

**Form FBOT, Supplement S-1—Exhibit G—Information Sharing Agreements Among the  
Commission, the Foreign Board of Trade, the Clearing Organization and Relevant  
Regulatory Authorities**

**Request:** Attach, as **Exhibit G**, the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

- (i) To evaluate the continued eligibility of the foreign board of trade for registration.
- (ii) To enforce compliance with the specified conditions of the registration.
- (iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.
- (iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.
- (v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

(2) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

**Response:**

The Clearing Conditions require Clearing Members to provide Eurex Clearing with information as requested. The Clearing Conditions also provide that Eurex Clearing is authorized to share information as provided in the Clearing Conditions with responsible supervisory authorities that are subject to confidentiality requirements with respect to such

information.<sup>1</sup> Eurex Clearing may, under this authority, provide requested information, the release of which is authorized by its rules directly to a foreign regulatory authority, like the Commission, subject to German law.<sup>2</sup> Also subject to German law, Eurex Clearing will make its best effort to obtain the necessary consents or to make arrangements in order to make information available to the Commission. Generally, consistent with the letter and spirit of the German Data Protection Act, any information that Eurex Clearing makes available would not include information of a personal nature or information that would relate to the identity of a natural person (including the names of a Clearing Member or Non-Clearing Member employee, except as provided under the German Data Protection Act).

In addition to Eurex Clearing's information sharing responsibilities pursuant to Commission requirements, BaFin, Eurex Clearing's domestic regulatory authority, has entered into information sharing arrangements with other regulators and is a signatory to the IOSCO MMOU.<sup>3</sup> Paragraph 10(a)(ii) of the IOSCO MMOU provides that signatories will share information as requested with respect to possible violations of regulatory requirements concerning "markets, exchange, and clearing and settlement entities." As part of the IOSCO MMOU, signatories in Paragraph 6(b) represent that, "no domestic secrecy or blocking law or regulation should prevent the collection or provision of the information set forth in 7(b) to the Requesting Authority."

BaFin is also an adherent to the Boca Declaration.<sup>4</sup> BaFin's predecessor agency, BaWE, was a signatory to the Boca Declaration, signing the agreement on October 17, 1997. The Boca Declaration constitutes a multilateral mechanism for sharing information on a bilateral basis between the requesting and requested market authority consistent with their legal and contractual obligations. The document establishes a mechanism whereby the occurrence of certain agreed triggering events affecting an exchange member's financial resources or positions will prompt the sharing of information under the Boca Declaration. The trigger levels are designed to facilitate the identification of large exposures by firms that could have a potentially adverse effect on markets. Under the terms of the Boca Declaration, a signatory supervisory authority

---

<sup>1</sup> See Clearing Conditions, Ch. I, Pt. 1, Section 14.1.1, which reads as follows:

Eurex Clearing AG treats all data and information which relate to its Clearing Members, Non-Clearing Members and Link Clearing Houses confidentially. Eurex Clearing AG shall be authorised – subject to applicable law – to transfer data and information to competent supervisory authorities or other authorised third parties domestic or abroad which are subject to confidentiality regulations comparable to those of Eurex Clearing AG.

Customer-related information may only be passed on by Eurex Clearing AG if it is already publicly available or if it is legally required to be passed on or if the relevant Clearing Member, Non-Clearing Member or Link Clearing House has agreed to it.

<sup>2</sup> Although such requests and responses may be made directly between Eurex Clearing and a foreign regulatory authority, as a matter of comity, Eurex Clearing would inform its home country regulators of such a request from the Commission and of its intended response.

<sup>3</sup> The list of signatories to the IOSCO MMOU is available at: [http://www.iosco.org/library/index.cfm?section=mou\\_siglist](http://www.iosco.org/library/index.cfm?section=mou_siglist).

<sup>4</sup> The list of signatories to the Boca Declaration is available at: [http://www.iosco.org/library/declarations/pdf/boca\\_declaration.pdf](http://www.iosco.org/library/declarations/pdf/boca_declaration.pdf).

may request information if it becomes aware that any of the triggering events has occurred with respect to a member of an entity that it supervises. These include, among others:

- a large decrease in an account owner's equity in any six month period;
- a Clearing Member's cumulative net variation payments over ten consecutive business days for proprietary and non-customer positions which are unusually large in relation to the Member's Owner's Equity;
- a Clearing Member's cumulative net variation payments over six consecutive months for proprietary and non-customer positions are unusually large in relation to the Member's Owner's Equity;
- a Clearing Member's net variation payments for customer positions for one business day are of unusually large size in relation to the Member's Owner's Equity;
- total positions in a contract registered in a Clearing Member's name, which represent at least 50% of the total long or short positions in a contract with less than 100,000 open interest or 25% in contracts with greater than 100,000 open interest; or
- a Clearing Member's customer or counterparty's position may be having a price impact or may be engaging in abusive activity.

It is Eurex Clearing's understanding that BaFin, as an adherent to the Boca Declaration, would provide information, if requested, pursuant to the terms of the Agreement, as discussed above, including information with respect to "clearing and settlement" with respect to transactions cleared and/or settled by Eurex Clearing.. Moreover, BaFin also has entered into bilateral and multilateral information sharing agreements with other national supervisory authorities.<sup>5</sup> Together, these agreements will assist the Commission in its supervision of Eurex Clearing in its functioning as a clearinghouse for Eurex.<sup>6</sup>

---

<sup>5</sup> The list of bilateral information sharing arrangements to which BaFin is a party is available at: [http://www.iosco.org/library/\\_display\\_mou.cfm?orgid=35](http://www.iosco.org/library/_display_mou.cfm?orgid=35).

<sup>6</sup> For example, as a signatory to the FESCO MOU, BaFin can request or share information with other European regulators. In addition, BaFin, as the successor agency to BaWE, is an adherent to a bilateral information sharing arrangement with the U.S. SEC.