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\* ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA, WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE.

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July 22, 2005

Ms. Elizabeth K. King  
Associate Director, Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Dear Ms. King:

We are writing on behalf of our clients Eurex Deutschland ("Eurex"); Eurex Frankfurt AG ("Eurex Frankfurt"), the operating company of Eurex; Eurex Zürich AG ("Eurex Zürich"), the holding company of Eurex Frankfurt; Eurex Clearing AG ("Eurex Clearing"), the clearing agency of Eurex; and Deutsche Börse AG ("DBAG"), the operator of a representative office in Chicago from which information concerning Eurex will be made available in the United States as described in this letter,<sup>1</sup> to request your confirmation that, based on the terms and conditions stated in this letter, and in view of similar relief previously granted by the Division of Market Regulation (the "Division") to other non-U.S. exchanges,<sup>2</sup> the Division will not

<sup>1</sup> See the discussion under "Background," below, for further background on the relationship among these entities.

<sup>2</sup> See SEC No-Action Letter to EDX London Limited and OM London Exchange Limited, available Oct. 23, 2003; SEC No-Action Letter to Tokyo Stock Exchange, available November 15, 2002; SEC No-Action Letter to Parisbourse SA, available Dec. 6, 1999; SEC No-Action Letter to Tokyo Stock Exchange, available July 27, 1999; SEC No-Action Letter to Osaka Securities Exchange, available July 23, 1999; SEC No-Action Letter to MONEP SA, available Oct. 26, 1998; SEC No-Action Letter to Borsa Italiana S.p.A., available Sept. 1, 1998; SEC No-Action Letter to Societe de Compensation des Marches Conditionnels, available June 17, 1996; SEC No-Action Letter to

recommend enforcement action to the Securities and Exchange Commission (the “Commission”):

- (1) against Eurex Frankfurt, Eurex, Eurex Zürich, DBAG or Eurex participants, or their respective directors, officers or employees, under Section 5 of the Securities Exchange Act of 1934 (the “Exchange Act”), by reason of Eurex not registering under Section 6 of the Exchange Act as a national securities exchange;
- (2) against Eurex Frankfurt, Eurex, Eurex Zürich, DBAG or Eurex participants, or their respective directors, officers or employees, under Section 15 of the Exchange Act, by reason of Eurex or its participants not registering under Section 15(b) of the Exchange Act as broker-dealers; or
- (3) against Eurex Frankfurt, Eurex, Eurex Zürich, DBAG or Eurex Clearing, or their respective directors, officers or employees, under Section 17A of the Exchange Act, by reason of Eurex Clearing’s not registering under the Exchange Act as a clearing agency,

if employees of Eurex Frankfurt, DBAG and Eurex participants act as described below to familiarize certain registered broker-dealers and large financial institutions in the United States with Eurex and certain equity and index options traded on Eurex, including options on German, Swiss, Finnish, Dutch, Italian and French equities; options on the DAX<sup>®EX</sup>, Dow Jones EURO STOXX 50<sup>SMEX</sup>, iShares DJ EURO STOXX, and XMTCH on SMI<sup>®</sup> exchange-traded funds; and options on the Dow Jones STOXX<sup>SM</sup> 50, Dow Jones Euro STOXX<sup>SM</sup> 50, Dow Jones Global Titans 50<sup>SM</sup>, DAX<sup>®</sup>, TecDAX<sup>®</sup>, Swiss Market Index (“SMI”) and Finnish Stock Index (“HEX 25”) indices.

### ***Background***

Eurex is a fully electronic derivatives exchange that allows Eurex participants decentralized and standardized access from several global access points.<sup>3</sup> International Eurex access points are located in Finland, France, Germany, the Netherlands, Spain, Switzerland, the United Kingdom and the United States.<sup>4</sup>

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London International Financial Futures and Options Exchange, available March 6, 1996; SEC No-Action Letter to Hong Kong Futures Exchange Ltd., available Sept. 26, 1995; SEC No-Action Letter to London International Financial Futures Exchange, available May 1, 1992; SEC No-Action Letter to London Traded Options Market, available Oct. 30, 1990.

<sup>3</sup> These global access points consist of servers and routers through which Eurex participants connect to Eurex through their own dedicated lines or via the Internet.

<sup>4</sup> The Eurex system allows U.S. Eurex participants to trade in certain futures contracts and options thereon pursuant to no-action relief granted by the Commodity Futures Trading Commission (“CFTC”). See CFTC No-Action Letter No. 99-48 (Aug. 10, 1999). Eurex represents that the Eurex trading system will not be made available for the trading of any Options (as defined herein), including trading by current U.S. Eurex participants that currently trade futures and options on futures pursuant to the no-action relief granted by the CFTC.

The predecessor to Eurex, Deutsche Terminbörse, was established in 1990 as Germany's first fully-computerized exchange and the first German exchange for trading financial futures. In 1998, Deutsche Terminbörse and the Swiss Options and Financial Futures Exchange ("SOFFEX") created a new single platform for the trading of derivatives, including both futures and options-related products. Deutsche Terminbörse became Eurex, which is a public law entity under German law. Eurex's operating company, Eurex Frankfurt, is wholly-owned by Eurex Zürich AG (the former SOFFEX), itself jointly owned by DBAG and the Swiss Exchange.<sup>5</sup> DBAG provides Eurex Frankfurt with various administrative services, including accounting, information technology and related services.

Three groups of equity or equity-related options are currently traded on Eurex. The first group comprises options on individual stocks that are listed and traded on other exchanges ("Stock Options"), and includes options on German, Swiss, Finnish, Dutch, Italian, French and U.S. shares.<sup>6</sup> The second group comprises options on non-U.S. exchange-traded funds ("EXTF Options"), and currently includes options on the euro-denominated and Swiss franc-denominated exchange-traded funds listed above. The third group comprises options on indices ("Index Options"), and currently includes options on the indices listed above (Stock Options, EXTF Options and Index Options may be referred to herein collectively as "Options").

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The Eurex trading system includes controls that restrict U.S. and other Eurex participants to trading through the Eurex trading system of only the specific products for which they have received express authorization from Eurex. To date, Eurex has granted U.S. Eurex participants authority to trade only futures and options on futures through their participation in the Eurex trading system. These U.S. Eurex participants are systemically precluded from effecting trades in Eurex equity, exchange-traded fund and index options through their participation in the Eurex trading system, and would continue to be so precluded under the scope of the no-action relief requested in this letter.

As a service provider to Eurex Frankfurt, DBAG maintains a representative office in Chicago in connection with the promotion of such futures products in the United States.

Eurex Frankfurt also holds all shares in U.S. Exchange Holdings, Inc., which in turn owns 80 per cent of the shares of U.S. Futures Exchange, L.L.C. ("Eurex US"). Eurex US is a Chicago-based electronic derivatives exchange that is licensed by the CFTC as a Designated Contract Market. Eurex US started its operations on February 8, 2004. In addition, U.S. Exchange Holdings, Inc., owns 100 per cent of U.S. Exchange, L.L.C., which is currently inactive.

<sup>5</sup> Attached is a chart showing the ownership structure of Eurex and related entities.

<sup>6</sup> On September 24, 2001, Eurex began listing certain options on equity securities of certain U.S. issuers that are listed on The Nasdaq Stock Market, Inc. or a U.S. securities exchange. However, Stock Options on equity securities of U.S. issuers are not yet available for distribution to U.S. persons. Consequently, Eurex is not requesting relief with respect to Stock Options on such U.S.-listed equity securities at this time.

The Eurex options disclosure document described below will contain a specific statement that options on equity securities of U.S. issuers that are traded on Eurex are not available for distribution to U.S. persons at this time. Moreover, as indicated below, Eurex participants will be required to obtain a specific representation from U.S. broker-dealers and financial institutions seeking to purchase or sell Options that they understand that Stock Options on equity securities of U.S. issuers that are traded on Eurex are not available for distribution to U.S. persons at this time.

## ***Regulatory Framework***

The regulatory framework of Eurex is governed primarily by two laws: the German Exchange Act and the Securities Trading Act. The German Exchange Act is designed to provide the means and measures necessary to maintain efficient and orderly trading and to protect investors and the public. To meet these objectives, the German Exchange Act establishes rules governing the establishment, organization and supervision of exchanges, delegates self-regulatory authority to the exchanges and regulates the admission of trading participants and securities to exchange trading. In addition, the Securities Trading Act and German criminal law contain prohibitions on price manipulation, fraud and other deceptive practices. The Securities Trading Act establishes trade reporting obligations, insider trading rules, public disclosure rules and rules of conduct for enterprises admitted to trading on an exchange that deal with the public.

At the exchange level, the responsibilities of the Eurex Board of Management include:

- (1) admitting enterprises and such enterprises' individual representatives to, or excluding them from, options and futures trading on Eurex;
- (2) regulating the organization and business operations of Eurex and setting the time of exchange sessions;
- (3) in conjunction with the Trading Surveillance Office of Eurex, monitoring and examining compliance of Eurex participants with all laws, regulations, terms and conditions and other rules governing trading on Eurex;<sup>7</sup>
- (4) adopting rules for the determination, monitoring, documentation and publication of prices on Eurex;
- (5) adopting the "Implementation Regulations Concerning Technical Equipment at Eurex Deutschland";
- (6) deciding on the admission of options and futures contracts to trading on Eurex and deciding on the commencement, suspension or discontinuation of options and futures trading on Eurex;
- (7) prohibiting physical delivery with respect to particular contracts if necessary for the maintenance of orderly market conditions on Eurex;
- (8) determining position limits for options and futures positions held by enterprises admitted to trading on Eurex; and

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<sup>7</sup> Each Eurex participant is obligated to provide information or assist Eurex otherwise in relation to activities carried out on Eurex.

- (9) the adoption of the contract specifications for options and futures contracts at Eurex Deutschland and Eurex Zürich.

The German Federal Financial Supervisory Agency (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (the “BaFin”)<sup>8</sup> and the Exchange Supervisory Authority in the State of Hesse also exercise certain supervisory powers.

- The BaFin is responsible for licensing, or denying licensing to, enterprises that intend to commence activities in the securities business in Germany, as well as ensuring the licensed enterprises maintain compliance with the capital and organizational requirements of the German Banking Act.
- The BaFin is also charged with enforcement of the Securities Trading Act and has the general power to counter any irregularities that may impair the orderly conduct of securities trading, investment services or ancillary investment services, or that may significantly disrupt the securities market.
- The BaFin also has the authority to request information and to compel the production of documents from exchange trading participants within its jurisdiction (*i.e.*, located in Germany) and their personnel.
- The BaFin has the authority to cooperate with competent authorities of other countries in connection with the supervision of securities and derivatives markets and trading activity thereon, including by sharing non-public market surveillance information.<sup>9</sup> Exchanges outside of Germany on which the component stocks of Index Options, and the equity securities and exchange-traded funds underlying Stock Options and EXTF Options, are traded are subject to active market surveillance by government and self-regulatory organizations in those jurisdictions. The BaFin generally has access to surveillance data from those regulators with respect to trading of these underlying and component securities

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<sup>8</sup> On May 1, 2002, the Federal Banking Supervisory Office (*Bundesaufsichtsamt für das Kreditwesen*) (the “BAKred”), the Federal Securities Supervisory Office (*Bundesaufsichtsamt für den Wertpapierhandel*) (the “BAWe”) and the Federal Insurance Supervisory Office (*Bundesaufsichtsamt für das Versicherungswesen*) (the “BAV”) were merged into the BaFin, which has federal responsibility for the supervision of credit institutions, financial services institutions and insurance companies. Therefore, all activities previously regulated by the BAKred, the BAWe and the BAV are now regulated by the BaFin.

<sup>9</sup> In connection with this authority, the BaFin may, at the request of a competent authority in another country (such as the Commission), request that Eurex provide the BaFin with any non-public market surveillance information necessary for the BaFin to fulfill the request of any such competent authority. Such information may include, but is not limited to, any information that Eurex has the authority to obtain in the manner described in footnote 7.

outside of Germany pursuant to various information-sharing memoranda of understanding.<sup>10</sup>

- In the case of securities traded on European exchanges, the members of the Forum of European Securities Commissions (“FESCO”) (which includes the BaFin and regulators of all the other European exchanges on which the underlying stocks of certain Options are traded, other than Swiss regulators<sup>11</sup>), have entered into a Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance Activities that provides for sharing of certain market surveillance data among FESCO members.<sup>12</sup>
- In addition, the BaFin is also a member of the International Organization of Securities Commissions, which promotes cooperation among more than 150 regulators of stock exchanges all over the world, and includes regulators from each jurisdiction in which the non-German securities underlying each Option have their primary market listing.
- Eurex itself does not have formal exchange-to-exchange information-sharing arrangements with non-German exchanges. However, Eurex’s Trading Surveillance Office is authorized under the German Exchange Act to obtain information directly from, and share information directly with other exchanges, similar trading surveillance offices of other exchanges or regulators outside of Germany. In addition, Eurex may request that the BaFin obtain information from other regulators pursuant to the various information-sharing arrangements described above.

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<sup>10</sup> The Trading Surveillance Office of Eurex can request such surveillance data from the BaFin for purposes of fulfilling its own monitoring, compliance and examination responsibilities with respect to Eurex participants.

<sup>11</sup> The Swiss Exchange, however, has agreed to share relevant market surveillance information with Eurex Zürich, the holding company of Eurex Frankfurt, regarding relevant trading activity on both the Swiss Exchange and virt-x in respect of all securities traded on those marketplaces underlying Eurex Options. The Swiss Exchange has full access to surveillance information on the trading of these underlying securities on virt-x, as well as having access to surveillance information regarding the trading of these securities on its own market. Collectively, the Swiss Exchange and virt-x trade every security underlying an Option on a Swiss franc-denominated security (including Stock Options on Swiss shares, EXTF Options on Swiss franc-denominated exchange-traded funds and SMI Index Options).

The Trading Surveillance Office of Eurex can in turn request, and Eurex Zürich can provide, information from Eurex Zürich concerning the Swiss Exchange and virt-x market surveillance information it receives from the Swiss Exchange, for purposes of fulfilling the Trading Surveillance Office’s own monitoring, compliance and examination responsibilities with respect to Eurex participants.

<sup>12</sup> In addition to this multilateral memorandum of understanding among FESCO members, the BaFin, as the successor organization to the BAWe, is party to bilateral memoranda of understanding or exchange of letters with regulators in Argentina, Australia, Brazil, China, the Czech Republic, France, Hong Kong, Hungary, Italy, Japan, Poland, Portugal, Russia, Singapore, Spain, Switzerland, Taiwan and the United States.

- At the state level, the German State of Hesse is responsible for exchange supervision as well as establishing and, in part, enforcing state regulations adopted under the purview of the German Exchange Act (*e.g.*, regulations concerning the election of an exchange’s council; the establishment, composition and proceedings of an exchange’s disciplinary committee; and regulations covering the status of exchange specialists (*Kursmakler*)).

### ***Eurex Membership***

Admission to membership as a participant in Eurex is necessary in order to engage in the direct trading of Options on Eurex. Eurex has a single category of exchange membership, which is limited to entities (i) that enter into Options (and/or futures) transactions (A) for their own accounts or (B) in their names for the accounts of third parties and (ii) that are organized business entities (*i.e.*, natural persons are not permitted to become participants in Eurex).<sup>13</sup>

Each applicant for membership must meet certain minimum requirements, including:

- (1) the completion of an application form and the provision of certain information as to the management of its business and the persons who are authorized to act on its behalf;
- (2) obtaining a license with Eurex Clearing for clearing transactions carried out on Eurex or concluding a Non-Clearing Member/General Clearing Member agreement or a Non-Clearing Member/Direct Clearing Member agreement with a Clearing Member (as defined in footnote 15 below) in the form prescribed by Eurex Clearing;
- (3) agreeing not to enter into transactions on behalf of customers unless (a) it is a “licensed credit institution” (generally a bank) under German law, a “licensed financial services institution” (generally a broker-dealer or investment advisor) under German law,<sup>14</sup> a licensed branch of a non-German bank or a bank in

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<sup>13</sup> As indicated in footnote 4, however, Eurex represents that U.S. Eurex participants are systemically precluded from effecting trades in Eurex equity, exchange-traded fund and index options through their participation in Eurex.

<sup>14</sup> In order to become a “licensed credit institution” or a “licensed financial services institution,” under the German Banking Act, an entity must apply for a license from the BaFin. The application must contain, among other items, (i) evidence of sufficient financial resources, (ii) the names of the applicant’s managers, (iii) evidence regarding the trustworthiness and qualifications of such managers, (iv) a viable business plan showing the nature of the applicant’s business, its organizational structure and its planned internal monitoring and control procedures, (v) information concerning persons (such as large shareholders) that have the ability to influence management of the applicant and (vi) information concerning significant affiliates of the applicant.

another European Union member state and (b) it is authorized to engage in broker-dealer activities or to render financial services, as these activities are defined under the German Banking Act; and

- (4) certain minimum financial requirements.

### *Eurex Clearing*

Eurex Clearing, founded in 1998, clears all Eurex trades and functions as central counterparty for all Options transactions. Every Eurex participant is required to participate in the clearing process of Eurex Clearing.<sup>15</sup> Every Clearing Member is required by Eurex Clearing to maintain sufficient margin to cover all of its contractual obligations. In addition, each Clearing Member is required to make a contribution to the clearing fund, which may be used to cover itself and other defaulting Clearing Members in event of default. Eurex Clearing serves as the counterparty for each Clearing Member Option transaction that takes place on Eurex.

Transactions are settled on a delivery versus payment (“DVP”) basis through SIS SegInterSettle AG, the Swiss central security depository, or Clearstream Banking AG in Frankfurt. Both of these central securities depositories have set up omnibus accounts and established a cross-border DVP link. In addition to offering securities clearing and settlement facilities, these central securities depositories also offer Clearing Members facilities for the deposit of collateral. Cross-border cash settlement by Eurex Clearing is processed through the Central Bank of Germany (Deutsche Bundesbank) for euros, the Swiss National Bank (SNB) in Zurich for Swiss francs and correspondent banks for other currencies.

To facilitate trades in larger amounts of contracts in standardized Eurex products, Eurex Clearing offers an OTC Block Trade Facility. The OTC Block Trade Facility enables Clearing Members to submit to Eurex Clearing trades that have been negotiated directly with Eurex participants outside the Eurex system. Eurex Clearing performs clearing and margining regulation in connection with each OTC block trade submitted to it. OTC block trades are only possible for products traded on the Eurex system and admitted to block trading. The minimum number of options contracts that must be traded is defined by Eurex Clearing with respect to each product and Eurex Clearing carries out a “validation,” meaning that only block trades within a certain price range will be accepted by Eurex Clearing. Clearing Members who wish to use the OTC Block Trade Facility must accept the general conditions for participation and be approved for submission of OTC block trades by Eurex Clearing.

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<sup>15</sup> Eurex participants can choose to participate in Eurex as General Clearing Members, Direct Clearing Members or as Non-Clearing Members. Both General Clearing Members and Direct Clearing Members are members of Eurex Clearing (“Clearing Members”). Non-Clearing Members must clear their transactions through a General Clearing Member or an affiliated Direct Clearing Member.

## ***Eurex Options Market***

The following is a brief summary of the operation of the Eurex Options market:

- Options are purchased and sold by a Eurex participant by inserting the order into Eurex's central order book,<sup>16</sup> where all orders are automatically sorted by type, price and entry time. Market orders always have the highest matching priority. Limit orders and quotes are sorted with the highest bids and lowest offers ranked first.
- The ten best bid and ask prices and their respective bid and offer sizes can be called up at any time, allowing Eurex participants constantly to monitor market depth and to keep abreast of the latest price trends on a real-time basis. Prices on Options are publicly disseminated. Stock Options and EXTF Options are quoted and traded in euros (with the exception of Stock Options on Swiss shares and EXTF Options on Swiss franc-denominated exchange-traded funds, which are bought and sold in Swiss francs), and Index Options are quoted and traded in index points with a defined euro-value per index point (with the exception of SMI Index Options, where the index point value is expressed in Swiss francs).
- Options are not evidenced by certificates; transactions and positions are recorded in statements from Eurex Clearing to Clearing Members and statements from Clearing Members to customers.
- Stock Options, EXTF Options and Index Options are not fungible or interchangeable with options that are traded on any other market. Thus, each Stock Option, EXTF Option and Index Option position issued by Eurex Clearing to a Eurex participant can be closed only on Eurex and can be exercised by the Eurex participant only by giving an exercise notice to Eurex, although such Options may be exercised automatically if the Eurex participant sets an "automatic exercise parameter" in advance.

### ***Stock Options and EXTF Options***

- Stock Options and EXTF Options have an American-style exercise. On each of the last ten exchange trading days before the last trading day of a series of Stock Options or EXTF Options contracts then becoming due, Eurex informs each Eurex participant of such last trading day. Each Stock Option or EXTF Option purchaser is generally responsible for exercising its Stock Options or EXTF Options.

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<sup>16</sup> As indicated in footnote 4, Eurex represents that U.S. Eurex participants are systemically precluded from effecting trades in Eurex Stock Options, EXTF Options and Index Options through the Eurex trading system.

- Any Stock Option or EXTF Option position can be closed only on Eurex or exercised by a Eurex participant giving an exercise notice, either electronically or in writing (in case of system problems), to Eurex, although such Options may be exercised automatically if the Eurex participant sets an “automatic exercise parameter” in advance.
- The underlying contract size of a Stock Option or an EXTF Option is generally based on 100 shares of the underlying instrument, but may vary depending on the price of the underlying stock or fund, as the case may be.
- Once a Stock Option or an EXTF Option is assigned by Eurex, clearance and settlement of the transaction in the underlying security takes place:
  - two exchange trading days following the date of exercise for (i) Stock Options based on German shares and (ii) EXTF Options on euro-denominated exchange-traded funds;
  - three exchange trading days following the date of exercise for (i) Stock Options based on Swiss, Dutch, Italian and French shares and (ii) Swiss franc-denominated exchange-traded funds; and
  - four exchange trading days following the date of exercise for Stock Options based on Finnish shares.
- When the writer of a Stock Option or an EXTF Option is a customer, it is contractually obligated to its broker with whom it deposits margins or the underlying stocks. If the executing broker is a Clearing Member, it is contractually obligated to Eurex Clearing with whom it deposits margins. If it is a Non-Clearing Member, it must clear the trade through a Clearing Member that then becomes contractually obligated to Eurex Clearing.

#### *Index Options*

- Index Options have a European-style exercise. On each of the last ten exchange trading days before the last trading day of a series of Index Options contracts then becoming due, Eurex informs each Eurex participant of such last trading day. Each Index Option purchaser is generally responsible for exercising its Index Options, although such Options may be exercised automatically if the Eurex participant sets an “automatic exercise parameter” in advance.
- All Index Options are cash settled and payable on the first exchange trading day after exercise.

Additional liquidity is provided to the Options market through the use of market makers. Market makers bridge any temporary imbalances in supply and demand in the market for less liquid Options. Market makers are required to submit a quote on any Option assigned to

them after a Eurex participant has submitted a quote request. Such quote includes both a bid and an ask limit price, as well as a quantity, and must be entered within a specified time after a quote request has been submitted. There is a maximum permissible range between the bid and ask price to ensure that market makers supply appropriate quotes. In addition, Eurex may stipulate minimum contract sizes for both bid and ask quotes, as well as a minimum period for maintaining such quotes in the system.

Contracts are performed by settlement between Clearing Members and Eurex Clearing. Each Clearing Member is responsible for handling such settlements for the Non-Clearing Members it serves, as well as its own customers. Eurex Clearing rules require Clearing Members to honor all obligations resulting from orders or quotes entered into Eurex by themselves as well as the Non-Clearing Members they serve. If a Non-Clearing Member fails to provide the margin fixed by its Clearing Member or to pay any daily settlement in a timely manner, the Non-Clearing Member may be excluded from trading for the duration of the failure by a decision of the Eurex Board of Management. If a Clearing Member fails to make any payments or deliveries due to Eurex Clearing, Eurex may exclude such Clearing Member, as well as any Non-Clearing Member it represents, for the duration of the failure.

Currently, as indicated above, Eurex systemically precludes persons located in the United States from effecting Option trades through the Eurex trading system. Eurex represents that it will not make Options trading accessible to persons located in the United States through the Eurex trading system without express approval from the Commission.

#### ***Transactions with U.S. Customers***

DBAG and Eurex Frankfurt wish to familiarize certain registered broker-dealers and large financial institutions in the United States with Options, and thus propose to take the limited steps described below with respect only to “Eligible Broker-Dealers” and “Eligible Institutions.” To be eligible, each such entity must meet the following standards:

- (1) it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the Securities Act of 1933 (the “Securities Act”), or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act and
- (2) it must have had prior actual experience with traded options in the United States options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Exchange Act).

Eurex participants will be required to take reasonable steps to assure themselves, before effecting any Option transaction for or with a customer located in the United States, that the customer is an Eligible Broker-Dealer or an Eligible Institution, that the customer is acting for its own account or the account of another Eligible Broker-Dealer or Eligible Institution or the managed account of a non-U.S. person (within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act), and that the customer has received the Eurex disclosure document referred to below. Eurex will advise Eurex participants that, under U.S. law, Eurex participants

which are not U.S. registered broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers as provided in that Rule.

Eurex will institute rules requiring Eurex participants to furnish to Eligible Broker-Dealers and Eligible Institutions a Eurex disclosure document (the “Eurex disclosure document”) before accepting an order from such entity to purchase or sell Options. The rules will also require that Eurex participants obtain written representations from any Eligible Broker-Dealer or Eligible Institution seeking to purchase or sell Options, signed by an appropriate officer, to the following effect:

- (1) it is an Eligible Broker-Dealer or Eligible Institution, and as such it (i) owns and invests on a discretionary basis a specified amount of eligible securities sufficient to be a qualified institutional buyer under Rule 144A under the Securities Act (and if a bank, savings and loan association or other thrift institution, has a net worth meeting the requirements of Rule 144A under the Securities Act) and (ii) has had prior actual experience in the U.S. standardized options markets and as a result thereof has received the options disclosure document entitled “Characteristics and Risks of Standardized Options” that is prepared by the Options Clearing Corporation and U.S. options exchanges (the “ODD”);
- (2) it has received the Eurex disclosure document;
- (3) its transactions in Options will be for its own account or for the account of another Eligible Broker-Dealer or Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act;
- (4) it will not transfer any interest or participation in an Option it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer or Eligible Institution;
- (5) it will cause any disposition of an Option that it has purchased or written to be effected only on Eurex (or submitted to the Eurex Clearing OTC Block Trade Facility as described above) and settled by Eurex Clearing;
- (6) it understands that any required payments for premium, settlement, exercise or closing of any Option in respect of which it has a contract with the Eurex participant must be made in the designated currency;
- (7) it also understands that, if it has a contract as a writer of an Option with a Eurex participant, margin must be provided to the Eurex participant in such form and amount as determined by such Eurex participant, and such Eurex participant, (a) if a Non-Clearing Member, must provide margin to its Clearing Member in such form and amount as determined by that Clearing Member and (b) if a Clearing

Member, must maintain, measure and deposit margin on such Option with Eurex Clearing in such form and amount as determined by Eurex Clearing;

- (8) it understands that Stock Options on equity securities of U.S. issuers that are traded on Eurex are not available for distribution to U.S. persons at this time;
- (9) if it is an Eligible Broker-Dealer or Eligible Institution acting on behalf of another Eligible Broker-Dealer or Eligible Institution that is not a managed account, it has obtained from the other a written representation to the same effect as the foregoing and will provide it to the Eurex participant upon demand; and
- (10) it will notify the Eurex participant of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to the Eurex participant.

Copies of the Eurex disclosure document, in the form to be submitted to and reviewed by the Division, will be provided only to Eligible Broker-Dealers and Eligible Institutions. The Eurex disclosure document will provide an overview of Eurex and its Options, with attention to significant differences from standardized options in the U.S. domestic options market, and will set forth special factors relevant to U.S. entities transacting in Options.

DBAG and Eurex Frankfurt will not engage in any general advertising concerning Options in the United States. However, DBAG, Eurex Frankfurt and Eurex will appoint certain DBAG and Eurex Frankfurt employees to act as their representatives in the United States. Eurex representatives in the United States and outside the United States (hereinafter referred to collectively as “Representatives”), will be available to respond to inquiries concerning Options from Eligible Broker-Dealers and Eligible Institutions. Any Representative may make personal calls on and correspond or otherwise communicate with entities whom such Representative reasonably believes to be Eligible Broker-Dealers and Eligible Institutions in order to familiarize them with the existence and operations of Eurex. Any Eligible Broker-Dealer or Eligible Institution would be provided, upon its first visit, communication or inquiry regarding Options, with the Eurex disclosure document.<sup>17</sup> The Representatives will maintain a reasonable supply of that document and the most recently published DBAG annual report<sup>18</sup> to respond to requests therefor from Eligible Broker-Dealers and Eligible Institutions. A Representative also may participate in programs and seminars conducted in the United States.

Representatives will not give investment advice or make any recommendations with respect to specific Options, nor will Representatives solicit, take or direct orders, nor recommend or refer particular Eurex participants. If requested by an Eligible Broker-Dealer or Eligible Institution, a Representative may make available to the requesting party a list of all

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<sup>17</sup> If the first communication is by telephone, the Eurex disclosure document will be mailed within one business day of the communication.

<sup>18</sup> The annual financial and related information of Eurex is consolidated with that of DBAG, and thus this information forms part of the DBAG annual report.

Eurex participants empowered to take orders from the public and any registered U.S. broker-dealer affiliates of such Eurex participants.

Eurex will require that Eurex participants, before effecting a transaction with or for an Eligible Broker-Dealer or Eligible Institution in Options, determine that the Eligible Broker-Dealer or Eligible Institution has received the ODD and the Eurex disclosure document and maintain a record of that determination. Eurex will furnish the Division, at least 30 days prior to the date definitive copies of the Eurex disclosure document are furnished to Eligible Broker-Dealers or Eligible Institutions, with a copy of any amendment that is made to the Eurex disclosure document because the information contained in the previously submitted and reviewed document has become or will become materially inaccurate or incomplete, or because there is or will be an omission of material information that is necessary to ensure that the document is not misleading.

Eurex will continue to be an organized exchange operating and regulated outside the United States (other than as described in footnote 4) and in making its Options known to a particular, sophisticated segment of the U.S. financial community, it will not be altering this fact. Careful limitations also will be taken to assure compliance with applicable U.S. securities laws, and DBAG, Eurex, Eurex Frankfurt and Eurex Clearing will continue as necessary to establish further limitations to assure continued compliance with applicable U.S. securities laws.

Making information concerning Eurex available in the United States as described in this letter will serve to increase, in a responsible manner, information concerning an important and growing marketplace in Europe that will be of substantial benefit to appropriate U.S. professionals and institutions as they pursue a global diversification of investments.

We therefore respectfully request on behalf of DBAG, Eurex, Eurex Frankfurt and Eurex Clearing that you confirm to us that the Division will not recommend that the Commission take enforcement action of the nature set forth in the opening paragraph of this letter, and that you advise us that:

- (1) the furnishing of the Eurex disclosure document by a Representative, by a Eurex participant, or by an Eligible Broker-Dealer, in each case to an Eligible Broker-Dealer or Eligible Institution, will satisfy the obligation of a broker or dealer under Rule 9b-1(d) of the Exchange Act to furnish an options disclosure document before accepting an order from a customer to purchase or sell an Option and
- (2) neither a Representative's furnishing of the Eurex disclosure document to an Eligible Broker-Dealer or Eligible Institution, nor a Eurex participant's furnishing of the Eurex disclosure document to an Eligible Broker-Dealer or, in response to an unsolicited inquiry concerning Options, to an Eligible Institution, will constitute "solicitation" or the provision of a "research report" as those terms are used in Rule 15a-6(a) under the Exchange Act.

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We would appreciate prompt consideration of this matter. If for any reason the staff is not disposed to grant the requested no-action relief, we would also appreciate an opportunity to discuss the situation with the staff prior to the issuance of any formal letter. Questions regarding this no-action request should be directed to me (at 202-974-1888), John R. Loatman (at 202-974-1958) or Dr. Ekkehard Jaskulla, Director – Head of Department, Markets and Regulatory of Eurex (at 011-49-69-2101-5133).

Sincerely yours,



J. Eugene Marans

Exhibit Index

- Exhibit 1      Ownership Structure of Eurex Frankfurt AG and Related Entities
- Exhibit 2      Special Characteristics and Risks of Eurex Options on Stocks, Exchange-Traded  
Funds and Stock Indices

Exhibit 1

## Ownership Structure of Eurex Frankfurt AG and Related Entities

