

clear to trade



Mr. David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

December 13, 2010

### Financial Requirements for Derivatives Clearing Organizations

Dear Mr. Stawick:

Eurex Clearing AG ("Eurex Clearing"), the leading futures and options clearing organization in Europe, welcomes this opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed requirements for derivatives clearing organizations ("DCOs").<sup>1</sup>

Eurex Clearing clears, among other things, futures and options contracts traded on Eurex Deutschland ("Eurex") and identical contracts that are traded over the counter ("OTC") as well as otherwise unlisted credit default swaps contracts.<sup>2</sup> Eurex Clearing is fully owned by Eurex Frankfurt AG ("Eurex Frankfurt"), which in turn is fully owned by Eurex Zürich AG ("Eurex Zürich"). Eurex Zürich is fully owned in equal shares by Deutsche Börse AG ("Deutsche Börse"), a publicly traded company listed on the Frankfurt Stock Exchange, and SIX Swiss Exchange. SIX Swiss Exchange is part of the SIX Group which, except for a 1.5% government holding, is owned by 150 Swiss and non-Swiss banks. Eurex Clearing is incorporated under the laws of Germany.

Eurex Clearing is licensed as a central counterparty by the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"). Its license was granted on December 12, 2006. On July 31, 2009, the CFTC recognized Eurex Clearing as a multilateral clearing organization. Eurex Clearing received an exemption from the Securities and Exchange Commission on July 29, 2009 to admit certain US persons for the purpose of clearing credit default swaps. Eurex Clearing adheres to the internationally recognized standards of CPSS IOSCO.

<sup>1</sup> *Financial Resources Requirements for Derivatives Clearing Organizations*; 75 FR 63113, October 14, 2010 (the "Notice").

<sup>2</sup> Eurex Clearing also acts as the central counterparty for and guarantees transactions on Eurex Bonds (a cash market for bonds), Eurex Repo (repurchase agreements), for equities on the Frankfurt Stock Exchange and the Irish Stock Exchange and for certain contracts executed on the European Energy Exchange.



Eurex Clearing AG  
Mergenthalerallee 61  
65760 Eschborn

Mailing address: 60485 Frankfurt/Main  
internet: [www.eurexclearing.com](http://www.eurexclearing.com)

Chairman of the  
Supervisory Board:  
Prof. Dr. Peter Gomez

Executive Board:  
Andreas Preuß (CEO),  
Jürg Spillmann, Thomas Book,  
Gary Katz, Michael Peters,  
Peter Reitz

Aktiengesellschaft mit  
Sitz in Frankfurt/Main  
HRB Nr. 44828  
Amtsgericht  
Frankfurt/Main



### Comments on the Commission's Proposed Rulemaking

As has been evidenced in the recent global financial crisis, risk mutualizing central counterparty clearing organizations provide important support to derivatives markets. Throughout its history and notably during the past three years, Eurex Clearing has continued to meet its obligations to its clearing members on a timely basis.

In recognition of the salutary effects of clearing organizations on the economy, Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandates an expansion of central counterparty clearing services into the OTC sector of the derivatives market. Since most of the instruments that likely will be cleared under the provisions of the Dodd-Frank Act have not been cleared until now, both the Commission and the financial services industry face a critical challenge of developing appropriate and prudent risk management processes for OTC clearing services. In the face of a potential surge in demand for clearing OTC transactions by DCOs, the Commission's present attention to financial resource requirements for DCOs is appropriate.

The Commission's proposed rules seek to assure that clearing organizations can withstand plausibly foreseeable economic developments and continue to provide their crucial risk management services under all sorts of conditions. Eurex Clearing supports the Commission's approach in the proposed rulemaking where it proposes standards that DCOs would be required to meet, indicates that compliance would be defined within the parameters of the DCOs' particular businesses and permits DCOs to avail themselves of different methods for compliance. Eurex Clearing believes that the proposals will not inhibit competition among clearinghouses; if adopted as proposed, the rules will, however, help assure that DCOs have the resources to withstand substantial defaults and continue operations for a period of time under adverse circumstances.

In the Notice the Commission requests comment on whether it should consider adopting capital requirements for DCOs. Eurex Clearing notes that clearing organizations exhibit a variety of organizational and capital structures and believes the Commission should allow DCOs to determine their own mixes of prophylactic measures – which might include the DCO's own capital. Eurex Clearing supports an initial capital requirement of \$25 million for clearing organizations.

#### The general rule for DCOs

The Commission proposes that a DCO be required to maintain sufficient resources to cover its obligations to its members in the event of a default by that member which would create the largest net obligation to the clearing members. The Commission notes in footnote 11 in the Notice that its proposed standard aligns well with the current international standards on financial resource requirements. Eurex Clearing complies with those standards. While Eurex Clearing supports adoption of the Commission's current proposal, it encourages the Commission to continue to align its proposal with that of the Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commissions ("IOSCO") which, as the Commission notes, is currently under review. If the standard is changed, Eurex Clearing believes that the Commission should consider its own proposals in light of such changes and provide additional opportunity for public comment.

clear to trade



The Commission further proposes that DCOs be required to have sufficient resources to enable them to continue operating for at least one year. Eurex Clearing agrees that this having such a requirement is reasonable, especially in view of the flexibility implied in the Commission's proposed rules for types of financial resources [see proposed Rule 39.11(b)(2)], but cautions that the one year time frame may be unnecessarily long.

Types of financial resources

In the event of a default by one of its members, Eurex Clearing would avail itself of the following financial resources: the collateral of the defaulting clearing member, the contribution of the defaulting clearing member's contribution to the clearing fund, reserves of Eurex Clearing, the clearing fund and the liable equity of Eurex Clearing. In the event of a depletion of the clearing fund, clearing members are required to restore their contributions to the appropriate levels. Eurex Clearing believes that the Commission's proposed list of financial resources in Rule 39.11(b)(1) is appropriate.

Liquidity of Financial Resources

Proposed Rule 39.11(e) the Commission would require that DCOs monitor the liquidity of assets under their control to assure that they can fulfill their obligations in a timely manner. Eurex Clearing agrees that low-credit risk, highly liquid assets should comprise guaranty funds and that this rule would serve important purposes.

Eurex Clearing thanks you for opportunity to comment on these proposed rules. If you have any questions please do not hesitate to contact us or Mr. Vassilis Vergotis, Head of US Offices (312-544-1058, [vassilis.vergotis@eurexexchange.com](mailto:vassilis.vergotis@eurexexchange.com)).

Yours faithfully,

Vassilis Vergotis

me

Matthias Graulich  
Executive Director