



Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

September 13, 2019

**Re: Derivatives Clearing Organization General Provisions and Core Principles
(RIN 3038-AE66)**

Dear Mr. Kirkpatrick,

Eurex Clearing AG ("**Eurex Clearing**") appreciates the opportunity to provide comments to the U.S. Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") regarding the Commission's Notice of Proposed Rulemaking: Derivatives Clearing Organization ("**DCO**") General Provisions and Core Principles ("**NPRM**") published on May 16, 2019.¹

Eurex Clearing supports the Commission's efforts to amend Part 39 of the CFTC Regulations to address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance. While we largely agree with the Commission's NPRM, the following are specific topics where we wish to comment and appreciate the Commission's consideration:

i. Financial Statements—§ 39.11(f)(1)(ii)

The NPRM proposes "in § 39.11(f)(1)(ii) and (f)(2)(i) . . . to require that assets allocated by the DCO for such purpose [of meeting the requirements of § 39.11(a)(1) or (2)] must be clearly identified on the DCO's balance sheet as held for that purpose."² Eurex Clearing respectfully believes that this proposed amendment would lead to practical difficulties for balance sheets drafted pursuant to International Financial Reporting Standards ("**IFRS**") and believes the Commission should omit this requirement in the final rulemaking.

As a preliminary matter, Eurex Clearing appreciates the NPRM's recognition that DCOs organized outside the United States may prepare their financial standards in accordance with IFRS and supports the proposed revision to § 39.11(f)(1)(ii) to clarify that DCOs incorporated or organized

¹ DCO General Provisions and Core Principles, Notice of Proposed Rulemaking, 84 Fed. Reg. 22226 (May 16, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-05-16/pdf/2019-09025.pdf>.

² *Id.* at 22,234.



Eurex Clearing AG
Mergenthalerallee 61
65760 Eschborn

Mailing address:
60485 Frankfurt/Main

T (312) 544-1087

eric.seinsheimer@
eurexchange.com

Internet:
www.eurexclearing.com

Chairman of the
Supervisory Board:
Jeffrey Tessler

Executive Board:
Enk Tim Müller (CEO),
Heike Eckert (Deputy CEO),
Matthias Graulich,
Manfred Matusza,
Dmitrij Senko

Aktiengesellschaft mit
Sitz in Frankfurt/Main
HRB Nr. 44828
USt-IdNr. DE194821553
Amtsgericht
Frankfurt/Main

under the laws of any foreign country may use either U.S. generally accepted accounting principles or IFRS.³

Regarding the identification of assets held for purposes of fulfilling the requirement of § 39.11(a)(1) (the “Cover One Requirement”), the issue is that the assets that go to fulfilling the Cover One Requirement do not practically transfer to identification on a balance sheet drafted pursuant to IFRS. One example is the cash collateral that is used for fulfilling the Cover One Requirement. The position for the Cover One Requirement is calculated in accordance with Eurex Clearing’s validated risk management models but varies slightly from the cash collateral amount stated in the balance sheet under IFRS, due to different requirements for the exchange rates and haircuts that are used in the risk management models. Another example is the securities collateral that is used for fulfilling the Cover One Requirement. At Eurex Clearing, securities used for collateral are pledged to Eurex Clearing. In accordance with IFRS, Eurex Clearing is not allowed to disclose pledged securities in the balance sheet. Lastly, because committed credit lines do not meet the criteria of a liability, Eurex Clearing does not disclose committed credit lines on its balance sheets under IFRS.

For these reasons, Eurex Clearing respectfully believes this proposed requirement presents practical difficulties for balance sheets created pursuant to IFRS and should be omitted in the final rulemaking. If the Commission decides to include such a requirement, Eurex Clearing would request clarity on how it should comply with the requirement.

ii. Default Procedures—§ 39.16(c)

The NPRM proposes “to amend § 39.16(c)(2)(ii) to require that a DCO have default procedures that include immediate public notice on the DCO’s website of a declaration of default.”⁴ Eurex Clearing appreciates that the Commission also specifically requests comment on this proposed amendment “as to whether the timing of the announcement would potentially impact the market or the DCO’s ability to manage the default.”⁵ Eurex Clearing fully agrees with the Commission as to the importance of integrity and stability to the financial markets in the event of the default of a clearing member.⁶

However, Eurex Clearing respectfully believes that this proposed requirement could adversely affect a DCO’s ability to manage a default and believes that the Commission should omit this requirement in a final rulemaking. In a clearing member default situation, Eurex Clearing believes that the decision as to when and how to provide public notice of such default should be at the discretion of the DCO. Placing a hard timeline, such as immediate website notice, on a DCO would significantly constrain the DCO’s flexibility to manage such a default and would place unnecessary pressure on the execution of the default plan during potentially stressed market conditions.

Eurex Clearing’s rules governing the default of a clearing member provide Eurex Clearing with flexibility for whether or how it notifies the general public of such default. In addition, in the event that a porting process is to be implemented, Eurex Clearing has specific rules governing such porting notification to all clearing members and disclosed direct clients of the defaulting clearing

³ Id.

⁴ Id. at 22,239.

⁵ Id. at 22,240.

⁶ Id. at 22,239-40.

member. In this manner, for any clearing member default, Eurex Clearing is first able to assess whether and how a porting process will occur and then provide notice with pertinent details concurrently with the notice of the clearing member default. Eurex Clearing respectfully believes that the proposed requirement for immediate notice on the DCO's website could interfere with these existing notification practices as well as the existing practices of other DCOs. During a time of a clearing member default, Eurex Clearing believes that a DCO should have flexibility in terms of the manner and timing with which it notifies clearing members, clients, and the public of the clearing member default.

iii. Change in Settlement Bank Arrangements—§ 39.19(c)(4)(xiv); Change in Depositories for Customer Funds—§ 39.19(c)(4)(xvi)

The NPRM proposes new §§ 39.19(c)(4)(xiv) and (xvi), which respectively would require a DCO "to report a change in its arrangements with any settlement bank used by the DCO or approved for use by the DCO's clearing members," and "any change in its arrangements with any depositories at which the DCO holds customer funds."⁷ Eurex Clearing respectfully comments that such reporting requirements should include a materiality threshold that triggers reporting. This aligns with current § 39.19(c)(4)(x), which requires notification of a change in credit facility funding arrangement, "including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions." This also would align with proposed § 39.19(c)(4)(xiii) (Change in Liquidity Funding Arrangement), which includes a similar materiality threshold.

iv. New Product Accepted for Clearing—§ 39.19(c)(4)(xxvi)

The NPRM proposes new § 39.19(c)(4)(xxvi), which "would require a DCO to provide notice to the Commission no later than 30 calendar days prior to accepting a new product for clearing."⁸ The Commission specifically requests comment on whether defining the term "product" would be helpful in clarifying what products must be reported to the Commission under such a new rule.⁹

Eurex Clearing respectfully believes that such a requirement is not necessary. For swaps, Eurex Clearing believes that the Commission would already receive notice of the clearing of a new swap pursuant to the § 39.5 filing requirement. Additionally, for any new class of swap that is substantially different from swaps currently cleared by Eurex Clearing, Eurex Clearing's practice is to engage with Commission staff well in advance of such clearing to solicit Commission staff feedback.

If the Commission adopts a new product filing requirement, Eurex Clearing believes it would be helpful for the Commission to provide clarity as to which products would be subject to this requirement, and also believes the Commission should limit such a required filing only to new products that present a unique or novel risk that is not covered by products already being cleared in the marketplace. For example, for a DCO that is clearing certain interest rate swaps and wishes to add an additional currency for a type of interest rate swaps already being cleared, Eurex Clearing does not believe that this should warrant a new product filing. Further, as discussed, the

⁷ Id. at 22,242.

⁸ Id.

⁹ Id. at 22243.

Commission would already receive notice of such new clearing pursuant to the § 39.5 filing requirement.

In conclusion, Eurex Clearing reiterates its appreciation for the opportunity to comment on the NPRM and looks forward to working with the Commission on other proposals and initiatives.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'E. Seinsheimer', with a stylized flourish at the end.

Eric Seinsheimer
US CCO
Eurex Clearing AG