



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5044  
Facsimile: (202) 418-5547  
*jbandman@cftc.gov*

Division of Clearing and Risk

Jeffrey M. Bandman  
Acting Director

CFTC Letter No. 16-04  
No-Action  
February 1, 2016  
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 Regulations Implementing Sections 5b(c)(2)(A) and 5b(c)(2)(C) of the Commodity Exchange Act

Dear Mr. Book and Mr. Haderup:

On February 1, 2016, the Commodity Futures Trading Commission (“Commission” or “CFTC”) issued an order granting registration to Eurex Clearing AG (“Eurex Clearing”) as a derivatives clearing organization (“DCO”) pursuant to the requirements of Section 5b(a) of the Commodity Exchange Act (“CEA”)<sup>1</sup> and subject to the terms and conditions specified therein (“Order”).<sup>2</sup> The Order permits Eurex Clearing to provide clearing services, in its capacity as a registered DCO, for swaps (“Cleared Products”)<sup>3</sup> for (i) U.S. persons<sup>4</sup> clearing for their own proprietary business,<sup>5</sup> or (ii) futures commission merchants clearing on behalf of U.S. customers, collectively (“U.S. Clearing Members”). As a registered DCO, Eurex Clearing is required to comply with all laws and regulations applicable to such DCOs,

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<sup>1</sup> 7 U.S.C. § 7a-1(a).

<sup>2</sup> CFTC Eurex Clearing Order of Registration dated February 1, 2016.

<sup>3</sup> Eurex Clearing is permitted to clear swaps, subject to the requirements of Commission Regulation 39.5(a)(2), pursuant to the Order. Under Regulation 39.5(a)(2), a DCO that wishes to accept for clearing any swap that is not within a group, category, type, or class of swaps that the DCO already clears, must request a determination by the Commission of the DCO’s eligibility to clear such swap before accepting the swap for clearing. 17 C.F.R. 39.5(a)(2).

<sup>4</sup> For purposes of the Order and this letter, the term “U.S. person” has the meaning set forth in the Commission’s Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292, 45,316–17 (July 26, 2013).

<sup>5</sup> The Order applies to proprietary transactions of a U.S. person that is a clearing member of Eurex Clearing and a U.S. person that is an affiliate of a clearing member of Eurex Clearing.

including the core principles set forth in CEA Section 5b(c)(2) (“Core Principles”) and Commission regulations (“Regulations”).<sup>6</sup>

In addition, the Order contains a condition with respect to Regulation 39.12(b)(7), which requires a DCO to accept or reject swaps for clearing as quickly after submission as would be technologically practicable if fully automated systems were used (the “straight-through processing requirement”).<sup>7</sup> Under the Order, Eurex Clearing is not permitted to clear or settle transactions for any U.S. Clearing Member until it demonstrates to the Division of Clearing and Risk (“Division”) that it can comply with the straight-through processing requirement. This condition applies to proprietary trades, as well as customer transactions. Eurex Clearing had represented that it would be in compliance with the straight-through processing requirement imposed by the Commission or, alternatively, the Markets in Financial Instruments Directive II (“MiFID II”), whichever is stricter, prior to the effectiveness of the Order. However, the implementation of MiFID II was delayed. Therefore, Eurex Clearing was unable to comply or demonstrate compliance with the straight-through processing requirement.<sup>8</sup>

### **Discussion**

During the pendency of Eurex Clearing’s application for registration, the Division granted no-action relief to Eurex Clearing which permitted it to clear certain interest rate swap (“IRS”) transactions on behalf of U.S. Clearing Members in connection with their proprietary IRS clearing business.<sup>9</sup> In order to avoid an interruption in clearing services for such transactions due to Eurex Clearing’s non-compliance with the straight-through processing requirement and in light of the MiFID II delay, the Division believes that it is appropriate to grant no-action relief to Eurex Clearing so that it may continue to clear proprietary trades in

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<sup>6</sup> CFTC Eurex Clearing Order of Registration dated February 1, 2016. *See also* 7 U.S.C. § 7a-1(c)(2)(A). To obtain and maintain registration as a DCO, Eurex Clearing must comply with the Core Principles and the regulations implementing the Core Principles set forth in Part 39.

<sup>7</sup> 17 C.F.R. § 39.12(b)(7).

<sup>8</sup> The Division understands that the implementation of MiFID II has been delayed by one year, which would postpone the implementation date for MiFID II to January 2018. Accordingly, Eurex Clearing would be expected to comply with the straight-through processing requirement no later than January 2018.

<sup>9</sup> *See* CFTC Letter Nos. 13-44 (Jul. 11, 2013), 14-27 (Mar. 10, 2014), 14-156 (Dec. 23, 2014), and 15-54 (Sept. 30, 2015) and their attachments (if any), available at:  
<http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/13-44.pdf>,  
<http://www.cftc.gov/idc/groups/public/@newsroom/documents/letter/14-27.pdf>,  
<http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/14-156.pdf>, and  
<http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/15-54.pdf>, respectively.

No-action relief was also given to U.S. Clearing Members for failure to clear certain IRS transactions 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.

IRS for U.S. Clearing Members. Consistent with the Order, the Division also believes that the clearing of proprietary transactions for U.S. Clearing Members should be permitted for all Cleared Products. The Division believes that granting no-action relief in this instance is appropriate to promote competition and enhance choice in clearing services for the Cleared Products.

**Grant of No-Action Relief**

Based on the facts presented and the representations Eurex Clearing has made, the Division will not recommend that the Commission take enforcement action against Eurex Clearing for failure to comply, as a registered DCO, with the requirements of Regulation 39.12(b)(7),<sup>10</sup> subject to the following conditions:

- (1) **Product Scope.** This relief is limited to Cleared Products as defined herein (and consistent with the Order) that are accepted for clearing by Eurex Clearing for U.S. Clearing Members;
- (2) **Participant Scope.** The relief applies to Eurex Clearing in connection with the provision of clearing services, as a registered DCO, for the proprietary<sup>11</sup> transactions of U.S. Clearing Members in the Cleared Products (Eurex Clearing will not accept, and no Eurex clearing member will offer for clearing through Eurex Clearing, the Cleared Products on behalf of a U.S. customer<sup>12</sup>); and
- (3) **Duration.** The no-action relief shall expire at such time as Eurex Clearing demonstrates to the Division compliance with the straight-through processing requirement.

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 supplemental materials to Eurex Clearing's DCO application, it should be noted that any different, changed, or omitted

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<sup>10</sup> To the extent that Regulation 39.12(b)(7) implements requirements in Sections 5b(c)(2)(A) and 5b(c)(2)(C) of the CEA, the relief provided herein encompasses those statutory requirements.

<sup>11</sup> The term "proprietary account" is defined in Regulation 1.3(y), 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.

<sup>12</sup> 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 Regulation 1.3(k) of the Commission's regulations, 17 C.F.R. § 1.3(k).

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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 Laura Astrada at (202) 418-7622, or Alicia Lewis, Special Counsel, at (202) 418-5862.

Sincerely,

Jeffrey M. Bandman  
Acting Director