



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

November 18, 2019

Re: Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations (RIN 3038-AE87)

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: Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations published on July 19, 2019 ("**NPRM**").¹

Eurex Clearing welcomes the Commission's efforts to amend its regulations to permit derivatives clearing organizations ("**DCO**") organized outside of the United States to register with the Commission by complying with the DCO Core Principles through their home country regulatory regime. While we outline our suggestions to improve the risk-sensitivity and ongoing requirements for the alternative compliance framework below, Eurex Clearing generally supports the underlying risk-based approach while applying deference to foreign regulations and foreign regulators for the regulation and supervision of central counterparties ("**CCPs**").

Eurex Clearing comments prior to "V. Request for Comments" section:

1. Good Regulatory Standing

The NPRM proposes "to define 'good regulatory standing' to mean, with respect to a DCO subject to alternative compliance, either there has been no finding by the home country regulator of material non-observance of the relevant home country legal requirements, or there has been such a finding by the home country regulator, but it has been or is being resolved to the satisfaction of the home country regulator by means of corrective action taken by the DCO."² The NPRM provides that "the Commission proposes to limit this to instances of 'material' non-observance of relevant

¹ 17 CFR Parts 39 and 140 Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, Notice of Proposed Rulemaking, 84 Fed. Reg. 34819 (July 19, 2019), <https://www.cftc.gov/sites/default/files/2019/07/2019-15262a.pdf>.

² *Id.* at 34,821.

home country legal requirements" and "requests comment as to whether it should instead require all instances of non-observance."³ Eurex Clearing supports the Commission's proposed definition of "good regulatory standing" and believes a materiality threshold is highly necessary for this definition. Eurex Clearing believes that instances of minor, immaterial non-compliance should not have any bearing on whether the Commission considers a DCO to be in "good regulatory standing."

Eurex Clearing comments on the section "V. Request for Comments" in the proposed rulemaking:

1. Does the proposed alternative compliance regime, including both the application process and the ongoing requirements, strike the right balance between the Commission's regulatory interests and the regulatory interests of non-U.S. DCOs' home country regulators?

Eurex Clearing believes that the proposed framework brings welcome relief in terms of adherence to the Part 39 rules for non-U.S. DCOs that do not pose a systemic risk to the U.S. financial system. The proposed rules seek to balance the principle of deference with the responsibilities of local supervisors towards their financial stability mandate.

Eurex Clearing respectfully believes that while the proposed amendments would provide for a clear set of waived requirements, there would still be a substantial number of major requirements in proposed § 39.50 applicable to non-U.S. DCOs under the alternative compliance framework. In addition to such requirements, the CFTC would be able to apply further conditions to the non-U.S. DCO when determining whether the DCO's compliance with its home country regulatory regime would satisfy the DCO Core Principles. In order to further support the effective benefits of alternative compliance compared to a full registration, Eurex Clearing believes the Commission should reduce a number of the requirements set forth in the NPRM, e.g. the general reporting requirements proposed in § 39.51(c)(2)(i) and § 39.51(c)(2)(ii) as well as the transaction-related reporting in § 45.

2. Are there additional regulatory requirements under the CEA or Commission regulations that should not apply to non-U.S. DCOs with alternative compliance in the interest of deference and allowing such DCOs to satisfy the DCO Core Principles through compliance with their home country regulatory regimes while still protecting the Commission's regulatory interests?

Eurex Clearing understands the Commission's aim to achieve balance between its own regulatory interest and the interest of the non-U.S. DCO's home country regulator. Thus, Eurex Clearing believes it reasonable that the CFTC would continue to ask for specific information (proposed § 39.51(b)(1) - § 39.51(b)(7)) directly from the DCO. However, Eurex Clearing respectfully believes that the general reporting requirements as well as the applicability of Part 45 transaction reporting are still substantial and costly while overlapping to a large degree with existing requirements from home regulators. Eurex Clearing understands that the Commission uses such data to evaluate the eligibility of the DCO and its compliance with the alternative compliance framework. However, an extended global standardization of reporting and cooperation among data repositories could avoid such duplicative reporting requirements. Given the substantial and costly nature of the requirements that would still apply to a non-U.S. DCO under this alternative compliance regime,

³ Id.

including e.g. all Part 39 daily reporting and Part 45 reporting and the general reporting requirements (coupled with the costs of the application), Eurex Clearing does not believe it is clear that enough burdens and ongoing costs have been reduced to non-U.S. DCOs so as to incentivize an application for the alternative compliance regime. Other points requiring clarification are discussed in the respective answers to the other questions.

3. Should the Commission take into account regulations in Part 39, in addition to the DCO Core Principles, in determining whether alternative compliance is appropriate for a non-U.S. clearing organization?

Eurex Clearing respectfully believes that the set of requirements applicable to a non-U.S. DCO under the alternative compliance framework is already substantial as outlined in our answer to No. 2.

4. Should the Commission require additional, or less, information from an applicant for alternative compliance as part of its application under proposed §39.3(a)(3)?

Proposed § 39.3(a)(3) would require an applying non-US DCO to submit the following sections of Form DCO: Exhibits A-1, A-2, A-3, A-4, A-7, A-8, A-9, A-10, F-1 through F-3, and Exhibit R. Eurex Clearing believes the proposed information required is significant. We believe that there should be a differentiation between whether the applying clearing organization is already a fully registered DCO or not. If the clearing organization is already a fully registered DCO and decides to opt in for the alternative compliance framework, the Commission would already be aware of a substantial amount of the documents required in the application process for alternative compliance. For such already registered DCOs, Eurex Clearing believes that a resubmission of such Exhibits should not be necessary and would be highly costly.

Furthermore, Eurex Clearing notes that the NPRM does not address the situation of a potential "re-application" in the event that a formerly fully registered DCO opts in for the new alternatively compliant DCO status but then, at some point in the future, is deemed to pose substantial risk to the U.S. financial system and thus must go back to the regular DCO compliance framework. Eurex Clearing believes that, in such a situation, there should be a simple, straight-forward process for enabling the DCO to switch out of the alternative compliance regime, without a burdensome and costly reapplication process. We would welcome further clarity on such process.

5. Is the proposed test for "substantial risk to the U.S. financial system" the best measure of such risk? If not, please explain why, and if there is a better measure/metric that the Commission should use, please provide a rationale and supporting data, if available.

Eurex Clearing believes that the threshold "(1) the DCO holds 20 percent or more of the required initial margin of U.S. Clearing Member for swaps across all registered and exempt DCOs" to be an appropriate measure of risk. The threshold "(2) 20 percent or more of the initial margin requirement for swaps at that DCO is attributable to U.S. clearing members", however, is less clear regarding its connection to systemic risk in the U.S., as it rather signifies the importance of U.S. Clearing Members to a specific CCP. Thus, the threshold may capture smaller-sized CCPs with a significant U.S. Clearing Member base on the one hand but with an insignificant exposure to the U.S. financial system on the other. Additionally, given the very broad definition of a "U.S. Clearing Member" in

this context as well as the discretion the Commission is proposing to have “where one or both of these thresholds are close to 20 percent...”, this potentially captures non-U.S. CCPs/DCOs that do not pose systemic risk to the U.S. financial system. Though Eurex Clearing respectfully understands the CFTC’s concerns regarding a situation where there could be a high percentage of U.S. Clearing Members versus non-U.S. Clearing Members concentrated at a non-U.S. DCO, the broad flexibility of the Commission provides a degree of uncertainty as to when a non-U.S. DCO would be deemed to actually pose a substantial risk to the U.S. financial system.

Therefore, Eurex Clearing could imagine a sequential risk test where the second (2) threshold is only tested in case the first (1) threshold is exceeded. Alternatively, the definition of a U.S. Clearing Member could be narrower in scope and only capture a Clearing Member that is organized in the United States without considering the ultimate parent company.

7. Does the proposed exemption from self-certification of rules in §39.4(c) meet the standards for exemptive relief set out in section 4(c) of the CEA?

a. In addition to rules that relate to the DCO's compliance with the requirements of section 4d(f) of the CEA, parts 1, 22, or 45 of the Commission's regulations, or §39.15, should the Commission require other rules to be filed pursuant to section 5c(c) of the CEA? If so, should the Commission retain discretion in determining which other rules must be filed based on, for example, the particular facts and circumstances? Or should the Commission enumerate the types of rules that must be filed (e.g., rules related to certain products cleared by the DCO)?

As per Eurex Clearing's previous comments, we respectfully believe that the number of requirements that apply the DCO Core Principles over a non-U.S. DCO should be reduced rather than extended.

8. Should non-U.S. DCOs with alternative compliance be excused from reporting any particular data streams in order to limit duplicative reporting obligations in the cross-border context without jeopardizing U.S. customer protections, particularly given the existence of an MOU between the Commission and the DCO's home country regulator as a requirement for eligibility for alternative compliance?

As outlined in Eurex Clearing's answer to No. 2, we believe that a global harmonization of reporting requirements would enable different regulators to share data on basis of MOUs and therefore agree that in this case non-U.S. DCOs could be excused from duplicative reporting requirements.

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

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Eric Seinsheimer', written in a cursive style.

Eric Seinsheimer
US CCO
Eurex Clearing AG

A faint, handwritten mark in blue ink, possibly initials or a signature, located in the lower right quadrant of the page.