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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

April 22, 2024

Re: Notice of Proposed Rulemaking: Foreign Boards of Trade (RIN 3038-AF37)

Dear Mr. Kirkpatrick,

Eurex Deutschland ("Eurex") 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: Foreign Boards of Trade published on March 1, 2024 ("Proposal").[1] Eurex has been a registered foreign board of trade ("FBOT") with the CFTC since October 31, 2016 and is also authorized by the Exchange Supervisory Authority of the State of Hesse, Germany as an exchange under the German Stock Exchange Act. Eurex is the leading European derivatives exchange and—with Eurex Clearing AG—one of the leading central counterparties globally, pioneering innovative products and infrastructures, offering a broad range of international benchmark products, operating the most liquid fixed income markets in the world, and featuring open and low-cost electronic access.

For all the reasons set forth in this letter, Eurex strongly supports the Proposal and urges its swift adoption by the Commission as soon as possible. The Proposal provides an important update to Part 48 of the CFTC regulations to reflect the significant evolution and increase in the role of introducing brokers within U.S. market structure, particularly with respect to risk management, while ensuring that necessary U.S. customer safeguards remain in place.

[1] CFTC, Notice of Proposed Rulemaking: Foreign Boards of Trade, 89 Fed. Reg. 15083 (Mar. 1, 2024).

Background

Prior to receiving its 2016 Order of Registration from the Commission, since 1996, Eurex has offered direct market access to U.S. participants for certain futures products pursuant to CFTC staff no-action relief letters. In 1996 and 1999, the Division of Trading and Markets provided Eurex (and its predecessor, Deutsche Terminbörse) with no-action relief to allow U.S. direct access for members that were registered futures commission merchants ("FCMs") submitting customer orders or were trading for proprietary accounts.[2] In 2006, the Division of Market Oversight provided Eurex with additional no-action relief to allow U.S.-direct access for members that were commodity pool operators ("CPOs") or commodity trading advisors ("CTAs") trading on behalf of U.S. pools they operate or U.S. customer accounts for which they have discretionary authority, respectively.[3]

In 2011, the Commission promulgated final Part 48 rules for FBOTs, including CFTC Regulation 48.4, which codified the prior no-action relief issued to Eurex and other FBOTs. The Part 48 rules provided three categories of U.S. participants for which FBOTs could provide direct access to their trading and order matching systems: (i) participants entering orders for proprietary accounts; (ii) registered FCMs submitting customer orders; and (iii) CPOs and CTAs submitting orders on behalf of a U.S. pool that the participant operates or a U.S. customer for which the participant has discretionary authority, respectively, provided that a registered FCM or firm exempt from such registration pursuant to CFTC Regulation 30.10 ("30.10-exempt broker") acts as clearing firm and guarantees, without limitation, all such trades of the CPO and CTA.

Comments on the Proposal

Eurex strongly supports the Proposal, which would add a new category to CFTC Regulation 48.4 to permit FBOTs to provide direct access to their trading and order matching systems to registered introducing brokers located in the U.S., provided that a registered FCM or 30.10-exempt broker acts as a clearing firm and guarantees, without limitation, all trades of the introducing broker effected through submission of orders for U.S. customers to the trading system.

The Proposal embodies the Commission's consistent dedication to ensuring that its existing rules continue, after promulgation, to address subsequent changes in U.S. market structure and the needs of U.S. participants, while continuing to provide necessary safeguard protections for U.S. customers. The Proposal accomplishes both of these goals fully, both addressing the significant changes over the last decade in how U.S. participants access foreign markets, especially with respect to risk management, while maintaining all sound, historical protections for U.S. customers that trade on foreign markets. The Proposal provides greater choice,

[2] CFTC Staff Letter No. 96-28 (Feb. 29, 1996), https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/96-28.pdf; CFTC Staff Letter No. 99-48 (Aug. 10, 1999), https://www.cftc.gov/sites/default/files/tm/letters/99letters/tmeurex_no-action.htm.

[3] CFTC Staff Letter No. 06-08 (Apr. 21, 2006), https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/06-08.pdf.

improves liquidity, increases competition, and enables necessary risk management choices for U.S. participants. Eurex urges the Commission to move forward with final adoption of the Proposal as soon as possible.

Evolution of U.S. and Global Derivatives Market Structure

Since the Commission's Part 48 rule adoption in 2011, U.S. market structure has changed dramatically in terms of the manner in which U.S. participants use introducing brokers, specifically with respect to their global risk management needs. In 2011 and prior, introducing brokers were not active in global derivatives markets. Rather, introducing brokers mainly served as a link between FCMs and customers located in more rural markets. Over the last decade, the role of introducing brokers has grown substantially, with introducing brokers now filling a crucial role as executing brokers for FCMs.

This change in market structure over the last decade also explains why introducing brokers were not considered during the Commission's 2011 Part 48 rulemaking and comment letter process. As introducing brokers did not occupy the same critical space in the U.S. market as they do now, they simply were not contemplated as a necessary § 48.4(b) category by FBOTs or U.S. participants. Thus, the lack of comment letters or consideration of introducing brokers during the Commission's 2011 Part 48 rulemaking process does not reflect any rejection of U.S. introducing brokers as a category of direct access member for FBOTs, but rather reflects the realities of U.S. market structure at that time.

The expansion in the role of introducing brokers has followed the continued, strong push since 2011 from the use of over-the-counter ("OTC") transactions to the use of standardized, listed, and centrally cleared futures transactions, which supports superior risk management for U.S. participants and is supported by and consistent with banking regulator policy. With this shift from OTC to standardized futures transactions, U.S. participants increasingly trade higher futures volumes, both as on-exchange transactions and off-exchange transactions, such as block trades. Many U.S. participants, including large U.S. banks, now specifically utilize introducing brokers to facilitate off-exchange trading, such as block trading, as introducing brokers can scout the market and find counterparties anonymously to fill large block trade orders, while preserving the anonymity of the underlying customer.

How the Proposal Would Benefit U.S. Market Participants

The present inability for U.S. participants to use U.S. introducing brokers for execution on FBOTs has presented, and continues to present, a significant obstacle for U.S. participants, specifically with respect to their ability to accomplish their risk management needs and properly hedge the respective global risks they face. While U.S. participants may use European-based introducing brokers to facilitate execution on FBOTs, once European markets close, which corresponds to 1 p.m. EST, there is then a time gap from 1 p.m. EST until the close of the U.S. business day during which U.S. participants cannot execute trades via introducing brokers on FBOTs and thus cannot manage their risk in the manner that is best for their needs.

This inability introduces either a time-lag risk for U.S. participants—delaying execution on foreign markets via introducing brokers until the next European business day—or requires execution of disfavored OTC transactions instead of standardized futures transactions. The increase in volatility events over the past few years, such as the Silicon Valley Bank bankruptcy and Russian invasion of Ukraine, has only heightened the need for U.S. participants to utilize U.S. introducing brokers for their risk management needs at times outside of European market hours. Many U.S. participants have stated directly and repeatedly to Eurex over the past few years that their inability to effect trades via U.S. introducing brokers has significantly impeded their ability to conduct risk management in the manner that best supports their needs.

Eurex additionally specifically supports the Proposal's language for CFTC Regulation 48.4(b)(4), which provides that registered U.S. introducing brokers may submit customer orders directly into the trading and order matching system of the FBOT, subject to the condition that a registered FCM or 30.10-exempt broker acts as a clearing firm and guarantees, without limitation, all trades of the introducing broker effected through submission of orders for U.S. customers. This condition mirrors the same condition present in existing CFTC Regulation 48.4(b)(3) for CPOs and CTAs and thus provides the same clearing firm guardrail that currently exists for CPOs and CTAs accessing FBOTs on behalf of U.S. customers. Eurex believes that this condition also properly mirrors the realities of current U.S. market structure, as per Eurex's understanding, all U.S. introducing brokers already face FCMs or 30.10-exempt brokers as their clearing firms. As the Proposal notes, all required risk disclosure requirements relating to foreign futures transactions pursuant to § 30.6 would continue to apply.

Lastly, Eurex requests clarification on one point related to the Proposal. In order to support fully introducing brokers' needs in the present market structure, introducing brokers require the ability both to trade directly on FBOTs' order books as well as to execute off-exchange transactions, such as block trades. Eurex requests confirmation that the addition of § 48.4(b)(4) would allow introducing brokers both to trade directly on FBOTs' trading and order matching systems, i.e., order books, as well as to execute off-exchange transactions, such as block trades. Eurex believes this approach is consistent with the language in existing § 48.4, which allows "members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade." § 48.4 includes the "trading" system *and* "order matching" system. In other words, it is not limited to the order matching system. Absent clarity on this point, Eurex believes there could be confusion as to whether the addition of introducing brokers as § 48.4(b)(4) would allow both types of transactions, which may artificially limit the Proposal's benefits to U.S. market participants.

The Proposal's Specific Requests for Comment

Eurex provides answers to the Proposal's specific requests for comment below:

(1) *Would extending direct access eligibility to eligible IBs for the purpose of submitting customer orders potentially result in any unintended consequences? Is there any reason the Commission should not amend § 48.4 to extend direct access eligibility to eligible IBs for the purpose of submitting customer orders? Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?*

Eurex strongly supports the Proposal and believes that all consequences resulting from the inclusion of introducing brokers into § 48.4's categories would be significantly beneficial for the U.S. market and U.S. market participants and would reflect the substantial changes in U.S. market structure since 2011, as described above. Eurex also provides that all necessary customer safeguards would remain in the same manner as currently provided for CPOs and CTAs that trade on foreign markets on behalf of U.S. customers, and has been in place for over a decade. Eurex does not believe there would be any unintended consequences or that there is any reason the Commission should not amend § 48.4 in the manner provided in the Proposal. Eurex believes the Proposal appropriately considers all necessary issues.

(2) *The proposed regulation would require that an FCM registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 act as a clearing firm and guarantee, without limitation, all trades of the IB effected through submission of orders for U.S. customers to the trading system.*

(a) *Is this condition appropriate? Why or why not?*

Yes, Eurex believes that this condition is appropriate and ensures that the same customer protection that applies for CPOs and CTAs trading on FBOTs on behalf of U.S. customers will also apply for introducing brokers trading on FBOTs on behalf of U.S. customers. This approach has worked well for over a decade. Under Eurex's understanding, all U.S. introducing brokers face FCMs or 30.10-exempt brokers as their clearing firms.

(b) *Does "act as a clearing firm and guarantee, without limitation, all trades of the introducing broker" effectively translate to and encapsulate the various comparable foreign regimes and market structures of FBOTs and their clearing organizations? Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?*

Yes, Eurex believes that the above-quoted language proposed in § 48.4 effectively translates to and encapsulates the various comparable foreign regimes and market structures of FBOTs and their clearing organizations. The language in proposed § 48.4(b)(4) is clear and unambiguous that all trades submitted by

introducing brokers on behalf of U.S. customers must be guaranteed, without limitation, by a registered FCM or 30.10-exempt broker acting as the clearing firm. Eurex believes that the above-quoted language has already properly functioned for CPOs and CTAs under § 48.4(b)(3) and will function effectively for proposed § 48.4(b)(4).

(c) How could this condition impact trades submitted by an IB on behalf of a self-clearing firm? Do direct clearing members of FBOT clearing organizations use IBs to submit their orders to FBOTs? If so, does this proposed condition raise any operational issues, additional costs, or other issues for such direct clearing members (e.g., relating to portfolio margining, risk management, or other)?

Eurex appreciates that proposed § 48.4(b)(4) would not allow for trades submitted by an introducing broker on behalf of a self-clearing firm that is not itself a registered FCM or 30.10-exempt broker. Eurex believes that the significant change to U.S. market structure over the past decade, discussed above, applies only to U.S. participants clearing via registered FCMs or 30.10-exempt brokers. Eurex is unaware of any need by self-clearing members to use introducing brokers to submit their orders to Eurex. Additionally, for the customer protection reasons discussed above, Eurex supports the proposed condition provided in § 48.4(b)(4) that all trades submitted by an introducing broker on behalf of U.S. customers would be guaranteed, without limitation, by a registered FCM or 30.10-exempt broker.

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations? What would be the effects of requiring such trades to be carried exclusively by clearing members that are registered with the Commission as FCMs?

Eurex believes that § 48.4(b)(4), as proposed, provides the appropriate condition that all trades entered by an introducing broker on behalf of U.S. customers be guaranteed by either a registered FCM or a 30.10-exempt firm. Eurex believes that requiring trades submitted by introducing brokers on behalf of U.S. customers to be carried exclusively by FCMs would draw an inconsistent and unreasonable distinction between § 48.4(b)(3) for CPOs and CTAs and proposed § 48.4(b)(4) for introducing brokers. Eurex does not believe there is any reason to require a different standard for introducing brokers than is presently required by CPOs or CTAs. As discussed below, Eurex believes § 30.10 provides a comprehensive framework for the Commission's assessment of applicants for § 30.10 relief, enabling appropriate safeguards for U.S. market participants.

In addition, Eurex agrees and appreciates fully that execution and clearing on foreign markets on behalf of U.S. customers should not raise any AML concerns and, to that end, believes that § 30.10 and the long-standing practice since 1990 by

which self-regulatory organizations located in foreign jurisdictions may apply for 30.10-exempt broker status for their members in their respective jurisdiction has functioned and continues to function robustly, affording the Commission the power to assess whether the foreign jurisdiction in question offers a comparable regulatory scheme. As provided by Appendix A to Part 30, this assessment reviews a minimum of six areas of a regulatory program, including the protection of customer funds from misapplication. As a prospective 30.10-exempt broker will not be directly subject to any U.S. laws, including AML rules and the Bank Secrecy Act, Eurex fully agrees that a robust assessment is necessary to ensure that all relevant areas of a foreign jurisdiction's regulatory program are comparable.

Regarding the protection of customer funds element specifically, Appendix A further provides:

> *Customer Funds.* The Act requires the strict segregation of customer funds from those of the person holding such funds. One of the primary purposes of this requirement is to prevent the misapplication of those funds for purposes other than those intended by the customer, which may affect not only the customer but the market as a whole. The purpose of segregation is also to identify customer deposits as assets of the customer, rather than the firm, in order that in bankruptcy such funds are payable only to satisfy the carrying firm's obligations to such customers and not other obligations of the firm. In assessing comparability of protection of customer funds, the Commission will consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud.

Eurex believes this element, as well as the Commission's powers under the § 30.10 review process, enable the Commission to review all facets of a foreign compliance regulatory program, including whether the program provides comparable AML protections. In the § 30.10 review process, the Commission may require submission of any documentation necessary to perform its assessment. Eurex therefore submits that the current § 30.10 process accounts for the Commission's consideration of a foreign compliance program's protection of customer funds, including protection of funds that would trigger AML concerns.

Considering this robust review process and evaluation framework, Eurex believes that establishing a different condition for § 48.4(b)(4) than exists for CPOs or CTAs and eliminating 30.10-exempt brokers as possible clearing firms would unnecessarily hamstring introducing brokers, hamper market competition, and undermine the current § 30.10 framework.

(4) Are there additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to IBs under proposed § 48.4(b)(4)?

No, Eurex does not believe there any additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to introducing brokers under proposed § 48.4(b)(4).

(5) In addition to the information that FBOTs provide to the Commission on an ongoing basis under § 48.8, is there additional information that the Commission should receive from FBOTs that provide direct access to IBs under proposed § 48.4(b)(4), and if so, why? For example, is there additional information that FBOTs could provide to assist the Commission in identifying, evaluating, and addressing situations that may adversely impact consumers, IBs, market participants, and financial markets? Further, please describe whether this information should be provided on a periodic basis (i.e., quarterly or monthly), or event-driven basis (i.e., after a disciplinary action).

No, Eurex does not believe there is any additional information that the Commission should receive from FBOTs that provide direct access to introducing brokers under proposed § 48.4(b)(4), in addition to the information that FBOTs provide to the Commission on an ongoing basis under § 48.8. All quarterly, annual, and prompt-notice reporting requirements that pertain to an FBOT's members under § 48.8(b)(1) would all apply to introducing brokers as well as the existing categories of participants.

In addition, introducing brokers are subject to wide range of CFTC and National Futures Association ("NFA") regulatory requirements. These include, for example, CFTC recordkeeping and books and record requirements under CFTC Regulation 1.31, which requires registered entities, including introducing brokers, to maintain and have available for inspection at its main business, certain records that support and explain its activities. All required records must be maintained for five years and be readily accessible for the most recent two years. Accordingly, Eurex Clearing believes both existing FBOT reporting requirements as well as CFTC and NFA rules provide the Commission with necessary reporting required for oversight.

Conclusion

Eurex reiterates its appreciation for the opportunity to provide information and comments on the Proposal. Eurex recognizes the Commission's consistent dedication to ensuring its rules continue to adapt to reflect changes in U.S. market structure. Due to the critical U.S. market need addressed by the Proposal, Eurex respectfully urges the Commission to adopt a final rule as soon as possible. Eurex looks forward to working with the Commission on other proposals and initiatives in the future.

Yours faithfully,

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