such products traded on Eurex.

A listing of the names, NFA ID numbers (if applicable) and main business addresses in the U.S. of all Eurex members that have access to the System in the U.S.

Eurex will promptly provide the Division with written notice of the following:

Any material change in the information provided in the No-Action Request, including any information contained in the documents submitted in support thereof.

Any material change in Eurex Rules or German laws, rules, and regulations relevant to futures and options.

Any matter known to Eurex or its representatives that, in Eurex's judgment, may affect the financial or operational viability of Eurex, including, but not limited to, any significant system failure or interruption.

Any default, insolvency, or bankruptcy of any Eurex member known to Eurex or its representatives that may have a material, adverse impact upon the condition of Eurex, Eurex Clearing, or upon any U.S. customer or firm.

Any known violation by Eurex or any Eurex member of the terms or conditions of the no-action relief provided herein.

Any disciplinary action taken by Eurex against any member of Eurex 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 a Eurex terminal or an AORS to submit orders to the System.

Satisfactory information-sharing arrangements between the Commission and the relevant regulatory authorities will remain in effect.

The Commission will be able to obtain sufficient information regarding Eurex and the members of Eurex operating pursuant to the no-action relief provided herein necessary to evaluate the continued eligibility of Eurex 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 CEA and Commission regulations.

Eurex will provide directly to the Commission information necessary to evaluate the continued eligibility of Eurex 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 CEA and Commission regulations.

Eurex employs reasonable procedures, to be determined by Eurex, 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's No-Action Request, its application for the 1996 No-Action Letter, and its application for relief pursuant to Rule 30.10, and the materials submitted in support thereof. 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's activities in the U.S. to ascertain whether Eurex's presence in the U.S. has increased to a level that might warrant reconsideration of the no-action relief.

This letter replaces and entirely supersedes the 1996 No-Action Letter. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion. Finally, the Division wishes to emphasize that the no-action position set forth herein is intended to provide immediate, interim relief to Eurex and its members, pending any adoption of rules or guidelines by the Commission regarding the use and placement in the U.S. of automated trading systems or

automated order routing systems 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 will be subject to those rules or guidelines in that event.

If you have any questions concerning this correspondence, please contact me, David Battan, Chief Counsel, or Matthew Lisle, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

MWL/ml

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

National Futures Association

Henry J. Matecki, T&M, Chicago

[1] For purposes of your No-Action Request and the relief provided herein, references to the members of Eurex shall include "affiliates" of such members to the extent that such affiliates are granted access by the member to the Eurex trading system. An "affiliate" of a Eurex 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 represents that, to the extent a Eurex member permits an affiliate to use the Eurex trading system, such affiliate will be required to comply with all of Eurex's rules that relate to trading on the Eurex trading system and the member shall remain responsible to Eurex for ensuring its affiliate's compliance with such rules.

[2] For purposes of the relief provided herein, the term "United States" shall include the United States, its territories and possessions.

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

[4] 7 U.S.C. §§ 1 et seq. (1994).

[5] For purposes of the No-Action Request and the relief provided herein, AORS means 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 human intervention, trade matching or execution takes place.

[6] For purposes of the No-Action Request and the relief provided herein, the term "U.S. customers" shall have the same meaning as the term "foreign futures or foreign options customers" as it is defined in Rule 30.1(c). Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

[7] DTB changed its name to Eurex on June 8, 1998, in anticipation of the business combination between DTB's administrative and operating institution, Deutsche Borse AG, and Swiss Exchange, the parent company of the Swiss Options and Financial Futures Exchange ("SOFFEX").

[8] CFTC Staff Letter No. 98-42, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,365 (June 3, 1998).

[9] CFTC Staff Letter No. 99-14, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH)¶27,601 (March 3, 1999) (emphasis in original). See also CFTC Staff Letter No. 98-61, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH)¶27,402 (August 21, 1998); CFTC Staff Letter No. 98-62, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH)¶27,410 (August 19, 1998).

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

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

[12] 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. 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).

[13] See footnote 6 of CFTC Staff Letter No. 96-28, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,669 (February 29, 1996). DTB did not pursue the application for Rule 30.10 relief at that time and subsequently has not pursued the application.

[14] Among other things, the Eurex Rules include the Exchange Rules, trading conditions, clearing conditions, fee regulations, arbitration rules, and other regulations.

[15] Eurex futures and option contract specifications are provided in the trading conditions section of the Eurex Rules.

[16] As stated below, the no-action relief provided herein is contingent upon the accuracy of representations made by Eurex in support of its No-Action Request, its application for the 1996 No-Action Letter, and its application for relief pursuant to Rule 30.10. 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.

[17] As a public-law institution under German law, Eurex itself does not have an owner, but is controlled by Eurex Frankfurt AG ("EFAG"), Eurex's administrative and operating institution.

[18] German credit institutions (including institutions that are Eurex members) hold approximately 80% of DBAG shares. Other members of the Frankfurt Stock Exchange, other Eurex members, and German regional stock exchanges hold the remaining 20% of DBAG shares. The Swiss Exchange is organized as an association under the Swiss Civil Code. Its membership is open to securities dealers that satisfy certain criteria set forth in the Swiss Stock Exchange Act.

[19] EU law permits investment firms, banks, and other institutions that are authorized to engage in certain types of investment business in one EU member state to conduct such business in other EU member states, pursuant to the EU's Investment Services Directive and the Second Banking Directive, which provide the regulatory foundation for cross-border activity within the EU. In Germany, the "European Passport" principle has been implemented through the Banking Act, which provides that any credit or financial services institution with its corporate domicile in another member state of the EU is entitled to render financial services in Germany to the extent that these activities are covered by the registration of the entity that has been issued by the competent authorities of the entity's state of origin.

[20] "Financial commission business" is defined in the Banking Act as the purchase and sale of financial instruments in the credit institution's own name for the account of others.

[21] In order to operate, credit and financial services institutions must meet certain minimum capital requirements set forth in the Banking Act.

[22] This amount is equivalent to DM100,000, based on the euro-to-deutsche mark exchange rate, which was permanently fixed (1 EUR: 1.9558 DM) as of January 1, 1999. For informational purposes only, the Division has noted the U.S. dollar equivalent of any sum of euros referenced herein, based upon the exchange rate as of August 5, 1999 (1 EUR: \$1.08). The Division also notes, however, that exchange rates may fluctuate and that the financial resource requirements set forth herein are not linked in any way to the U.S. dollar equivalents that have been provided.

[23] As stated above, the description of the System included herein is based upon representations made by Eurex or its representatives. The Division has not conducted an independent examination of the System to determine the truthfulness of such statements nor has it performed an independent assessment of the security or soundness of the system.

[24] Receipt of a no-action position from Commission staff is a necessary prerequisite to the offer and sale of foreign futures contracts on stock indices within the U.S. Commission staff issued a no-action letter stating that it would not recommend any enforcement action against Eurex in connection with the offer and sale of Eurex's DAX futures contract within the U.S., which became effective on January 5, 1995. See CFTC Staff Letter No. 94-98, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,277 (December 20, 1994).

[25] These contracts are currently available for trading on the System outside of the U.S.

[26] The offer and sale of the Dow Jones STOXX 50, Dow Jones Euro STOXX 50, and MDAX futures contracts in the U.S. is currently pending receipt of a no-action position from Commission staff. Eurex also intends to submit an application for no-action relief in connection with futures contracts on the SMI.

[27] These contracts will originate from Eurex and are not subject to a linkage arrangement that would permit trading on these contracts to or from any other exchange. Eurex anticipates that trading on the FOX futures contracts will begin on Eurex outside the U.S. on September 27, 1999, and that trading on Nordic Stock futures contracts will begin on Eurex outside the U.S. on October 10, 1999. (The names of these futures contracts may be changed by Eurex prior to their listing on Eurex. However, the terms and conditions of the contracts will not change materially). Eurex plans to submit an application for no-action relief to Commission staff in connection with the offer and sale of these two futures contracts within the U.S.

[28] All NCMs must clear their transactions through a clearing member.

[29] Germany was one of eight jurisdictions that participated in Working Party 7 of IOSCO ("Working Party") whose mandate included, among other things, the identification of issues related to screen-based trading systems for derivative products. In considering the special concerns for screen-based trading systems, the Working Party identified and addressed the following issues: 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).

[30] Eurex's network extends from the central host processor to a port in each member's user device. Thus, for example, the transmission distance between a user device located in Germany and the central host processor is much less than the distance between a user device located in the U.S. and the central host processor.

[31] As noted in section I.A., although Eurex is owned by a Swiss entity, this letter does not address, and is not based upon, any examination of Swiss laws or regulations.

[32] Although the Securities Trading Act only refers to "securities trading" and "securities markets," it is generally accepted that BAWe's responsibility for the oversight of securities trading includes derivatives. Moreover, the Securities Trading Act defines "services relating to securities" as including the "acquisition and disposal of derivatives."

[33] The BAWe has access to surveillance information from the Exchange Supervisory Authority and is authorized to share such information with the Commission in accordance with the terms of the information-sharing arrangements between the Commission and the BAWe.

[34] As defined herein, Eurex Rules include trading conditions, clearing conditions, fee regulations, arbitration rules, and other regulations in addition to the Exchange Rules.

[35] The fraudulent manipulation of trading prices is a criminal offense under the Exchange Act and is punishable by substantial fines and up to three years imprisonment. The investigation and prosecution of such practices is the responsibility of the public prosecutor and the German courts. By law, Eurex must cooperate in any such investigation.

[36] Eurex members dealing on behalf of customers have an account with Eurex for their own trades and an account for trades executed on behalf of their customers (i.e., an agent account). Pursuant to the Securities Trading Act, Eurex members that are not authorized under the Banking Act to accept deposits or hold securities in safe custody for the account of others are required to maintain customer money and securities in segregated accounts with credit institutions authorized to perform those functions. Under the German Deposit Act, credit institutions must account for customer funds and securities separately from proprietary funds or securities. Furthermore, Eurex members are not entitled to pledge customer securities to Eurex Clearing to fulfill their margin requirements.

[37] Times are recorded in fractions of a second on both the System and AORSs linked to the System. Eurex 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.

[38] The notice must identify the derivative, the date and time of execution, the price and quantity of the

transaction, the parties to the transaction, the exchange where the transaction occurred, the designation for the identification of the transaction, and whether the transaction is proprietary. Additionally, those members executing transactions on behalf of customers must record, among other things, the customer's instructions, the employee who accepted the order, the time the order was placed, and the time it was executed.

[39] Eurex represents that all information-sharing arrangements that were in effect with respect to DTB and DBAG under German law remain applicable to Eurex and EFAG and are not subject to any privacy restrictions arising under Swiss law, notwithstanding the business combination and the new ownership structure or the fact that the parent company of Eurex, EUREX CH, is a Swiss entity.

[40] 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 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.

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

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

[43] In addition to the other German regulatory authorities discussed throughout this letter, it should be noted that the fraudulent manipulation of trading prices is a criminal violation of the Exchange Act under the purview of the German public prosecutor.

[44] "Members" includes those persons identified in footnote 1 for the purposes of this no-action letter and the conditions imposed upon the relief provided herein.

[45] For the purposes of the no-action relief provided herein, the term "proprietary account" shall have the meaning set forth in Rule 1.3(y).

[46] 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.

[47] 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's membership criteria; the location of Eurex's management, personnel, or operations (particularly changes that may suggest an increased nexus between Eurex's activities and the U.S.); the basic structure, nature, or operation of the System; or the regulatory or self-regulatory structure applicable to Eurex, the System, or System participants.