



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

CFTC Letter 17-21
No-Action
April 14, 2017
Division of Clearing and Risk

Ms. Heike Eckert, Chief Operating Officer
Mr. Patrick Deierling, Senior Vice President
Eurex Clearing AG
Mergenthalerallee 61
65760 Eschborn
Federal Republic of Germany

Re: No-Action Relief with Regard to Commission Regulation 39.19(c)(3)(ii)

Dear Ms. Eckert and Mr. Deierling:

This is in response to your letter dated March 21, 2017 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division accept for filing Eurex Clearing AG’s (“Eurex Clearing”) audited year-end financial statements for the year ending December 31, 2016, presented on the basis of German statutory accounting principles as stipulated by the German Commercial Code (“*Handelsgesetzbuch*,” or “HGB”). You further request that the Division provide no-action relief to Eurex Clearing from the requirement of Commission Regulation 39.19(c)(3)(ii) and Eurex Clearing’s order of registration (the “Order”) that year-end audited statements be presented in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) or International Financial Reporting Standards issued by the International Accounting Standards Board (“IFRS”), with such relief applicable to Eurex Clearing’s financial statements for the year ending December 31, 2016. Finally, you request that the Division also grant the foregoing relief for any subsequent year during which, at year end, Eurex Clearing is relying upon CFTC Letter No. 16-04 (“Letter 16-04”).

Statement of Facts

The Commission issued the Order to Eurex Clearing on February 1, 2016, granting registration to Eurex Clearing as a derivatives clearing organization (“DCO”) pursuant to Section 5b of the Commodity Exchange Act (the “Act”).¹ The Order provides that registration is subject to certain conditions enumerated therein, including Condition 4, which requires Eurex Clearing to

¹ 7 U.S.C. §7a-1.

submit to the Commission all required financial statements in English and prepared in accordance with U.S. GAAP or IFRS.² Commission Regulation 39.19(c)(3)(ii) requires a DCO to provide audited year-end financial statements to the Commission.³

Eurex Clearing's registration is also subject to, among others, Condition 5(b) of the Order, which provides that Eurex Clearing shall not commence clearing or settling transactions involving the Cleared Products (as defined in the Order) prior to demonstrating compliance with the Commission's straight-through processing requirements. However, on the same date as the Order, the Division issued Letter 16-04,⁴ which granted no-action relief to Eurex Clearing allowing it to clear certain proprietary trades for its U.S. clearing members, despite Eurex Clearing's failure to demonstrate compliance with the Commission's straight-through processing requirements.⁵ Letter 16-04 will expire at such time as Eurex Clearing demonstrates compliance with the straight-through processing requirements.

Discussion of Request for No-Action Relief and Applicable Legal Requirements

Eurex Clearing, as a registered DCO, is required to comply with all laws and regulations applicable to such DCOs, including the core principles set forth in CEA Section 5b(c)(2) and Commission regulations. The no-action relief that was granted by the Division in Letter 16-04 enables Eurex Clearing to provide clearing services for the proprietary transactions of U.S. Clearing Members in Cleared Products (as defined) but restricts Eurex Clearing from providing such clearing services on behalf of any U.S. customer.

Eurex Clearing represents that the preparation of audited financial statements in U.S. GAAP or IFRS would require "significant expenditures in fees to external auditors and, more significantly ... internal staff resources." Eurex Clearing also notes that, should its request be granted, it would provide audited financial information based on HGB which, although not in U.S. GAAP or IFRS, would still present "useful accounting information."⁶

² Condition 4 also provides that any financial statements required to be submitted to the Commission less than 90 days after the date of the Order may alternatively be prepared in accordance with German Generally Accepted Accounting Principles. The Division understands that HGB, as defined above, is the same as "German Generally Accepted Accounting Principles" as such term is used in Condition 4.

³ Regulation 39.19(c)(3)(ii) also provides that, if there are no financial statements available for the DCO itself, the consolidated audited year-end financial statements of the DCO's parent company must be submitted.

⁴ CFTC Letter No. 16-04 (Feb. 1, 2016), available at

<http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/16-04.pdf>.

⁵ During the pendency of Eurex Clearing's application for registration, the Division granted time-limited no-action relief, which has since expired, permitting Eurex Clearing to clear certain interest rate swap ("IRS") transactions on behalf of U.S. clearing members in connection with its proprietary IRS clearing business. See CFTC Letter Nos. 13-44 (Jul. 11, 2013), 14-27 (Mar. 10, 2014), 14-156 (Dec. 23, 2014), and 15-54 (Sept. 30, 2015) and their attachments (if any), available at: <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/13-44.pdf>, <http://www.cftc.gov/idc/groups/public/@newsroom/documents/letter/14-27.pdf>, <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/14-156.pdf>, and <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/15-54.pdf>, respectively.

⁶ Eurex Clearing further states that "as a matter of routine business usage[, it] has available unaudited quarterly statements in IFRS." The Division expects that Eurex Clearing's unaudited financial statements, submitted to the

The Division is mindful of the financial and operational resources necessary to prepare audited financial statements in U.S. GAAP or IFRS and is aware that Eurex is not otherwise required to do so, and has not historically done so. Hence, the Division is aware that such expenses would only be incurred in order to comply with Commission requirements. Because Eurex Clearing does not currently provide clearing services for U.S. customers and is not permitted to do so given its reliance on Letter 16-04, and because Eurex Clearing will submit audited financial statements based on HGB, the Division believes that it is appropriate to grant no-action relief.

Grant of No-Action Relief

Based on the facts presented and the representations that Eurex Clearing has made:

- (1) The Division will accept for filing the audited financial statements for Eurex Clearing based on HGB for the year ending December 31, 2016, and for any subsequent year in which Eurex Clearing is relying on Letter 16-04 as of the year-end date.
- (2) The Division will not recommend that the Commission take an enforcement action against Eurex Clearing for a violation of Commission Regulation 39.19(c)(3)(ii) or Condition 4 of the Order for submission of annual financial statements for the year ending December 31, 2016, or for any subsequent year in which Eurex Clearing is relying on Letter 16-04 as of the year-end date, if Eurex timely submits audited financial statements based on HGB (with English translation) rather than on U.S. GAAP or IFRS.

The no-action relief shall expire at such time as Eurex Clearing demonstrates to the Division its compliance with the Commission's straight-through processing requirements and, consequently, is no longer relying on Letter 16-04.

The position taken herein concerns Division procedures and enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based on the representations contained in the Letter, any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

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Should you have questions regarding this matter, please contact Brian Baum, Special Counsel (bbaum@cftc.gov, 202-418-5654), Ward Griffin, Associate Director (wgriffin@cftc.gov, 202-418-5425) or Eileen Donovan, Deputy Director (edonovan@cftc.gov, 202-418-5096).

Very Truly Yours,

John C. Lawton
Acting Director