



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 13-44
No-Action
July 11, 2013
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: 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 July 4, 2013 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against (1) Eurex Clearing AG (“Eurex Clearing”) for failure to register as a derivatives clearing organization (“DCO”) under Section 5b(a) of the Commodity Exchange Act (“CEA”),¹ 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”) and certain credit default swaps (“CDS”) on a broad-based index of reference entities (“Index CDS”) through a registered DCO pursuant to Section 2(h)(1)(A) of the CEA and the implementing regulations thereunder as applicable.²

Under this proposed relief, Eurex Clearing would be permitted to clear certain IRS and Index CDS transactions as described herein and in the attachment to this no-action letter, which Eurex Clearing provided as Attachment A to the Letter. In addition, U.S. Clearing Members would be permitted to clear proprietary positions in such IRS and Index CDS through a DCO that is not registered with the Commission. You have requested that such relief be effective until the earlier of December 31, 2013, or the date upon which the

¹ 7 U.S.C. 7a-1(a).

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

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Commission determines to grant or deny the pending application of Eurex Clearing for registration as a DCO with respect to its IRS and Index CDS clearing businesses.³

Statement of Facts

Based upon the representations made by Eurex Clearing to the Division, including the representations made in the Letter and in Eurex Clearing's DCO application, we understand the relevant facts to be as follows:

Eurex Clearing was formed in 1997. Eurex Clearing acts as the central counterparty for all Eurex Deutschland ("Eurex") transactions and it guarantees the fulfillment of all transactions in futures, options, and options on futures traded on Eurex. Eurex Clearing also acts as the central counterparty for, and guarantees transactions on, Eurex Bonds (a cash market for bonds), Eurex Repo (repurchase agreements), and other markets and instruments. In addition, it clears IRS, Index CDS, and single-name CDS. Eurex is 100% owned by Eurex Frankfurt AG, which in turn is 50% owned by Deutsche Börse AG and 50% by Eurex Global Derivatives AG, a Swiss entity.

Eurex Clearing is licensed as a central counterparty by the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, ("BaFin")). Its license was granted by BaFin on December 12, 2006. The German Federal Bank ("Deutsche Bundesbank") cooperates with BaFin in the supervision of Eurex Clearing. At the federal level, BaFin and Deutsche Bundesbank coordinate and cooperate in the exercise of their supervisory functions.

Eurex Clearing launched its clearing services for IRS and Index CDS on November 13, 2012 and July 30, 2009, respectively, and it has proposed to expand these services to additional members and customers.⁴ In connection with this proposed expansion of its business, Eurex Clearing filed an initial application for DCO registration on May 17, 2011⁵

³ By letter dated July 4, 2013, Eurex Clearing requested that the review period for its DCO application be extended until December 31, 2013.

⁴ Eurex Clearing has proposed to extend its IRS and Index CDS clearing businesses to U.S. proprietary and U.S. customer clearing. 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 Eurex Clearing clearing member. The term "customer" is defined in § 1.3(k) of the Commission's regulations, 17 C.F.R. § 1.3(k). *See* Adaptation of Regulations to Incorporate Swaps, 77 Fed. Reg. 66,288, 66,316 (Nov. 2, 2012).

⁵ Prior to Eurex Clearing filing its DCO registration application, in 2009, the Commission recognized Eurex Clearing as a multilateral clearing organization ("MCO") under Section 409 of the Federal Deposit Insurance Corporation Improvement Act. In so doing, the Commission found that "the supervision provided by BaFin, in conjunction with the Bundesbank, with respect to the clearing activities of Eurex satisfies appropriate standards." 74 Fed. Reg. 39,303, 39304 (Aug. 6, 2009). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 repealed Section 409.

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and amended applications on September 14, 2012 and September 21, 2012. Subsequently, Eurex Clearing submitted additional materials, which further support its application.

As indicated in the attachment to this letter, IRS contracts currently accepted for clearing by Eurex Clearing include:

- Plain vanilla IRS denominated in Euros (“EUR”), U.S. Dollars (“USD”), and British Pound Sterling (“GBP”) with maturities up to 50 years; and Swiss Francs (“CHF”) with maturities up to 30 years;
- Basis IRS denominated in EUR, USD and GBP with maturities up to 50 years and 30 years on CHF;
- Plain vanilla overnight index swaps denominated in EUR, USD, GBP and CHF with maturities up to 3 years; and
- Plain vanilla forward rate agreements denominated in EUR, USD, GBP and CHF with maturities up to 2 years.

Index CDS contracts currently accepted for clearing by Eurex Clearing include CDS on the following iTraxx Europe indices, with maturities of 3, 5, 7, and 10 years:

- iTraxx Europe Index;
- iTraxx Europe HiVol Index; and
- iTraxx Europe Crossover Index.

The Commission recently adopted regulations to establish a clearing requirement under Section 2(h)(1)(A) of the CEA with respect to certain classes of IRS and CDS.⁶ Certain IRS and Index CDS products accepted for clearing by Eurex Clearing are among those covered by the clearing determination.

⁶ See Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74,284 (Dec.13, 2012) (adopting Part 50 of the Commission’s regulations).

Discussion of Request for No-Action Relief and Applicable Legal Requirements

The Division accepts, without independent analysis, Eurex Clearing's representation that the IRS and Index CDS contracts subject to its request are swaps under the CEA and Commission regulations. It also accepts, without further inquiry, that certain of Eurex Clearing's prospective clearing members may be U.S. persons.

On October 12, 2012, the Commission's regulatory definition of the term "swap," which includes IRS and Index CDS, became effective.⁷ Section 5b(a) of the CEA provides that a derivatives clearing organization may not perform the functions of a DCO with respect to swaps unless it is registered with the Commission.⁸ Section 2(h)(1)(A) of the CEA states that swaps that are required to be cleared must be submitted to a registered DCO or a DCO that is exempt from registration.⁹

Eurex Clearing's request for relief is consistent with recent requests for Division no-action letters permitting similarly-situated non-U.S. clearing organizations to clear swaps for U.S. persons prior to becoming registered with the Commission as a DCO.¹⁰ Granting the relief requested by Eurex Clearing during the pendency of its DCO registration application is appropriate in order to promote competition and enhance choice in clearing services for IRS and Index CDS, particularly iTraxx products.

⁷ See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,207 (Aug. 13, 2012).

⁸ Section 5b(a) of the CEA, 7 U.S.C. 7a-1(a), states: "Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to . . . (B) a swap. (2) EXCEPTION. – Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission."

⁹ Section 5b(h) of the CEA, 7 U.S.C. 7a-1(h), permits the Commission to exempt a DCO from registration for the clearing of swaps to the extent that the Commission determines that such DCO is subject to comparable, comprehensive supervision by the Securities and Exchange Commission or the appropriate government authorities in the home country of the DCO. At the present time, no DCO has sought or been granted an exemption from registration for the clearing of swaps.

¹⁰ See CFTC No-Action Letter No. 12-56 (Dec. 17, 2012) (granting no action relief to Japan Securities Clearing Corporation and certain of its clearing members); and CFTC No-Action Letter No. 12-63 (Dec. 21, 2012) (granting no-action relief to Singapore Exchange Derivatives Clearing Limited and certain of its clearing members).

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 or Index CDS 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 and Index CDS currently accepted for clearing by Eurex Clearing and identified in the attachment to this letter;
- (2) Participant Scope. The relief applies to Eurex Clearing and to its prospective U.S. Clearing Members in connection with their proprietary¹¹ IRS and Index CDS clearing businesses (Eurex Clearing will not accept, and no Eurex clearing member will offer for clearing through Eurex Clearing, IRS or Index CDS on behalf of a U.S. customer); and
- (3) Limited Duration. The no-action relief shall expire at the earlier of: (i) December 31, 2013 or (ii) the date upon which Eurex Clearing becomes registered as a DCO with respect to its IRS and Index CDS clearing businesses.¹²

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.

¹¹ 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.

¹² 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.

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Should you have any questions, please do not hesitate to contact me at (202) 418-5188, or Alicia Lewis, Special Counsel, at (202) 418-5862.

Sincerely,

Ananda Radhakrishnan
Director

Attachment