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VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

February 13, 2023

Re: Notice of Proposed Rulemaking: Reporting and Information Requirements for Derivatives Clearing Organizations (RIN 3038-AF12)

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: Reporting and Information Requirements for Derivatives Clearing Organizations published on December 15, 2022 (“Proposal”).¹ Eurex Clearing has been a fully registered derivatives clearing organization for swaps with the CFTC since 2016 and also qualifies as a central counterparty (“CCP”) pursuant to Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories (“EMIR”). Eurex Clearing is one of the leading CCPs globally, clearing the broadest scope of products under a single framework in Europe and accepting the world’s widest spectrum of eligible collateral.

Eurex Clearing welcomes and generally supports the Commission’s Proposal, which is a positive step to enhancing, clarifying, and simplifying certain of DCOs’ reporting and information requirements. Eurex Clearing specifically

¹ Notice of Proposed Rulemaking: Governance Requirements for Derivatives Clearing Organizations, 87 Fed. Reg. 76698 (Dec. 15, 2022).

appreciates that DCOs' regulatory reporting provides fundamentally important information utilized by the Commission in its oversight of DCOs.

Eurex Clearing provides the following responses to the specific sections laid out in the Proposal as well as the Commission's specific requests for comment:

I. Proposed Amendments to § 39.13(h)(5)

These proposed amendments are not applicable to Eurex Clearing.

II. Proposed Amendments to § 39.15(b)(2)

Eurex Clearing supports the proposed amendments to § 39.15(b)(2). § 39.15(b)(2) provides the procedures a DCO must follow to obtain Commission approval to commingle customer positions and associated funds from two or more of three separate account classes—futures and options, foreign futures and options, and swaps—in either a futures or cleared swaps customer account. Eurex Clearing believes the proposed amendments to § 39.15(b)(2) appropriately streamline these procedures and will focus DCOs pursuing such relief, as well as the Commission in its review of such requested relief, on the information most relevant to a DCO's application for approval to commingle customer positions in the above separate account classes.

III. Proposed Amendments to § 39.18

Eurex Clearing appreciates the Commission's strong oversight purpose fulfilled by § 39.18(g)(1)'s reporting requirement, which requires DCOs to notify CFTC Division of Clearing and Risk staff promptly of "[a]ny hardware or software malfunction, security incident, or targeted threat that materially impairs or creates a signification likelihood of material impairment, of automated system operation, reliability, security, or capacity." However, Eurex Clearing respectfully strongly disagrees with certain of the proposed amendments to § 39.18(g)(1) as well as the proposed new definition of "hardware or software malfunction" in § 39.18(a).

Eurex Clearing strongly believes that the materiality threshold is essential to § 39.18(g)(1)'s current reporting requirement and would be essential to new, proposed § 39.18(g)(2)'s reporting requirement. Eurex Clearing notes that DCOs routinely deal with system issues that are easily fixable and have no effect on the DCOs' operations. These issues arise in the ordinary course of business due to the vast technological infrastructures implemented by DCOs and are usually fixable or worked around quickly with no internal or external effect. Eurex Clearing believes that elimination of any materiality threshold would lead to a dramatic increase in the number of reports all DCOs would be required to file under § 39.18(g)(1) and then that the vast majority of these reports would provide no additional regulatory oversight value to the Commission. Eurex Clearing has implemented a robust procedure to comply with § 39.18(g)(1) and is confident it interprets the materiality standard in an objectively reasonable manner.

Eurex Clearing does appreciate the Commission's stated concern that the materiality threshold is subject to interpretation and the Commission's statement that it has learned of malfunctions, incidents, or threats that were not reported by DCOs and that the Commission believes were reportable. Eurex Clearing believes the Commission, however, could maintain the materiality threshold and then publish further guidance for DCOs detailing the types of system issues that the Commission believes meet the materiality threshold versus those that do not as well as the types of issues that certain DCOs have not reported in the past that the Commission believes should have been reported. Eurex Clearing would also enthusiastically participate in any discussions the Commission were to wish to have with the industry in order to ensure that the Commission receives notice of all system issues necessary for its oversight.

Eurex Clearing also respectfully disagrees with the proposed definition of "hardware or software malfunction" as "*any circumstance where an automated system or a manually initiated process fails to function as designed or intended, or the output of the software produces an inaccurate result*"² and believes that this definition coupled with proposed, new § 39.18(g)(2) without a materiality threshold would also result in a dramatic increase in the number of reports all DCOs would have to file. Defining a hardware or software malfunction as any circumstance where the system or manual process did not function as designed or intended could then encompass minor system glitches that DCOs encounter and easily fix or work around as a matter of course and that have no internal or external effect.

Lastly, Eurex Clearing respectfully disagrees with the Proposal's cost-benefit statement that the proposed amendments would increase the number of reports by four. Eurex Clearing believes the proposed amendments could lead to a many-fold increase for all DCOs and would also substantially increase costs for the Commission, which would then be required to review all dramatically greater number of reports, the vast majority of which would pertain to system issues with no internal or external effect and provide no regulatory oversight value.

IV. Proposed Amendments to § 39.19(c)

A. Daily Reporting of Variation Margin and Cash Flows – § 39.19(c)(1)(i)(B) and (C)

Eurex Clearing supports the proposed amendments to § 39.19(c)(1)(i)(B) and (C).

B. Codifying the Existing Reporting Fields for the Daily Reporting Requirements in New Appendix C to Part 39

Eurex Clearing supports the proposed codification of the existing reporting fields for the daily reporting requirements of § 39.19(c)(1) in a new

² *Id.* at 76701, 76716 (emphasis added).

Appendix C to Part 39. However, as discussed further in Section IV.E, Eurex Clearing has comments with respect to the daily reporting of margin model back-testing.

C. Proposed Additional Reporting Fields for the Daily Reporting Requirements – § 39.19(c)(1)

Eurex Clearing generally supports the proposed new fields for new Appendix C, though, as discussed in Section IV.E, has comments with respect to the fields required for daily reporting of margin model back-testing.

As to the Commission's proposal to require that a DCO include in its daily reports information that reflects that the daily report is complete, the Commission proposes that completeness information be submitted either as a manifest file that contains a list of files sent by the DCO, or by including the file number and count information embedded within each report, where each FIXML file would indicate its position in the sequence of files submitted that day, i.e., file 1 of 10. Eurex Clearing believes a manifest file is the best approach. Were the latter approach adopted, any time an individual file were to be added or removed, it might require a full resubmission of all files as the total number of files referenced in each file would change. A manifest file would continue to be accurate in the event any individual file were to change. Eurex Clearing believes this is the preferable approach.

D. Individual Customer Account Identification Requirements – § 39.19(c)(1)(i)(D)

Eurex Clearing supports the proposed amendment that where a DCO is required to identify each customer account using both a legal entity identifier ("LEI") and any internally generated identifier, which as proposed would be in § 39.19(c)(1)(i)(A) and (D), the DCO must only do so where this information is available. Eurex Clearing notes that in Europe there is no obligation to transmit this data to a CCP. Consequently, not all Multilateral Trading Facilities or Approved Trade Sources of Eurex Clearing transmit the LEI of customer accounts to the CCP. Therefore, Eurex Clearing applauds the Commission for only requiring such identifying information where available.

E. Daily Reporting of Margin Model Back Testing – § 39.19(c)(1)(i)

Eurex Clearing supports the proposed addition to § 39.19(c)(1)(i) that would require that a DCO include in its daily reports the results of the margin model back-testing that a DCO is required to perform daily pursuant to § 39.19(g)(7)(i) but, as discussed further below, strongly believes the Commission needs to discuss the manner of such reporting with DCOs prior to any rule implementation. Eurex Clearing fully agrees that the Commission's access to margin model back-testing information will further enable to Commission to evaluate the efficacy of DCO margin models, which are a critical component of

DCO risk management and additionally supports the idea that increased transparency related to back-testing results can achieve better comparability of results across CCPs. However, given the different manner of back-testing of the DCOs, Eurex Clearing strongly believes the Commission should align with the industry prior to formalizing any new rule so that the industry aligns on the type of back-testing data that would be most relevant to the Commission's oversight as well as so that consistency across DCOs' reporting is ensured.³ Eurex Clearing would be eager to participate in such a Commission-initiated discussion, whether in an industry roundtable or other format.

While Eurex Clearing believes Commission and industry alignment are paramount prior to any rulemaking regarding daily reporting of back-testing data, Eurex Clearing provides specific feedback below as to the issues it sees in each of the areas identified in the Proposal: (i) general remarks on the comparability of different portfolio back-testing approaches; (ii) more specific remarks related to both proposed reports (the "Breach Details" Report and "Breach Summary" Report); and (iii) remarks related to operational efforts and constraints related to the proposed daily reporting frequency.

1. Definition of the portfolio back-testing approach

From Eurex Clearing's perspective, a high degree of transparency should be provided by DCOs related to the underlying portfolio back-testing approach to ensure a reasonable assessment of model performance and allow for a comparison across CCPs. In this context, Eurex Clearing highlights the following aspects.

a. Definition of back-testing P&L

Eurex Clearing believes that "Variation Margin" should be replaced as a measure for back-testing by a more general "Back-testing P&L," which would include further mandatory fields detailing how back-testing P&Ls are calculated (including P&L horizon, "clean" vs. "dirty" P&L, mark-to-market vs. mark-to-model P&L). Moreover, Eurex Clearing believes the "Variation Margin" field is not a suitable measure in the back-testing context from a Eurex Clearing perspective due to the following limitations:

- Variation Margin is charged/calculated daily whereas the P&L horizon for back-testing purposes is aligned with the underlying margin period of risk ("MPOR") for calculation of the Initial Margin (with $MPOR \geq 1$).
- Variation Margin is only applicable to "future-style" products and, for example, does not consider any premium style option positions. Eurex Clearing believes back-testing should account for changes in the value of all underlying positions within a margin account and over the MPOR.
- Variation Margin depends not only on changes in the value of underlying positions but also on changes in member portfolios themselves. This

³ In this context, Eurex Clearing also refers the Commission to Eurex Clearing's last contributions to its of its [Pioneering CCP Transparency series](https://www.eurex.com/ec-en/services/risk-management/ccp-transparency), available at: <https://www.eurex.com/ec-en/services/risk-management/ccp-transparency>.

reflects a back-testing assessment against “dirty” P&Ls, whereas an assessment against “clean” P&Ls based on a fixed portfolio composition would be preferable from a Eurex Clearing perspective to assess model performance.

b. Definition of margin accounts for back-testing purposes

Eurex Clearing believes that it should be clear and transparent based on the provided back-testing report how margin accounts are defined for back-testing purposes. From Eurex Clearing’s perspective, all positions grouped within the same margin account for back-testing purposes must at least share the same MPOR and the same target confidence level to allow for a reasonable assessment of model performance. Preferably, margin accounts used for back-testing should be the same as “netting sets” considered for the calculation of initial margin. Eurex Clearing proposes that the Commission should provide further detail and/or add further reporting fields to clarify the underlying margin accounts (including MPOR, Target Confidence Level, Asset Class).

c. Definition of Initial Margin for back-testing purposes

Regarding the definition of Initial Margin for back-testing purposes, the Proposal provides, “Margin requirement calculated by the DCO’s margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.” Regarding the inclusion of margin add-ons, Eurex Clearing proposes that the Commission should provide further guidance and/or add further reporting fields detailing with respect to margin components included for back-testing purposes.

d. Product level back-testing

Eurex Clearing would generally point out that daily portfolio back-testing results may not be most informative to the Commission, given the difficulty in comparison across different CCPs. Comparability of portfolio back-testing results across CCPs can only be ensured if underlying portfolio back-testing approaches (compare to comment 1.a – 1.c) are reasonably aligned, and, even still, results depend highly on the composition of underlying margin accounts. In contrast, back-testing results on a product level for a selected set of benchmark products might yield a higher level of transparency and comparability related to model performance. From Eurex Clearing’s perspective, the quarterly or monthly reporting of product level back-testing results for a set of benchmark products would in fact provide the Commission with greater visibility and comparability.

2. “Breach Details” Report

As Eurex Clearing understands the Proposal, the “Breach Details” Report should provide information on the latest daily back-testing observations and more specific information on all reported margin breaches. In this context, ECAG has the following comments:

a. Calculation dates for Initial Margin and Back-testing P&L

As discussed in 1.b and 1.c above and for further clarity, Eurex Clearing would propose to add further fields related to the date of margin calculation as

well as the start and end date for P&L calculation. In Eurex Clearing's case, EOD margins as of T-MPOR will be back-tested against P&Ls calculated between T-MPOR and T based on EOD market data. Respective results would be reported in T+1 by 10:00 AM EST.

b. Aggregation level of "Breaches Details" Report

Eurex Clearing currently generates daily reports of all margin breaches in portfolio back-testing, which are used as a basis for internal analysis and distributed to different stakeholders. In this context, daily back-testing observations, including margin breaches and related maximum breach amounts, are aggregated per asset class. Eurex Clearing would propose to provide results related to daily back-testing observations/breaches to the Commission in a similar format due to the following:

- Consistency in existing reports on portfolio back-testing and results available as part of public quantitative disclosures (including the CPMI-IOSCO disclosure) which are also aggregated on an asset class level (labelled as "Clearing Services" within the CPMI-IOSCO disclosures).⁴
- Avoidance of significant operational redundancies related to the reporting of back-testing results in different formats, which would occur daily.
- Added value of disclosing related clearing and non-clearing member names related to a particular margin breach is very limited for an assessment of model performance.

Existing daily reports on margin breaches could be complemented by further metrics and breakdowns depending on the Commission's needs. In addition, further details could be provided depending on certain thresholds (e.g., for the max breach amount).

3. "Breach Summary" Report

As Eurex Clearing understands the Proposal, the "Breach Summary" Report would provide an aggregated view on back-testing results over a specified lookback period. In this context, Eurex Clearing has the following comments/remarks:

a. Lookback period for back-testing reporting

Eurex Clearing would propose that a fixed lookback period be defined for the "Breach Summary" to allow for comparability across CCPs, e.g., 1Y or 3Y. In this way, all available back-testing observations for margin accounts within the prespecified lookback period would be included in the report.

b. Aggregation level of "Breaches Summary" Report

Similar to our comment in 2.b above in the context of the "Breach Details" Report, Eurex Clearing would propose to provide the "Breach Summary" Report on an aggregated level with reporting results per asset class, which also aligns

⁴ See Eurex Clearing AG, Regulatory Standards and Disclosures, *available at*: <https://www.eurex.com/ec-en/find/about-us/regulatory-standards>.

with public quantitative disclosures (labelled as “Clearing Services” within the CPMI-IOSCO disclosures).⁵ As also discussed, Eurex Clearing strongly believes that alignment on reporting formats and aggregation levels promotes global consistency and efficiency. If required and according to the Commission’s needs, further metrics and breakdowns (in addition to “Total Instances” and “Number of Breaches”) could be provided for each asset class, including, e.g., the max breach amount over the lookback period or the distribution of the effective confidence levels across margin accounts per asset class. As of the end of 2022, ECAG reports backtesting observations over a 1Y lookback period for > 2,000 individual margin accounts (following criteria as specified within comment 1.b), such that results are easier to interpret in case they are reported on a meaningful aggregation level (e.g., per asset class or per asset class & account type).

4. Operational efforts and constraints

Eurex Clearing would like to highlight the operational constraints it faces related to a daily reporting of portfolio back-testing results by 10:00 AM (EST).

a. Reporting deadline of 10:00 AM (EST)

Portfolio back-testing is used to monitor model performance/margin coverage primarily over a long-term period. For this reason, Eurex Clearing believes there exists limited added value for the Commission to receive daily back-testing results by a strict deadline every morning in contrast to the high operational efforts that would be required to prepare results in the desired reporting format. Eurex Clearing reviews its portfolio back-testing results daily and triggers further analysis if applicable. Eurex Clearing’s processes would need to be amended to ensure meeting the envisioned timeline for reporting at 10:00 AM (EST).

b. Reporting frequency of “Breach Summary” Report

Eurex Clearing believes that aggregated results over time are useful for assessment of long-term model performance, including, for example, the Effective Confidence Levels. As results aggregated over the back-testing lookback period do not change significantly in a day-to-day comparison, Eurex Clearing would propose to provide such summary reports of back-testing results at a lower frequency, e.g., monthly or quarterly. In the event that a high number of margin breaches were reported as part of the daily “Breaches Details” Reports, Eurex Clearing could then provide additional “Breaches Summary” Reports to the Commission on an ad-hoc basis during such a period of high financial distress if requested.

In summary, Eurex Clearing supports the Commission in its effort to receive information on back-testing from DCOs and would be happy to discuss any of the comments as outlined above and the Proposal to align future reports on portfolio back-testing with the Commission’s objectives. In addition, Eurex Clearing would be pleased to provide sample files of back-testing reports to the Commission.

⁵ See *id.*

F. Fully Collateralized Positions – § 39.19(c)(1)(ii)

These proposed amendments are not applicable to Eurex Clearing.

G. Reporting Change of Control of the DCO – § 39.19(c)(4)(ix)(A)(1)

Eurex Clearing supports the proposed amendments to § 39.19(c)(4)(ix)(A)(1).

H. Reporting Changes to Credit Facility Funding and Liquidity Funding Arrangements – § 39.19(c)(4)(xii) and (xiii)

Eurex Clearing supports the proposed amendments to § 39.19(c)(4)(xii) and (xiii).

I. Reporting Issues with Credit Facility Funding Arrangements, Liquidity Funding Arrangements, and Custodian Banks – § 39.19(c)(4)(xv)

Eurex Clearing supports the proposed amendments to § 39.19(c)(4)(xv).

J. Reporting of Updated Responses to the Disclosure Framework for Financial Market Infrastructures – § 39.19(c)(4)(xxv)

Eurex Clearing supports the proposed amendments to § 39.19(c)(4)(xxv).

V. Proposed Amendments to § 39.21(c)

K. Publication of Margin-Setting Methodology and Financial Resource Package Information – § 39.21(c)(3) and (4)

These proposed amendments are not applicable to Eurex Clearing.

L. Publication of List of Clearing Members – § 39.21(c)(7)

These proposed amendments are not applicable to Eurex Clearing.

VI. Proposed Amendments to § 39.21(c)

These proposed amendments are not applicable to Eurex Clearing.

VII. Proposed Amendments to § 140.94(c)(10)

Eurex Clearing supports the proposed amendments to § 140.94(c)(10), which delegate to the Director of the Division of Clearing and Risk the authority

in existing § 39.19(a) to require a DCO to provide to the Commission the information specified in § 39.19 and any other information that the Commission determines to be necessary to conduct oversight of the DCO, and in existing § 39.19(b)(1) to specify the format and manner in which the information required by § 39.19 must be submitted to the Commission.

In conclusion, Eurex Clearing reiterates its appreciation for the opportunity to provide information and comments on the Proposal and looks forward to working with the Commission on other proposals and initiatives in the future.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'E. Seinsheimer', is positioned above the typed name.

Eric Seinsheimer
Director, Legal (Americas), Eurex &
US CCO, Eurex Clearing AG