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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

October 27, 2023

**Re: Notice of Proposed Rulemaking: Amendments to Provisions
Common to Registered Entities (RIN 3038-AF28)**

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: Amendments to Provisions Common to Registered Entities published on September 6, 2023 (“Proposal”).¹ Eurex Clearing has been registered as a derivatives clearing organization (“DCO”) for swaps with the CFTC since early 2016 and separately qualifies as a central counterparty (“QCCP”) 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 amendments set forth in the Proposal as they apply to a DCO and agrees fully with the Commission’s objective to clarify, simplify, and enhance the utility of the Part 40 Regulations for market participants and the Commission. Eurex Clearing does, though, propose a change to Regulation 40.6(d)(3), described below.

¹ Notice of Proposed Rulemaking: Amendments to Provisions Common to Registered Entities, 88 Fed. Reg. 61432 (Sept. 6, 2023).

Proposed New Category of Rules for Inclusion in 40.6(d)(3)

The Proposal solicits feedback as to whether the Commission should add any other categories of rules covered by § 40.6(d)(2) or § 40.6(d)(3). Eurex Clearing appreciates the Commission's solicitation of input on this question.

CFTC Regulation 40.6(a) sets out the procedure for a registered entity to submit a rule or rule change to the Commission via self-certification. A registered entity generally must wait ten business days from making the filing before it may implement the rule. CFTC Regulation 40.6(d) sets out alternate procedures whereby a registered entity may implement rules without certification for certain routine matters that are largely non-substantive or of minor substance. For the types of rules and rule changes described in § 40.6(d)(2), the registered entity must provide a weekly summary of the changes to the Commission, whereas no filing is required with respect to the types of rules and rule changes described in § 40.6(d)(3).

Eurex Clearing, like certain other DCOs, clears product classes that are outside the scope of its DCO Order of Registration. Eurex Clearing recommends that the Commission expand the categories of rules covered by § 40.6(d)(3) that a DCO may place into effect without certification or notice to the Commission to cover rules and rule changes that are unrelated to the DCO's activities that are subject to the Commission's oversight. This proposed category would cover a DCO rule or rule change that:

- (i) applies to any product class for which it provides clearing services that is outside the scope of the DCO's Order of Registration with the Commission;
- (ii) does not affect any product class cleared within the scope of the DCO's Order of Registration with the Commission; and
- (iii) does not affect the DCO's general operations.

Expanding § 40.6(d)(3) as proposed would provide substantial benefit to Eurex Clearing and we believe to other DCOs facing this issue by freeing up resources currently dedicated to preparing and submitting rule filings in areas that bear no relation to the Commission's oversight of the DCO. Over its seven plus years' experience as a registered DCO, Eurex Clearing has submitted numerous filings unrelated to its CFTC-regulated DCO activities pursuant to the self-certification procedure laid out in § 40.6(a). Most if not all of them have covered rules or rule changes of a routine, modest nature akin to the categories covered in §§ 40.6(d)(2) and (3), but because the rules do not technically fit within those categories Eurex Clearing has followed the requirements of § 40.6(a), which in addition to the certification requirement entails submitting a filing ten business days before implementing the covered rules or rule changes.

The proposal would also free Commission staff from the distraction of having to review filings in areas outside the scope of the Commission's oversight of the DCO.

In short, Eurex Clearing believes that its recommendation would appropriately tailor Part 40 for the Commission and DCOs to those rules that are relevant to the Commission's oversight of the DCO.

Practical Application to Eurex Clearing

Pursuant to its DCO Order of Registration, Eurex Clearing is authorized to clear swaps for U.S. persons that are clearing members or affiliates of clearing members and for customers of futures commission merchants ("FCMs"). Eurex Clearing divides its rules framework between: (i) the Clearing Conditions of Eurex Clearing ("Clearing Conditions") and (ii) the FCM Clearing Conditions of Eurex Clearing ("FCM Clearing Conditions").²

The Clearing Conditions provide Eurex Clearing's rules that apply to the general operations of Eurex Clearing in Chapter 1 - General Provisions as well as separate rule chapters that are specific to the clearing of product classes subject to EMIR. Chapter VIII - Clearing of OTC Derivative Transactions covers clearing of swaps and is relevant to the swaps clearing services that Eurex Clearing provides to U.S. persons clearing only for proprietary accounts under the DCO Order of Registration. The other chapters, which cover clearing of other, unrelated products, are Chapter II – Transactions Concluded at Eurex Deutschland (Eurex Exchange); Chapter IV – Clearing of Repo Transactions; and Chapter V – Transactions Concluded at the Frankfurter Wertpapierbörse (i.e., Frankfurt Stock Exchange).³

The FCM Clearing Conditions are comprised of the FCM Regulations and the FCM Default Rules, which apply to Eurex Clearing's client clearing services offered to FCM clearing members clearing swaps for their clients. The FCM Regulations are organized into Chapter I - Clearing Model Related Provisions), Chapter II - Special Provisions for Clearing of Interest Rate Derivative Transactions, and Appendices 1-3.

Lastly, Eurex Clearing maintains the Price List of Eurex Clearing ("Price List"), which applies to all product classes cleared by Eurex Clearing.

As noted, Eurex Clearing's DCO registration with the Commission is limited to swaps. The recommended change to expand the categories of rules and rule changes set out in § 40.6(d)(3) would not affect Eurex Clearing's obligations to file rules or rule changes for matters within the scope of its DCO license. Thus, Eurex Clearing would generally continue to file under Part 40 rules

² All Eurex Clearing rulebooks and documents mentioned in this letter are publicly available at: <https://www.eurex.com/ec-en/rules-regs/rules-and-regulations>.

³ The missing chapter numbers are intentional and represent chapters that have since been deleted from the Clearing Conditions. The Clearing Conditions also include Appendices 1 – 14 containing various clearing-related agreements or addressing certain technical matters. Additionally, Eurex Clearing maintains Ancillary Clearing Documents and Connection Agreements. The complete list of Ancillary Clearing Documents is: Statutes for the EMIR Risk Committee, Default Management Committee Rules, Default Management Auction Rules, Statutes for the FIC Board Advisory Committee, Auction Terms of Eurex Clearing, Statutes for the Disciplinary Committee, Disciplinary Procedures Rules, GC Pooling Pledge Back Agreement, ESG Report Terms, and ESG Visibility Hub Terms. See *supra* n.2 for Eurex Clearing's webpage containing these documents.

or rule changes to Chapters 1 (General Provisions) affecting its general obligations and to VIII (Clearing of OTC Derivative Transactions) of the Clearing Conditions, the FCM Clearing Conditions, related ancillary documents, and the Price List provisions pertaining to swaps.

As a QCCP under EMIR, Eurex Clearing clears ETD transactions, repo transactions, and Frankfurt Stock Exchange Transactions pursuant to EMIR regulations and outside Eurex Clearing's DCO license or the Commission's regulations applicable to registered DCOs. Therefore, as applied to Eurex Clearing, the proposed new category for § 40.6(d)(3) would apply to any Eurex Clearing rules or rule changes that affect only Chapters II, IV, or V of the Clearing Conditions, the Ancillary Clearing Documents related to GC Pooling and ESG, the Price List rules pertaining to non-swap products, and any new product class Eurex Clearing may clear in the future outside of its DCO license.

With respect to ETD transactions (Chapter II) specifically, Eurex Clearing notes that its affiliate, Eurex Deutschland (Eurex Exchange) is a registered FBOT with the Commission and is subject to the CFTC Part 48 Regulations governing a registered FBOT. Consistent with the requirements imposed under Part 48, Eurex Clearing is not required to be registered as a DCO to clear transactions in futures or options on futures listed for trading on the Eurex Exchange. Instead, Eurex Exchange and Eurex Clearing had to demonstrate to the Commission that Eurex Clearing is subject to comprehensive supervision and regulation under EMIR that is comparable to the comprehensive supervision and regulation what would apply to a DCO under the CEA framework with respect to ETDs. In addition, on an ongoing basis Eurex Clearing must observe the Recommendations for Central Counterparties (known as the "PFMIs") and be in good regulatory standing in Germany and the EU (both of which are met).⁴

Notably, under Part 48 Eurex Exchange is not required as a general matter to notify the Commission of each change to its rules or to the rules of Eurex Clearing as its clearing organization. Rather, as provided in § 48.8(b)(ii), Eurex Exchange must "promptly provide to the Commission written notice" only of "material" changes to its rules or to those of Eurex Clearing. However, under the current construct of Part 40, because Eurex Clearing is registered as a DCO to clear swaps, it must submit rules and rule changes relating to clearing of transactions in ETDs on Eurex Exchange however minor, far beyond the requirements of Part 48.

Expanded Discussion of the Rationale for the Recommendation

For a DCO such as Eurex Clearing that clears ETD or other product classes outside the scope of its DCO license, the current requirements of Part 40 can lead to an extremely high proportion of § 40.6(a) filings relating solely to product classes cleared outside the scope of the DCO license, not subject to the Commission rules applicable to DCOs, and thus unrelated to the Commission's oversight of the DCO. Eurex Clearing can provide that, since receiving its DCO

⁴ Eurex Clearing publicly provides annual assessments of its compliance against the PFMIs, KPMG's independent report, and quarterly PFMI public quantitative disclosure standards at: <https://www.eurex.com/ec-en/find/about-us/regulatory-standards>.

license from the Commission in February 2016, the amount of § 40.6(a) filings pertaining solely to Chapters II, IV, and V of its Clearing Conditions unrelated to its DCO license has been extensive. Such filings have been and continue to be by and large extremely minor and entirely routine, the vast majority pertaining simply to the listing, delisting, or contractual changes to these unrelated product classes. This is especially the case for ETD clearing under Chapter II of the Clearing Conditions, where Eurex Exchange, the largest European exchange, currently lists 2,818 ETD contracts⁵ and is constantly refining its product scope. Under current CFTC Regulation § 40.6, Eurex Clearing has been required to perform a § 40.6(a) filing for every such ETD-related refinement. Eurex Clearing believes such filings are wholly unrelated to its DCO license as well as its general operations and should be placed in § 40.6(d)(3).

Indeed, Eurex Clearing believes that the filing requirements of § 40.6(a)(7) contemplate application only to product classes cleared under a DCO license or the general operations of the DCO. Specifically, § 40.6(a)(7)(v) requires “[a] concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the [Commodity Exchange] Act, including core principles, and the Commission’s regulations thereunder.” But an “explanation and analysis of . . . compliance with applicable provisions of the Act, including core principles, and the Commission regulations thereunder” is not even possible with respect to rules only applicable to product classes outside the DCO license, as such rules do not relate to any provisions of the Commodity Exchange Act, DCO Core Principles, or CFTC regulations.

With Eurex Clearing’s experience since 2016, Eurex Clearing can conclusively state that categorizing these filings under § 40.6(d)(3) would result in a considerable savings of resources for itself, and we believe the same would hold true for other similarly affected DCOs and for the Commission. For example, in 2022, Eurex Clearing issued thirty-five circulars that contained rule amendments.⁶ Of these thirty-five circulars, sixteen (45.7%) contained rule amendments not related to Eurex Clearing’s DCO license or general operations.⁷ Eurex Clearing notes that of these sixteen circulars, fifteen pertained only to the listing, delisting, or fee methodology changes for Eurex Exchange or Frankfurt Stock Exchange contracts. Eurex Clearing would estimate that the preparation and filing of each § 40.6(a) filing applicable to Chapters II, IV, or V of the Clearing Conditions requires between one and four hours of total time to prepare and file, depending on the extensiveness of the rules proposed, and relatedly requires time from Commission staff as well. This amount of time multiplied by the number

⁵ As of October 2023.

⁶ Eurex Clearing submitted thirty-three § 40.6(a) filings for these thirty-five circulars, because two § 40.6(a) filings contained two circulars.

⁷ For 2022, Eurex Clearing filed the following circulars as § 40.6(a) filings, while only those **bolded** herein pertained to swaps or Eurex Clearing’s general operations: ECAG Rule Certifications 001-22, **002-22**, 004-22, 005-22, 008-22, **012-22**, 016-22, 022-22, 025-22, 027-22, 028-22, **031-22**, **034-22**, 036-22, **037-22**, **038-22**, **042-22**, **043-22**, **048-22**, 049-22, **050-22**, **053-22**, 059-22, **064-22**, 065-22, 075-22, 077-22, **078-22**, **080-22**, 081-22, 083-22, **086-23**, **088-23**, 091-22, and 093-22.

of such filings per year every year equates to a large burden on both affected DCOs and the Commission. Eurex Clearing believes all years have exhibited and will continue to exhibit a similar trend as 2022⁸ given the breadth of Eurex Clearing's EMIR-related offerings, and thus that the savings to DCO and Commission resources would be substantial.

Moreover, Eurex Clearing has been and continues to be concerned that submitting this large number of § 40.6(a) rule filings unrelated to a DCO's operation could result in confusion for the market and public. As the Commission maintains a public database showing all § 40.6(a) filings by DCOs, Eurex Clearing believes market participants and the public could come to the erroneous conclusion that all product classes cleared by a non-U.S. DCO such as Eurex Clearing are subject to its DCO license and the applicable CFTC regulations. To that end, for all § 40.6(a) filings for product classes outside of its DCO license, Eurex Clearing has needed to add an express disclaimer to note that the proposed rule amendments in such filings do not apply to Eurex Clearing's DCO license, which applies only to swaps.

Conclusion

In conclusion, Eurex Clearing believes that for the reasons explained above the Commission should add the proposed category to § 40.6(d)(3) for rules that apply to a product class or product classes cleared outside the scope of a DCO's Order of Registration with the Commission, do not affect any product class cleared within the scope of the DCO's Order of Registration, and do not affect the DCO's general operations. In the alternative, if the Commission were to wish to make the above category narrower, this category could be defined to encompass all listings, de-listings, and fee-related changes related to products cleared outside the DCO's license; however, Eurex Clearing believes the more complete proposed category is appropriate.⁹ Eurex Clearing believes § 40.6(d)(3) serves an important purpose for DCOs, the Commission, and market participants, by filtering out the "noise" for matters that do not implicate the Commission's oversight of DCOs and such purpose would be furthered significantly by such an addition. 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.

Eurex Clearing thanks the Commission for the opportunity to provide our comments on this matter. If you have any questions regarding our comments, please contact the undersigned at (312) 544-1087.

⁸ This trend has continued into 2023. So far this year, Eurex Clearing has filed twenty-six § 40.6(a) filings, twelve (46.1%) of which have not pertained to swaps or Eurex Clearing's general operations.

⁹ In the event the Commission were to decline the addition of the proposed category to § 40.6(d)(3), Eurex Clearing respectfully requests Commission staff work with affected DCOs to provide exemptive or no-action relief.

Yours faithfully,

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

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