

## **Exhibit B – Membership Criteria**

**Exhibit B-1: A description of the categories of membership, participation in the FBOT and the access and trading privileges provided by the FBOT. The description should include any restrictions applicable to members and other participants to which the FBOT intends to grant direct access to its trading system**

This exhibit has been updated primarily to reflect the following changes:

- a) The admission of members eligible to trade on behalf of multiple trading participants;
- b) Allowing members to trade from locations other than the business premises of the trading participants in cases where the member is employed by an investment advisor;
- c) Implementation of the German high-frequency trading (“HFT”) law; and
- d) The restructuring of the Eurex Outsourcing Program to allow CMs and NCMs to outsource their clearing, risk management and back-office functions to U.S. insourcers without any product restrictions.

### **Exchange Participants**

There is only one membership category for trading membership for Eurex Deutschland. Only enterprises (as defined in the German Stock Exchange Act) are eligible to take part in Eurex trading as Exchange Participants.

The enterprises that are entitled to act as Exchange Participants include institutions concluding Exchange transactions that involve a) buying or selling for its account or b) buying or selling in its own name for the account of third parties, or c) acting as an agent in buying and selling for others provided, in each case, the business operators of such enterprise are of such a nature or scale as to require a commercial organized business establishment.

An enterprise may become an Exchange Participant if it holds a clearing license as either a General Clearing Member (“GCM”) or as a Direct Clearing Member (“DCM”).

An enterprise may become an Exchange Participant without holding a clearing license if, instead, it becomes a Non-Clearing Member (“NCM”). NCMs must execute an NCM-Clearing Member Agreement with either a GCM or a group-affiliated DCM. GCMs and DCMs may clear their own trades as well as those executed on behalf of their customers and trades for NCMs with whom they (the GCM or DCM) have signed a Clearing Agreement.

Enterprises that use a “high frequency algorithmic trading technique” are required to obtain a formal authorization from the German Federal Financial Services Supervisory Authority in order to trade on a German Trading Venue. The “Act for the Prevention of Risk and the Abuse of High-Frequency Trading” (“HFT-Law”) defines “high frequency algorithmic trading technique” as being characterized by 1) the use of latency-minimizing infrastructure, 2) the use of automated trading systems to initiate, enter, transmit or execute orders, and 3) the generation of high-intra-day message rates of orders, quotes or cancellations. The authorization requirements

apply only to enterprises that conduct trading on their own account. The HFT-Law also imposes conduct of business rules and organizational requirements on HFT-firms. (Please see Exhibit F for additional information.)

NCMs may execute their own and their customers' orders.<sup>1</sup> NCMs are responsible for options exercises and position management functions online. At all times they must be able to maintain a system-wide-overview of the payment and delivery obligations that result from their trading activities.

As explained in more detail in the S-1 Supplement, Eurex Clearing AG has instituted a new Net Omnibus Customer Clearing model recently. At this time, this new segregation model is offered only to UK FCA-registered clearing members and their customers. The new net omnibus segregation model was structured to comply with UK CASS client money requirements. Until the implementation of this net omnibus segregation model for customer property, NCMs did not have a direct contractual relationship with Eurex Clearing AG (Eurex Clearing). The new Clearing Agreement for the new net omnibus model has three parties, the NCM, its clearing member and Eurex Clearing AG. In this new model, the NCM and Eurex Clearing have specific obligations respecting customer margin obligations as well as segregation provisions (See Appendix 7 of the Clearing Conditions.) Under the new model, Eurex Clearing maintains separate transaction and margin accounts for Customer or NCM/Registered Customer (or "RC")-related eligible Omnibus transactions of a clearing member. Omnibus margin accounts may not be used to satisfy the obligations arising from other standardized agreements such as the Individual Clearing Model or the Elementary Clearing Model. Customer-related omnibus transactions will be held in a dedicated omnibus customer account (referred to as an "A9" account), whereas NCM/RC related omnibus transactions will be held in a dedicated sub-account of the clearing member's account for NCM proprietary trades cleared through its UK-registered clearing member.

In order to accommodate the net omnibus segregation model, Part 3 Number 3.1 of the Clearing Agreement (Appendix 1 of the Clearing Conditions) has been modified to allow a clearing member to specify its intent to use an Omnibus Clearing Agreement for customer-related transactions. In addition, the Clearing Member may choose, in Part 3 Number 3.2 of the Clearing Agreement, whether the daily payment netting process across different standard agreements will apply in respect to omnibus transactions or not.

### **Member outsourcing of various functions**

In Eurex's original Foreign Board of Trade ("FBoT") application filed with the Commission in August 2012, it was noted that in addition to trading activities carried out under the FBOT no-action relief, some Eurex Members outsource administrative activities to their U.S. affiliates, for which Eurex has received CFTC no-action relief. These administrative functions involve back-office and post trade operations that remain the responsibility of the respective Eurex Deutschland or Eurex Clearing AG ("Eurex Clearing") Member.

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<sup>1</sup> Therefore, futures commission merchants ("FCMs") may be NCMs.

This previous no-action relief respecting outsourcing activities was confirmed by letter dated October 6, 2006, from the CFTC's Division of Market Oversight responding to a request by Eurex. It confirmed that the outsourcing arrangements described by Eurex was consistent with the 1999 Eurex FBoT no-action letter (CFTC Staff Letter No. 99-48, dated August 10, 1999) and that the Division of Clearing and Intermediary Oversight had affirmed that the outsourcing arrangements described in the letter did not trigger a U.S. registration requirement. Specifically, the 2006 letter in which Eurex requested confirmation from the divisions ("2006 Outsourcing Letter") described certain outsourcing arrangements, which included permitting Eurex's non-U.S. Members to have employees located in the offices of U.S. affiliates perform certain administrative functions related to maintenance of orders in the Eurex Trading System. The activities were routine clerical tasks that would have to otherwise be performed by employees in the offices in Europe outside of normal business hours.

In accordance with the CFTC's extension of previous no-action relief to FBoT registrants, Eurex requested an extension of its ability to permission individual trading or clearing members to outsource these activities to entities within the U.S. under its registration as an FBoT. Eurex has since determined to restructure its framework, allowing non-US NCMs to outsource back-office and clearing functions to insourcers in the U.S.

On December 19, 2012, the Executive Board of Eurex Clearing AG approved, with effect from January 14, 2013, amendments to its Clearing Conditions respecting its outsourcing framework applicable to clearing, risk management and back-office functions in the context of Eurex clearing undertaken by US insourcers. The new framework does not contain any product restrictions.

In order to avail themselves of the new outsourcing framework, clearing members must submit an application for the specific outsourced function. (The form is included as an attachment to this Exhibit.)

### **Exchange Traders**

Natural persons entitled to act as traders for an Exchange Participant are categorized as "Exchange Traders."

All Exchange Participants must have at least one individual authorized to act as its Exchange Trader. At the time that Eurex submitted its original FBoT application in August, 2012, an Exchange Trader could only be admitted on behalf of one Exchange Participant. Since Eurex's original FBoT application, Eurex's Exchange Council has approved rule amendments allowing for an Exchange Trader to execute transactions on behalf of multiple customers. The intended effect of this membership structure change is to increase the transparency of volumes generated by hedge funds through an improved direct access model. The new rule amendments provide the opportunity, under certain conditions, to admit an exchange trader for more than one trading member if multiple trading members outsource its trading infrastructure to a professional service provider (or "Investment Advisor") as many hedge funds are structured.

These amendments were approved in order to allow customers such as hedge funds to contract with a non-employee exchange trader, employed by an investment advisor, to trade for multiple customers. These amendments are conditioned on the resolution of conflicts of interest when an investment advisor with multiple fund customers executes Eurex trades for multiple funds, in conformance with the following conditions:

- Disclosure of conflicts to the supervisory authorities;
- Oversight of the legal relationships between the exchange trader, its employer and the exchange participant; and
- Observance of principles regarding the execution of orders to ensure that each customer receives a fair price and that no customer is disadvantaged thereby in comparison with any other customer.

An investment advisor acting as an Exchange Trader under these new rules must not be involved in trading in its own name and for its own account. Within this new structure, the individual who will be admitted and authorized to trade for such fund will be an employee of an investment advisor, and will not be the investment advisor itself as a legal entity.

Another recent rule change necessary to allow investment advisor employees to trade on behalf of hedge fund customers that was approved is the removal of the requirement that trading by Exchange Participants may only be conducted from the business premises of the Exchange Member (i.e., customer on whose behalf trading is being done). With the new rules, it is possible that a Trading Participant may conduct trading from the business premises of his Investment Advisor employer when trading on behalf of Exchange Member(s). Finally, position limit rule amendments have been adopted to allow for the aggregation of positions of multiple accounts traded by a single trader by default.

If an Exchange Trader left employment with a company that had authorized his trading, the trader or the company on behalf of which the trader was authorized to trade is required to cancel the Exchange Trader's authorization via notification to the exchange. This supports the requirement that Exchange Traders that directly enter orders into the Eurex trading system must use the unique personal ID and password that have been assigned to them by Eurex.

With respect to a US person wishing to apply for admission as an Exchange Participant and to apply for permission to install Eurex trading screens in the US, Eurex requires the execution of a declaration containing the following representations:

*“Eurex Deutschland obtained from the U.S. Commodity Futures Trading Commission (“CFTC”) a no-action relief permitting Eurex exchange participants to install and utilize Eurex computer terminals in their offices within the United States in order to purchase and sell certain Eurex futures products and options thereon for principal trading purposes.<sup>2</sup> And*

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<sup>2</sup> Unlike Commission Regulation §1.3(y), which includes certain affiliates in the definition of “proprietary firms,” a “principal position on Eurex Deutschland is limited to the Eurex Deutschland member that enters the trade.

*in the case of any Eurex Deutschland member who becomes a registered U.S. futures commission merchant (“FCM”), on behalf of foreign futures and options customers<sup>3</sup> as well.*

*According to this no-action statement, a Eurex Deutschland exchange member, who intends to install and maintain Eurex trading screens in his premises in the United States, besides the observance of Eurex Rules and Regulations, must comply with the following terms and conditions:*

- *Eurex terminals can be maintained in the Eurex Deutschland member’s U.S. offices only (except for the instance wherein one trader employed by an investment advisor has been allowed to trade from the business premises of his employer investment advisor);*
- *Eurex Deutschland will inform the CFTC of admissions as exchange participants of such firms that intend to operate at Eurex Deutschland by using Eurex terminals in the United States.*
- *The Eurex Deutschland member is obliged to inform Eurex Deutschland and, on request of the CFTC, regarding the location of all Eurex terminals. The Eurex Deutschland member must update this information on the occasion of changes, but in any event, at least once a year.*
- *Participating Eurex Deutschland members will provide, upon the request of the CFTC, prompt access to original books and records, and to the premises where Eurex terminals are installed in the United States, and will consent to CFTC jurisdiction for purposes of ensuring compliance with the conditions of the no-action relief.*
- *Non-FCM Eurex Deutschland members will be subject to CFTC’s jurisdiction by signing the herewith enclosed “Acknowledgement of Jurisdiction;”*
- *Eurex Deutschland will submit to the CFTC, on at least a quarterly basis, information reflecting the volume of trades originated from U.S. based Eurex computer terminals compared to Eurex Deutschland’s overall trading volume.*
- *This being said, we hereby declare that:*
- *We acknowledge the aforementioned terms and conditions which are set forth in the CFTC’s no-action statement and that we will comply therewith; and*
- *We acknowledge our obligation to inform Eurex Deutschland in writing about any change of the actual circumstances of our exchange membership and any change regarding the placement of Eurex trading screens in the U.S. and otherwise.”*

*(Signed by U.S. trading membership applicant)*

**Enclosures:**

- Eurex Deutschland Admission Regulations
- Remote Member Application

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<sup>3</sup> The term “foreign futures and options customer” is defined under 17 C.F.R. §30.1 (c) as any person located in the United States, its territories or possessions who trade in foreign futures or foreign options as those terms are defined in 17 C.F.R. §30.1 (a) and (b), and which are subject to regulation by the CFTC under the Commodity Exchange Act (CEA).

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- eXAS Trader Admission
  - Outsourcing Trading Application
  - Eurex Information Memorandum respecting the Omnibus Clearing Model
  - Clearing Member Remote Application
  - Eurex Clearing Circular 117/12 “Clearing Outsourcing in the US”
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