

clear to trade



Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
1155 21st Street NW  
Washington DC 20581

August 1, 2013

**Re: RIN 3038–AD88; Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations**

Dear Ms. Jurgens:

Eurex Clearing AG (“Eurex Clearing”) is pleased to comment on several of the measures proposed in the Commodity Futures Trading Commission’s (“Commission”) notice of proposed rulemaking entitled Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (77 Federal Register 67866 – 67971; November 14, 2012). Eurex Clearing strongly supports the Commission’s goals of enhancing the protections afforded both futures, including in particular foreign futures, and swaps customers.

Eurex Clearing is the central counterparty clearinghouse for Eurex Deutschland, whose predecessor entity, DTB, received the first foreign terminals no-action letter from the Commission’s Division of Trading and Markets and whose application for registration as a foreign board of trade is pending at the Commission. Eurex Clearing has also applied to the Commission for registration as a derivatives clearing organization in order to clear swaps for US persons.

The Commission has proposed that Rules 1.20 and 30.7 each be modified to require that depositories which hold US customer funds execute a standard acknowledgment letter which is designed to assure that customer funds are properly segregated or secured away from improper use. While Eurex Clearing appreciates the potential convenience and increases in certainty and transparency that such a standardized approach would likely afford, we also strongly caution that such an approach may be impossible to implement for depository institutions outside of the jurisdiction of the US. In particular, the proposed commitment of an institution to provide read-only electronic access by the Commission to accounts holding the segregated or secured funds of US customers will probably meet with strong resistance from the non-US commercial and central banks as well as securities depositories where US customer funds currently may be held.



Eurex Clearing AG  
Mergenthalerallee 61  
65760 Eschborn

Mailing address:  
60485 Frankfurt/Main

T +49-69-211-1 47 71  
F +49-69-211-61 47 71  
Thomas.Book@  
eurexclearing.com  
Internet:  
www.eurexclearing.com

Chairman of the  
Supervisory Board:  
Hugo Bänziger

Executive Board:  
Thomas Book (CEO),  
Jürg Spillmann (Deputy CEO),  
Heike Eckert, Thomas Laux,  
Erik Tim Müller, Andreas Preuss

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

Especially in light of the specific, detailed nature of the representations in the proposed standard letter that a depository would be required to make it is, in fact, likely that execution of the such standard acknowledgment letters may be legally impossible in some cases.

Eurex Clearing urges the Commission to provide explicitly in its final rules for satisfaction of the acknowledgment letters requirement through alternative methods for depository institutions that are outside of the US. Specifically, we suggest that the Commission amend the rule to authorize the Directors of the Division of Clearing and Risk and the Division of Swap Dealer and Intermediary Oversight to accept alternate language from depositories outside of the U.S. In light of the additional requirements under Commission Rule 1.49 regarding the qualifications that apply when a depository is located outside of the U.S. this reasonable approach will provide the necessary flexibility while assuring that only highly capitalized institutions hold US customer funds outside of the US. In addition, we encourage the Commission to consult closely with other banking and financial market regulators to design documentation that can be effective in relevant other jurisdictions.

Finally, we note that proposed Rules 1.20 and 30.7, if adopted without providing for alternative methods of satisfying the objectives embodied in the proposed new requirements, could significantly disrupt current cross-border business arrangements, discourage or limit the use of non-US banking and depository institutions, and negatively affect international competition among financial infrastructure providers.

Sincerely,



Thomas Book  
Chief Executive Officer

Heike Eckert  
Chief Operating Officer