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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

January 17, 2024

Re: Notice of Proposed Rulemaking: Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AF24)

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: Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations published on November 21, 2023 (“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 (“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 the Commission’s Proposal governing the safeguarding and investment of customer funds by futures commission merchants (“FCMs”) and derivatives clearing organizations (“DCOs”). The Proposal represents a significant step in increasing the range of new foreign

¹ Notice of Proposed Rulemaking: Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations, 88 Fed. Reg. 81236 (Nov. 21, 2023).

sovereign debt instruments available as investments for FCMs and DCOs, while furthering the need to ensure that such investments share a low risk of default and high level of liquidity.

Eurex Clearing also notes that this goal of increasing investment vehicles for DCOs while minimizing credit risk, market risk, and liquidity risk can be effectively met if DCOs are allowed to deposit customer funds at the Federal Reserve Banks. In its recent proposed rulemaking, the Commission stated, “central banks are often the safest place to deposit customer funds.”² Accordingly, Eurex Clearing believes the Commission should continue to work for such Federal Reserve deposit access for all DCOs.

Regarding the Proposal, Eurex Clearing provides the below specific comments and notes that it limits its comments to just the Sections listed below.

1. Foreign Sovereign Debt

Eurex Clearing supports the Commission’s Proposal to amend CFTC Regulation 1.25 to permit FCMs and DCOs to invest customer funds in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom (“Specified Foreign Sovereign Debt”). Specifically, Eurex Clearing supports the addition of the foreign sovereign debt of France and Germany to Regulation 1.25, which would codify the Commission’s 2018 Order (“2018 Order”),³ which permitted DCOs to invest customer funds in the foreign sovereign debt of France and Germany subject to the conditions of the 2018 Order. Additionally, Eurex Clearing supports the addition of the countries Canada, Japan, and the United Kingdom as permissible foreign sovereign debt.

As the Commission correctly states, these countries are among the seven largest economies in the International Monetary Fund’s classification of advanced economies, and each qualifies as a “money center country” under CFTC Regulation 1.49(a)(1). Further, Specified Foreign Sovereign Debt has credit, liquidity, and volatility characteristics that are comparable to the credit and liquidity characteristics of U.S. Treasury securities and do not raise any additional concerns. Eurex Clearing notes expanding the list of permissible countries has the significant benefits of enabling DCOs to achieve better interest rates for clients as well as increasing the selection of secured investment opportunities.

2. Asset-Based and Issuer-Based Concentration Limits for Permitted Investments

Eurex Clearing limits its comment to state that it agrees with the Commission’s decision not to impose asset-based or issuer-based concentration limits on FCM or DCO investments in Specified Foreign Sovereign Debt, which is consistent with the 2018 Order that also correctly did not impose concentration

² Protection of Clearing Member Funds Held by Derivatives Clearing Organizations 89 FR 286 (Jan 3, 2024) at 289 and 290.

³ Order Granted Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations, 83 Fed. Reg. 35241 (July 25, 2018).

limits. The Proposal correctly notes that this is consistent with the current exclusion of U.S. government securities from such limits as well as that Specified Foreign Sovereign Debt shares credit, liquidity, and volatility characteristics that are consistent with two-year U.S. Treasury securities. Therefore, Eurex Clearing believes that concentration limits should continue not to apply to Specified Foreign Sovereign Debt and that their potential inclusion in fact would harm an FCM and DCO's ability to properly invest customer funds with no corresponding benefit.

3. Read-Only Electronic Access to Customer Funds Accounts Maintained by Futures Commission Merchants

Eurex Clearing supports the Proposal's elimination of the requirement that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts. Eurex Clearing agrees fully with the Proposal's rationale that CME and NFA's daily segregation confirmation and verification processes afford sound assurances that the system provides adequate access as well as that implementation of the read-only requirement presents significant practical and technical challenges. Regarding this latter point, Eurex Clearing can provide that provision of third-party access rights has brought substantial challenges and effort, which Eurex Clearing believes do not bring any corresponding benefits given the existing confirmation and verification processes already in place.

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,



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