

X-pand into the Future



David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

January 18, 2011

**Proposed Rule for the Registration of Foreign Boards of Trade, 75 Fed. Reg. 70974
(November 19, 2010)**

Dear Mr. Stawick:

Eurex Deutschland appreciates this opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") request for comment in connection with its Notice of Proposed Rulemaking entitled "Registration of Foreign Boards of Trade" (the "Notice"). Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") allows the Commission to adopt rules regarding the registration of foreign boards of trade ("FBOTs"). Eurex supports the proposed regulations as set forth in the Notice and it values the legal certainty that registration by the Commission will provide. Eurex looks forward to being registered by the Commission as an FBOT and to the fuller participation in the development of the U.S. derivatives industry that it expects will accompany registration.

Eurex Deutschland, an FBOT, is a futures and options exchange operated by Eurex Frankfurt AG (hereinafter "Eurex Deutschland" and "Eurex Frankfurt AG" together are referred to as "Eurex").¹ Eurex operates an electronic trading system for derivative instruments. This market operates independently of a member's location, permitting international participation. As of January 5, 2011, Eurex has 415 members with more than 8,543 registered traders in 29 countries. 72 members are U.S. resident entities.

In 1996, Eurex's predecessor entity, Deutsche Terminbörse GmbH ("DTB"), received the first no-action letter from the Commission allowing a foreign board of trade to install trading screens in the

¹ Eurex Deutschland is a German public-law institution. Eurex Frankfurt AG, a registered German stock corporation, operates Eurex Deutschland. Eurex Frankfurt AG, headquartered in Frankfurt, Germany, is a 100% subsidiary of Eurex Zürich AG, itself a 50-50 joint venture of SIX Swiss Exchange and Deutsche Börse AG. All transactions on Eurex Deutschland are governed by its rules and the laws of Germany. Trading on Eurex Deutschland is supervised by Exchange Supervisory Authority of the State of Hesse. Transaction intermediation and Eurex's clearing are overseen by the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin").



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U.S. without an additional registration as a board of trade with the Commission (a "foreign terminal no-action letter"). This was the first of many foreign terminal no-action letters that foreign exchanges have received from the CFTC. In 1999, the DTB foreign terminal no-action letter was reissued to Eurex and the scope of relief therein expanded.²

Eurex offers trading in a wide array of futures, options and options on futures on equities, equity indexes, fixed income instruments, short-term interest rates, events and commodities. A subset of these contracts, including the EURO STOXX 50[®] Index, DAX[®], Bund, Bobl and Schatz futures contracts, is available for direct trading from terminals in the United States in accordance with no-action letters provided by the Commission staff. The Commission's foreign terminal no-action letter has enabled U.S. persons to become members of Eurex and to trade on its electronic exchange on the same basis as other members.

Since the first foreign terminal no-action letter was issued, DTB and Eurex have diligently fulfilled their reporting and other requirements, and they consistently provided timely notice of their rule changes. At the same time, the Commission and its German counterparts have worked together to assure that they could carry out their regulatory responsibilities in light of the cross-border trading access provided by the foreign terminal no-action letter. Eurex is unaware of any instance caused by this trading access that has impeded the regulators from executing their regulatory programs and believes that the Commission's current policies and processes for issuing foreign terminal no-action letters have worked well.

As noted earlier, Eurex has 72 U.S. members who currently enjoy the benefits of direct trading access and they should not be subjected to an undue risk of interruption in their access. Consequently, Eurex encourages the Commission to be careful in its final rulemaking to assure that there is an adequate period for application reviews and for incumbent FBOTs with foreign terminal no-action letters to transition to the registered status.

Eurex respectfully offers the views below on questions included in the Notice and on several of the Commission's proposed rules.

Adequacy of proposed requirements

In proposed Part 48, the Commission provides numerous specific and general requirements for FBOTs to become registered by the Commission. Eurex believes that the proposed requirements for FBOTs, while comprehensive, are by and large reasonable on their face, except for those relating to clearing organizations (see below). Additionally, in the Notice, the Commission asks whether the application contents requirements are adequate to address registration requirements.

Although the proposed application and registration requirements may be appropriate and very well aligned with international standards at this time, Eurex believes that the Commission should be careful not to allow its requirements for FBOT registration in the future to deviate from international standards of regulation. Eurex currently adheres to BaFin requirements, which in turn comply with International Organization of Securities Commissions ("IOSCO") standards, and the Commission should remain mindful of the potential for legal conflicts as it moves forward.

² See Commission Staff Letter No. 99-48, http://www.cftc.gov/tm/letters/99letters/tmeurex_no-action.htm.

Foreign supervision

The Notice indicates an increased focus on issues of market surveillance, trade practice oversight and rule enforcement. As the Commission is probably well aware, these topics present some of the most complex issues in international commercial and regulatory relations. So far, the Commission has been exemplary in its efforts to work with non-U.S. regulators and respect their local legal conditions, especially when it has granted foreign terminal no-action letters. For example, in many jurisdictions the concept of self-regulation is not as advanced as in the U.S. and exchanges are not empowered in the same way as DCMs. Eurex respectfully recommends that the Commission explicitly incorporate that it may rely on the totality of the regulation – self and governmental - of the FBOT in the rules that it ultimately adopts.

Existing foreign terminal no-action letters

Proposed Rule 48.6, which provides special procedures for FBOTs which have received foreign terminal no-action letters, appropriately addresses the mandate in Dodd-Frank that the Commission consider “any previous Commission findings that the foreign board of trade is subject to comparable comprehensive regulation by the appropriate government authorities in the foreign board of trade’s home country.”³ Eurex supports this provision.

Swaps on FBOTs

The Notice requests comment on whether FBOTs should be permitted to provide access in the U.S. for trading swaps. Eurex believes that the Commission should permit FBOTs to provide trading access to qualified U.S. persons for trading swaps that are listed on the FBOT without it registering first as a swap execution facility. In addition, Eurex believes that the currently proposed conditions on FBOTs would be sufficient for them to comply with the purposes of the Dodd-Frank Act regarding swap trading.

Clearing

In a departure from the current practices regarding the issuance of foreign terminal no-action letters, the Commission now proposes explicitly to include FBOTs’ clearing organizations within the registration regime of foreign boards of trade. Eurex believes that the proposed expansion, which was not articulated in the Dodd Frank Act, is not necessary for the Commission to execute its responsibilities vis-à-vis FBOTs.

Eurex believes the Commission can safely rely on an FBOT’s home regulator’s oversight of the market participants in view of the market protections implied by the proposed requirement that the FBOT’s clearing organization either be a Derivatives Clearing Organization (“DCO”) or comply with the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems (“CPSS”) and the Technical Committee of IOSCO. Eurex notes that when the Commission recently proposed new requirements for derivatives clearing organizations (*Financial Resources Requirements for Derivatives Clearing Organizations*; 75 FR 63113, October 14, 2010) it specifically aligned them with those of the CPSS and IOSCO.

³ Section 738(a)(4) of the Dodd Frank Act.

Eurex Clearing AG, Eurex's clearing organization, complies with the Recommendations for Central Counterparties noted above.

Eurex cautions the Commission, however, against extending its interests into FBOT clearing at least for operational reasons. The amount of oversight implied by the proposed rule will likely burden the Commission and cause inappropriate diversion of scarce Commission resources. For example, proposed Rule 48.8(b) *Other Continuing Obligations* would require continual updating of the Commission with commensurate paperwork regarding rule changes and administrative developments at the FBOTs' clearinghouses. Eurex recommends that the Commission instead simply require that an FBOT demonstrate that if its clearing organization is not a DCO the clearing organization complies with the Recommendations for Central Counterparties.

If you have any questions or if we can be of assistance to the Commission, please do not hesitate to contact either of us.

Sincerely,



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