

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-756-3300
Fax: 202-756-3333
www.alston.com

Paul M. Architzel

Direct Dial: 202-756-3492

E-mail: paul.architzel@alston.com

November 29, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6628

Re: Request for Extension of Exemptive Relief Under the Securities Exchange Act of 1934 Related to the Central Clearing of Credit Default Swaps

Dear Ms. Murphy:

On April 23, 2010, the U.S. Securities and Exchange Commission (“Commission”) issued an Order modifying its temporary exemption related to the central clearing by Eurex Clearing AG (“Eurex Clearing”) of credit default swaps (“CDS”) and extending its effective period through November 30, 2010.¹ The Commission’s CDS Exemption Order provides a temporary conditional exemption from certain requirements of the Securities Exchange Act of 1934 (“Exchange Act”), permitting Eurex Clearing to perform the functions of a clearing agency (central counterparty) for certain non-excluded Credit Default Swap transactions (“CDS”). The Commission’s CDS Exemption Order also permitted buy-side customers to be brought within Eurex Clearing’s CDS clearing architecture.²

The impetus behind Eurex Clearing’s request for an Exemptive Order was the exponential growth in volume of CDS, the recent, unprecedented conditions in the financial markets, including the over-the-counter (“OTC”) markets for CDS, and the call by financial regulatory authorities in both the European Union and in the United States

¹ See “Order Extending and Modifying Temporary Conditional Exemptions Under the Securities Exchange Act of 1934 In Connection With Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comment,” Securities Exchange Act Release No. 34-61975 (April 23, 2010) (“CDS Exemptive Order”).

² The CDS Exemption Order modified and extended an earlier Commission exemptive order permitting the central clearing of CDS contracts, but did not include the clearing of buy-side customers within the clearing architecture. See “Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comments,” Securities Exchange Act Release No. 34-60373 (July 23, 2009) (“July 23, 2009 CDS Order”).

for Central Counterparty clearing (“CCP”) as one means of reducing systemic, counterparty and operational risk arising from such transactions.³

Since the Commission’s issuance of the July 23, 2009 and April 23, 2010 Exemptive Orders, the Congress has enacted far-reaching regulatory reform legislation.⁴ The provisions of Title VII of the Dodd-Frank Act⁵ provide for the comprehensive regulation of swaps and security-based swaps.⁶ Section 763 of the Dodd-Frank Act provides that the Commission shall review and determine the security-based swaps which are required to be cleared. Such security-based swaps must be cleared by a clearing agency that is registered under the Exchange Act or exempt from registration. A clearing agency is required to submit to the Commission each security-based swap or category that it plans to accept for clearing. Security-based swaps listed for clearing as of the date of enactment of the Dodd-Frank Act are considered to be submitted to the Commission.

In general, the provisions of the Dodd-Frank Act will become effective 360 days after enactment of the bill.⁷ At that time, the mandatory clearing provisions, including the requirement that entities clearing security-based swaps be registered with the SEC as a clearing agency under the Exchange Act or exempt from registration will also become effective.

Eurex Clearing’s clearance and settlement services for CDS became operational with respect to its clearance and settlement services for CDS on July 30, 2009, shortly after issuance of the initial Exemptive Order.⁸ At the time that it first became operational, Eurex Clearing’s offering in Europe included customer CDS transactions within its CDS clearance and settlement services. Although the Commission’s initial exemptive Order did not include within its scope clearing of customer transactions, the Commission’s April 23, 2010 CDS Exemptive Order extended the scope of the original Order to also grant relief in connection with U.S. and non-U.S. customer CDS

³ See, statement of Charlie McCreevy, European Commissioner for Internal Market and Services, Reference MEMO/09/77, welcoming an industry commitment to agree to the central clearing in Europe for certain CDS which are systemically relevant.” See also, “The Role of Credit Derivative in the U.S. Economy,” Before the U.S. House Agriculture Committee, 110th Cong. 2nd Sess. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, U.S. Securities and Exchange Commission).

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”).

⁵ Under Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

⁶ Section 761(a)(6) defines a “security-based swap” as any agreement, contract or transaction that is a swap based on a narrow-based security index, a single security or loan, including any interest therein or on the value thereof; or the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

⁷ The Dodd-Frank Act was enacted on July 21, 2010. The 360th day following enactment would be July 16, 2011.

⁸ The initial CDS Exemptive Order, issued on July 23, 2009.

transactions cleared through U.S. clearing members of Eurex Clearing and CDS transactions by U.S. customers cleared through non-U.S. clearing members of Eurex Clearing.⁹

As noted above, the effective period of the Commission's CDS Exemptive Order pursuant to which Eurex Clearing offers to accept for clearing certain security-based swaps is through November 30, 2010. Eurex Clearing is requesting herein the CDS Exemptive Order so that Eurex Clearing is permitted to extend its service offering in respect of U.S. clearing members and U.S. customers through the general effective date of the Dodd-Frank Act. This will enable Eurex Clearing to continue to offer and further develop its clearing services seamlessly, as the new regulatory framework is put into place. This is consistent with the public interest in providing for an orderly transition between the current offering of clearing services for security-based swaps and the clearing services which will be offered under the new framework of the Dodd-Frank Act, once it becomes effective.

Accordingly, for the reasons set forth below, and based upon the representations and undertakings of Eurex Clearing's July 23, 2009 request for exemptive relief,¹⁰ as modified and supplemented by its April 23, 2010 request for modification and extension of its original request¹¹ (together, "Requests for Exemptive Relief"), both of which are incorporated by reference herein, as supplemented and modified by the representations and undertakings in this request,¹² Eurex Clearing requests that the Commission extend the exemptive relief which it granted to Eurex Clearing and to Clearing Members of Eurex Clearing¹³ until the effective date of Section 763 of the Dodd-Frank Act and related provisions.

Specifically, Eurex Clearing respectfully requests that:

⁹ Eurex Clearing requested exemptive relief in connection with its activities and those of its U.S. CDS Clearing Members, their affiliates and other persons related to clearing of certain CDS transactions. Eurex Clearing's activities and those of its non-U.S. Clearing Members related to the clearance and settlement of CDS transactions between non-U.S. CDS Clearing Members for their own accounts or on behalf of their non-U.S. customers were not within the scope of the original requests for exemptive relief and would not be subject to this request for an extension of the CDS Exemptive Order.

¹⁰ See Letter from Paul M. Architzel, Alston & Bird, LLP to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated July 23, 2009 ("July 23, 2009 Request").

¹¹ See Letter from Paul M. Architzel, Alston & Bird, LLP to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated April 23, 2010 ("April 23, 2010 Request").

¹² As provided above, Eurex Clearing incorporates by reference in this letter and affirms the continuing validity of the representations and undertakings made in its July 23, 2009 Request as modified by its April 23, 2010 Request as though each were set forth herein. Representations in this letter supplement the representations of the July 23, 2009 and April 23, 2010 Requests.

¹³ Natural persons are not permitted to become clearing members of Eurex Clearing.

(1) the Temporary Conditional Exemption dated April 23, 2010, pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) from the clearing agency registration requirements set forth in Section 17A(b)(a)¹⁴ of the Exchange Act with respect to its performance of the functions of a clearing agency with respect to certain OTC CDS transactions involving U.S. persons, and in particular in connection with clearing of transactions involving U.S. customers and from any provisions of the Exchange Act governing securities transactions, be extended with respect to the activities described in that Order, as supplemented herein;

(2) that the Temporary Conditional Exemption dated April 23, 2010, pursuant to Section 15(a)(2) of the Exchange Act, exempting any person that may be subject to registration as a U.S. broker-dealer solely as a consequence of their effecting transactions in, or inducing or attempting to induce the purchase or sale of, any CDS transactions to be cleared by Eurex Clearing in respect of transactions described in that Order and as supplemented herein be extended;

(3) that the Temporary Conditional Exemption dated April 23, 2010, pursuant to Section 36(a)(1) of the Exchange Act exempting Eurex Clearing, its Clearing Members and their affiliates from any requirement that they comply with provisions of the Exchange Act governing securities transactions, to the extent otherwise applicable to Eurex Clearing, its Clearing Members and their affiliates, in connection with the offer, acceptance, execution, clearance, settlement, performance and related activities contemplated or required by the Eurex Clearing Conditions, by the Eurex Clearing Clearing Agreement or by the Eurex Clearing Tri-party Agreement, as described in that Order and as supplemented herein, be extended; and

(4) that the relief in paragraphs (1), (2) and (3) be subject to Eurex Clearing, and such other persons complying with, and remaining subject to, the provisions of the Exchange Act applicable to security-based swap agreements and on the terms of and subject to the conditions upon which this relief is requested.

As detailed in its letters requesting the CDS Exemptive Orders, Eurex Clearing operates under a regulatory regime that provides an appropriate level of protection to market participants using its clearing services, and its robust risk management and operational processes safeguard those market participants and protect against systemic risk to the general markets.

¹⁴ We include as part of this exemptive request, relief from the provisions of Exchange Act Section 17A(b)(2) requiring the filing of a Form CA-I in light of the permission granted December 12, 2006, by the German Federal Financial Supervisory Authority (“BaFin”) to Eurex Clearing AG to act as a CCP.

As provided in the Commission's CDS Exemptive Order, this includes offering clearing services to the buy-side customers of CDS Clearing Members ("CCM"). Eurex Clearing's offering of clearing services would benefit buy-side customers of CCMs through the enhanced financial integrity of such transactions and the protection of customer collateral in case of the default of the customer's clearing member. Extending the term of the Exemptive Order beyond November 30, 2010 will provide greater certainty with respect to Eurex Clearing's making available its clearing services to U.S. CDS Clearing Members in connection with their transactions with their buy-side customers and to non-U.S. CDS Clearing members in connection with their transactions with their U.S. buy-side customers and will further the development of CCP clearing protections for market participants. For these reasons, we believe that the requested extension of the Temporary Conditional Exemptions is necessary or appropriate in the public interest and consistent with the protection of investors.

Eurex Clearing AG

As described more fully in its Requests for Exemptive Relief, Eurex Clearing was formed in 1997 to function as the clearinghouse for the Eurex exchanges. Eurex Clearing is a stock corporation (*Aktiengesellschaft*) formed and incorporated under the laws of Germany. Eurex Clearing received permission to act as a CCP from the German Federal Financial Supervisory Authority ("BaFin") on December 12, 2006. Eurex Clearing is supervised by BaFin cooperatively with the Deutsche Bundesbank (the German Federal Bank). In addition, on January 16, 2007, Eurex Clearing was recognized by the U.K. Financial Services Authority ("FSA") as a Recognized Overseas Clearing House ("ROCH"), on the basis that the regulatory framework and oversight of Eurex Clearing in its home jurisdiction was comparable to that of the U.K. FSA. On July 31, 2009, the U.S. Commodity Futures Trading Commission issued an Order under Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act of 1991, enabling Eurex Clearing to act as a Multilateral Clearing Organization thereunder with respect to certain over-the-counter contracts, agreements or transactions. As noted above, Eurex Clearing was granted Exemptive Relief by the Commission on July 23, 2009 in connection with the offering of clearance and settlement services with respect to CDS transactions described in the CDS Exemptive Order.

A complete explanation of the function and operation of Eurex Clearing is included in the Eurex Disclosure Document for Options, which is provided under a no-action of the Commission's Division of Trading & Markets.¹⁵

¹⁵ The Eurex Options Disclosure Document can be found at:
<http://www.eurexchange.com/download/documents/circulars/cf2452007e.pdf>. The Eurex no-action letter can be found at: <http://sec.gov/divisions/marketreg/mr-noaction/eurex072705.htm>.

Eurex Clearing's CDS Clearing Services

On July 30, 2009, Eurex Clearing began offering its clearance and settlement service for CDS transactions based on the iTraxx® Europe (Main), iTraxx® HiVol and iTraxx® Europe Crossover CDS Indexes and for CDS transactions based on 17 single name constituents of the iTraxx® Europe (Main) index of the utility sector. The list of index series and maturities and of the specific single name constituents that are available for clearing can be found at:

http://www.eurexclearing.com/markets/creditlear/product_scope_de.html. Further European single names are expected to be added over time to provide full coverage of the iTraxx® benchmark index constituents. As described in its Requests for Exemptive Relief, Eurex Clearing intends, in response to market demand, to offer clearing services for other indexes and their constituents and to deepen its offering with respect to buy-side participation.

Overview of Clearing Architecture

As discussed in the Requests for Exemptive Relief, CDS clearing is achieved through a process of novation, wherein if the novation criteria are met Eurex Clearing is interposed as the universal counterparty to transactions between its Clearing Members. Thus, upon novation, the original CDS transaction will be terminated and replaced through two new CDS transactions. The Clearing Member that acted as buyer under the bilateral transaction will continue to be the buyer by way of novation with Eurex Clearing and the Clearing Member that acted as seller bilaterally will act as the seller under the new legal relationship with Eurex Clearing.

Eurex Clearing establishes the terms of the contracts which are novated by the clearing house in a chapter of its rulebook--the "Clearing Conditions of Eurex Clearing" (hereafter the "Clearing Conditions"), entitled "Clearing of OTC Derivatives Transactions." The terms established by the CDS Chapter of the Clearing Conditions are consistent with, and incorporate to the extent possible, the terms most commonly used for CDS transactions in the OTC markets as provided under ISDA® documentation, adhering to European market conventions. Eurex Clearing complies with ISDA® March 2003 Credit Derivative definitions incorporating the March 2009 Determinations Committees and Auction Settlement (Big Bang) Supplement and the latest July 2009 Restructuring (Small Bang) Supplement.

The CDS for which Eurex Clearing offers clearing and settlement services provide for cash settlement as the mandatory settlement mechanism for events of bankruptcy and failure to pay. Eurex Clearing will follow the ISDA® Determination Committee decisions whether a credit event has occurred. The ISDA® Determination Committees will be effective as of April 8, 2009, with implementation of two new ISDA® protocols (Auction Settlement supplement and ISDA® Derivatives Determination Committee). In the event that the ISDA Determination Committee would not assess a

potential credit event, Eurex Clearing may facilitate a credit event determination process via its Eurex CDS Determination Committee. In case of restructuring events, which are mainly applicable for European CDS contracts, Eurex Clearing would also follow OTC procedures to the degree possible.

Eurex Clearing requires CCMs to deposit sufficient collateral with Eurex Clearing to cover the calculated risk resulting from the cleared transactions. Prior to novation, Eurex Clearing conducts a pre-risk evaluation and other pre-novation checks. These relate to member and product-specific requirements.¹⁶ If all such pre-novation checks are satisfactory, Eurex Clearing will proceed to novate the contract, replacing the prior bi-laterally negotiated contracts.

Clearing Mechanics

Operationally, CDS clearing to the extent possible is built upon the existing clearing architecture and existing infrastructure providers. Transactions will be submitted to Eurex Clearing through one or more third party confirmation platform providers, also referred to as a recognized Matching and Confirmation Service (“MCS”), such as Markit Wire, to capture bilaterally confirmed deals as well as post-trade events.¹⁷

Specifically, in order for a transaction to be cleared, it must first be processed by an MCS. Only confirmed CDS contracts may be submitted to Eurex Clearing for clearing. Trades designated by the parties to be submitted for clearing will be received over the interface with an MCS. These transactions will be accepted by Eurex Clearing on the same day as the contracts were bi-laterally effectuated, with novation on T+1 (provided all novation criteria have been satisfied).¹⁸ The cleared contracts will then be recorded in Deriv/SERV’s Trade Information Warehouse (“TIW”) with Eurex Clearing as the counterparty. Eurex Clearing is currently in negotiations that will enable it to accept transactions from one or more MCSs.¹⁹

Buy-side customers can be included within the clearing architecture in either of two account categories, a dedicated customer account referred to as a “Registered

¹⁶ For example, with respect to member checks, the member must not have been suspended. Product-related checks include specific product-related criteria, such as duration to maturity, and position limits, if in effect.

¹⁷ Eurex Clearing has no rule requiring an executing broker to be a clearing member. Eurex Clearing Conditions permits any execution venue or trade confirmation platform that meets the technical requirements to participate in its clearance and settlement architecture.

¹⁸ In addition, Eurex Clearing will continue to novate bi-laterally effectuated transactions that were first recorded in the TIW using the interface with DTCC Deriv/SERV’s TIW. Under this alternative, trades designated by the parties to be submitted for clearing will be received over the interface from DTCC and will continue to be novated on a weekly novation cycle.

¹⁹ Eurex Clearing represents that it remains committed to work with reasonably qualified execution venues and trade processing platforms to facilitate functionality for submission of trades by non-member dealers if there is interest in such functionality.

Customer” (“RC”) account,²⁰ or an account in which the positions of all customers are commingled, the “Customer Omnibus Account.”²¹ In either case, the CCM carries the positions as agent for its customer(s).

Margin and Customer Collateral

As detailed in the Requests for Exemptive Relief, Eurex Clearing will require that CCMs deposit or pledge sufficient collateral to Eurex Clearing to cover the calculated risk resulting from the cleared transactions.²² The Clearing Conditions also require that CCMs collect from their customers’ collateral no less than the amount required to meet the margin calculated by Eurex Clearing.²³ Prior to novation, Eurex Clearing will conduct a pre-risk evaluation and other pre-novation checks.²⁴ If such pre-novation checks are satisfactory, Eurex Clearing will proceed to novate the contract, replacing the prior bi-laterally agreed CDS.

As explained in the Requests for Exemptive Relief, the total margin requirement for CDS covers the market risk of the positions held by a clearing member so that, should a member default, the clearing house has, in all but the most extreme market circumstances, sufficient margin to cover default losses to at least the 99% confidence interval without recourse to other financial resources at its disposal.

Eurex Clearing will calculate the amount of the up-front margin required for cleared CDS transactions based upon the overall risk exposure of the Clearing Member. The risk exposure of its cleared CDS transactions will be based upon five components, as explained in detail in the Requests for Exemptive Relief.

Margin is calculated for each CCM in reference to its various accounts. There is no netting of an RC’s account with any other RC’s account.

²⁰ An RC is required to enter into a Tri-party Agreement among Eurex Clearing, the CCM and the RC, in which the CCM agrees to guarantee the RC’s position and the RC agrees to be bound by Eurex Clearing’s Clearing Conditions. The positions carried by the CCM in an RC’s account are carried in the clearing house’s systems on a fully disclosed basis.

²¹ Customers whose positions are carried through the CCM’s omnibus clearing account are not required to enter into a Tri-party Agreement with Eurex Clearing. The positions carried in the Customer Omnibus Account are not carried by the clearing house on a fully disclosed basis. The CCM, through its own internal record keeping systems would identify particular contracts with its particular customer.

²² As explained in greater detail below, this requirement may be met in some instances by the deposit of such collateral directly with Eurex Clearing and in other instances by depositing such collateral with a third-party custodian with a first priority pledge of the collateral to Eurex Clearing.

²³ See Clearing Conditions 1.3.1(1)(c).

²⁴ For example, with respect to member checks, the member must not have been suspended. Product-related checks include specific product-related criteria, such as duration to maturity, and position limits, if in effect.

Acceptable Collateral

Margin in the form of collateral, which may be cash, securities or book-entry securities acceptable to Eurex Clearing, will be transferred to Eurex Clearing at the approved collateral location. Eligible collateral and applicable haircuts can be found on Eurex Clearing's web site at: http://www.eurexclearing.com/risk/parameters_en.html.

Segregation of Customer Collateral

Segregation of customer collateral, as described in greater detail below, will be available as agreed upon between the CCM and its customer. However, segregation of customer assets at Eurex Clearing and as between U.S. CCMs and their customers and U.S. customers and their CCMs in respect of CDS clearing will be mandatory. The customer segregation framework will become effective with buy-side access to Eurex Clearing's CDS clearing offering.

Individual segregation for RCs

Eurex Clearing's segregation framework will protect collateral posted by RCs and forwarded by CCMs to Eurex Clearing in connection with cleared CDS. The framework distinguishes between collateral as required by Eurex Clearing and additional collateral that may be required by the CCM. Under the segregation framework, pursuant to the Tri-party Agreement among Eurex Clearing, the CCM and an RC, the RC will deliver margin to the CCM which must transfer such collateral as promptly as practicable after receipt to Eurex Clearing by transferring title thereto. The CCM will give the customer a pledge for the return of an amount equivalent to the net value of the securities after the customer's obligations have been satisfied therefrom in the event of the insolvency of the CCM. Eurex Clearing will maintain the customer collateral in a separate "RC Margin Collateral Account specific to that RC.

A CCM may require its RC to deposit collateral in an amount in excess of the collateral required by Eurex Clearing to margin the customer's position ("Excess Customer Collateral"). Unless Eurex Clearing provides otherwise, this Excess Customer Collateral will be deposited with Eurex Clearing to be held in the RC Margin Collateral Account specific to that RC in the case of collateral in the form of securities, or with a depository in the case of collateral in the form of cash.

Segregation for non-RCs

In contrast to the segregation procedures for the collateral of RCs, Eurex Clearing anticipates at a later time introducing omnibus customer clearing, which would require each clearing member only to post with Eurex Clearing sufficient collateral to satisfy the net CDS position associated with the CCM's non-RC customers. Eurex Clearing does not plan on introducing omnibus customer clearing for U.S. customers or U.S. CCMs

until following implementation of the Dodd-Frank Act, which is beyond the term of the requested extension of this exemptive relief. In this regard, Eurex Clearing is currently analyzing its anticipated approach to omnibus customer clearing and the segregation provisions of the Dodd-Frank Act and will introduce omnibus customer clearing as part of its implementation of the provisions of the Dodd-Frank Act.²⁵

Default and Portability Rules

Prior to a clearing member default, an RC and other customers would be able to instruct that both the customer's positions and collateral be moved to another CCM with the approval of all involved parties, a release by the CCM with respect to any outstanding obligations of the customer to the CCM, and a release by Eurex Clearing.

In the case RCs, following a clearing member default but prior to the filing of a formal insolvency proceeding, the security agreements would provide that the collateral would be returned to the RC, facilitating the transfer of the collateral to a new CCM.²⁶

If a clearing member were to become insolvent as the result of an RC's default or insolvency, Eurex Clearing would have the right to use the collateral in that RC's account to satisfy the shortfall. In that event, Eurex Clearing would not be able to use the collateral posted by other customers to make up the shortfall. If a clearing member became insolvent due to a shortfall associated with a customer other than an RC, it is planned that Eurex Clearing could use collateral in the account up to the amount of net omnibus position, causing loss to non-defaulting customers.

²⁵ Before enactment of the Dodd-Frank Act, Eurex Clearing had planned on introducing omnibus customer clearing under the Commission's exemptive order. Eurex Clearing had anticipated initially providing that CCMs may only post cash as collateral to satisfy the margin requirement of customers that are not RCs. The customers would have transferred, to the clearing member, title to collateral posted to satisfy this requirement; the clearing member then would have been required immediately to deposit with Eurex Clearing, an amount of cash necessary to address the net margin requirement associated with these customers' positions. Eurex Clearing would have held a primary pledge with respect to the deposited cash.

The collateral that a clearing member would have been required to collect from these customers would have exceeded the amount of net margin (reflecting the net exposure associated with those customers' positions) that the clearing member would have been required to forward to Eurex Clearing. Clearing members also may collect from these customers additional amounts of collateral in excess of the Eurex Clearing required margin. This excess collateral would not have been held at Eurex Clearing; instead, clearing members would have been required to post this collateral as soon as possible to a third-party custodian. CCMs would have been required to grant back to these customers (such as through the use of an independent collateral agent) a pro rata security interest in the customer collateral on deposit with the third-party custodian. As noted above, Eurex Clearing is analyzing its anticipated framework for omnibus customer clearing in light of the provisions of the Dodd-Frank Act and will not implement omnibus customer clearing for U.S. customers and U.S. CCMs during the period of exemptive relief.

²⁶ These procedures may be subject to the action of the receiver of the clearing member. In the case of customer omnibus accounts, which will be implemented at a later time, Eurex Clearing would be able to ascertain the collateral to be transferred with the agreement of the affected entities.

In the event of a clearing member's default, the clearing member would be required to close its cleared CDS transactions; otherwise Eurex Clearing could close the positions on behalf of the clearing members. If Eurex Clearing cannot close those transactions within a reasonable period, it may use a voluntary auction process to liquidate the position in whole or in part, and assign the remaining positions among non-defaulting clearing members pro rata.

Daily Evaluation Prices

Eurex Clearing has determined to alter its procedures for determining daily settlement prices that will be used in marking positions to market from its initial procedures. Under the revised procedure, Eurex Clearing will calculate a daily mark-to-market price based upon end of day prices submitted by CCMs. This process will become effective with a minimum number of participating members. The price quotation system will make use of the existing infrastructure that Eurex Clearing has in place with Markit, LLC.

Under the procedure for determining settlement prices, Eurex Clearing will independently rank the bid and ask prices provided by the CCMs through Markit, LLC by highest bid and lowest ask. Those bids or ask prices that are outside of the maximum applicable Bid/Ask range around the Provisional Price are excluded. The mark-to-market price will be determined by pairing any locking or crossing bid/ask prices to reveal the first non-crossed, non-locked bid/offer pair. If such ranking does not result in any crossed orders or locked interests, then the mark-to-market price will be the mid-point of that range. Eurex Clearing reserves the right in its discretion to deviate from this procedure where the best interest of the market so warrants.

In order to ensure the reliability of the process, CCMs whose prices lock or cross will randomly be required to execute transactions. In order to calculate the execution price the order of the crossed or locked asks will be reversed, the mid of the then matching pairs will determine the execution prices. Such trading will be required on a limited basis, being no more than three days in any 30 day period and limited to no greater than 10% of Eurex Clearing's market data requirements. The market data requirements are defined by the open positions held by Eurex Clearing and the data points required for the respective instrument.

Insofar as the nature of this forced trading mechanism is quite limited and only for the purpose of establishing the reliability of the settlement price procedure, we request that this Temporary Conditional Exemption from the exchange registration requirements of sections 5 and 6 of the Exchange Act be extended. In making this request, Eurex Clearing makes the following representations:

1. Eurex Clearing will report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within

- 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:
- a. The total volume of transactions expressed in the currency of the underlying instrument executed during the quarter, broken down by reference entity, security, or index; and
 - b. The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.
2. Eurex Clearing will establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include:
- a. limiting access to the confidential trading information of participants to those employees of Eurex Clearing who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and
 - b. establishing and maintaining standards controlling employees of Eurex Clearing trading for their own accounts. Eurex Clearing will establish and maintain oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.
3. Eurex Clearing will comply with the conditions to the temporary exemption from registration as a clearing agency which is granted in response to this request.

Information Sharing

Eurex Clearing is authorized under its Clearing Conditions to share information as provided in the Clearing Conditions with responsible domestic or foreign supervisory authorities that are subject to confidentiality requirements with respect to such information.²⁷

As noted in the CDS Exemptive Requests, the Commission and BaFin have entered into a number of Memoranda of Understanding (“MOU”) which will facilitate the Commission carrying out its oversight responsibilities under the conditions of the requested exemptions.²⁸ In furtherance of the importance of information-sharing among

²⁷ Part 10 Section 10.1 of the Clearing Conditions of Eurex Clearing reads as follows:

- (1) Eurex Clearing AG treats all data and information which relate to its Clearing Members, Non-Clearing Members and Link Clearing Houses confidentially. Eurex Clearing AG shall be authorized – within the provisions it is subject to - to transfer data and information to responsible supervisory authorities or other authorized third parties domestic or abroad which are subject to non-disclosure regulations comparable to those of Eurex Clearing AG.

Customer-related information may only be passed on by Eurex Clearing AG if they are already publicly available or if they are legally required or if the Clearing Member, Non-Clearing Member or the Link Clearing House has agreed to it.

²⁸ Specifically, on October 17, 1997, BaFin’s predecessor agency, the Bundesaufsichtsamt für den Wertpapierhandel and the Commission entered into an agreement, entitled, “Memorandum of Understanding on Mutual Assistance and the Exchange of Information” which provides for the sharing of

regulators, Eurex Clearing represents that before offering CDS clearing and settlement services to U.S. customers of non-U.S. Credit Clearing Members, it will adopt a requirement that will prohibit a member from directly or indirectly submitting, or permitting a non-U.S. clearing member to clear a position for a U.S. customer (when the member receives or holds funds or securities of U.S. persons for the purpose of purchasing, selling, clearing, settling, or holding that CDS position), unless the non-U.S. clearing member, in connection with such CDS activities, is regulated or supervised by a regulatory authority which is, or which is in a jurisdiction which is: (a) a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, (b) a signatory to a bilateral arrangement with the Commission for enforcement cooperation, or (c) a financial regulatory authority in Ireland or Sweden.

Public Interest

In issuing its Exemptive Orders to Eurex Clearing, the Commission has recognized both the important purposes served by CDS as well as the risks that CDS pose systemically to financial stability.²⁹ Accordingly, along with the other members of the President's Working Group on Financial Markets, the SEC has supported the establishment of central counterparty services for CDS, reasoning that a CCP for CDS "could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts."³⁰

Eurex Clearing believes that CCP services for CDS contracts will address concerns relating to CDS trading that have been raised in respect of counterparty risk, lack of transparency regarding exposures and the sufficiency of risk coverage and operational weaknesses. Eurex Clearing believes that its offering of clearing services will ameliorate these risks. Offering clearing services also will provide buy-side customers critically important protections and substantial benefits. Among these are that the positions of RCs are separately booked and margined, making it possible for the ready transfer of such positions and customer collateral to be transferred in the event of the insolvency of the Clearing Member.

For these reasons, Eurex Clearing believes that this request to extend the Commission's Order dated April 23, 2010, in respect of the offer by Eurex Clearing of

information and cooperation between the two regulatory authorities primarily in the context of enforcement investigations. In addition, both the Commission and BaFin are signatories to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("IOSCO MOU"). The IOSCO MOU also covers information-sharing primarily in the context of enforcement investigations.

²⁹ To Review the Role of Credit Derivatives in the U.S. Economy: Hearing before the House Committee on Agriculture, 110th Cong, 2d Sess. (November 20, 2008)(statement of Erik Sirri, Director of Trading and Markets, U.S. Securities and Exchange Commission, at p 1 and 2).

³⁰ *Id.* at p. 3.

CDS clearance and settlement services is necessary or appropriate in the public interest and is consistent with the protection of investors.

Conditions for Exemptive Relief

Eurex Clearing bases its request for exemptive relief on the following representations:

1. Eurex Clearing meets, and will continue to meet on an on-going basis the conditions of the “Order Extending and Modifying Temporary Conditional Exemptions Under the Securities Exchange Act of 1934 In Connection With Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comment,” Securities Exchange Act Release No. 34-61975 (April 23, 2010).
2. Eurex Clearing will make available to all U.S. customers and all customers of U.S. Eurex Credit Clearing Members information regarding the terms of the CDS cleared by Eurex Clearing, the creditworthiness of Eurex Clearing, and the clearing and settlement process for CDS clearing by Eurex Clearing, subject only to such limitation and protections as may be imposed under applicable privacy or similar laws.
3. Eurex Clearing only considers for membership entities located in jurisdictions with regulatory arrangements it deems satisfactory regarding: (i) supervision of investment activity; (ii) information sharing and cooperation between the supervisory authority of the jurisdiction concerned and Eurex Clearing and/or BaFin and (iii) capital adequacy, liquidity, and segregation of customers’ funds and securities (and related books and records provisions).
4. Before offering CDS clearance and settlement services to U.S. customers of non-U.S. Eurex Clearing Members, Eurex Clearing will adopt a requirement that will prohibit a member from directly or indirectly submitting, or permitting such a customer to submit, a CDS transaction for clearing when the member receives or holds funds or securities of U.S. persons for the purpose of purchasing, selling, clearing, settling, or holding that CDS position, unless the member, in connection with such CDS activities, is supervised or regulated by a regulatory authority which is, or which is in a jurisdiction which is: (i) a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation, or (iii) a financial regulatory authority in Ireland or Sweden.
5. To the extent that the clearing member of Eurex Clearing receives or holds funds or securities of U.S. persons for the purpose of purchasing, selling, clearing, settling, or holding Cleared Index CDS positions, the U.S. persons shall not be natural persons.
6. To the extent that a U.S. Clearing Member receives securities or funds from a customer or a non-U.S. Clearing Member receives securities from a U.S.

customer for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions, Eurex Clearing shall require that the clearing member segregate such securities or funds as provided for under the Eurex Clearing Conditions or under the Tri-Party Agreement or Clearing Agreement, and Eurex Clearing shall segregate such positions and collateral of such U.S. persons from the clearing member's own positions and assets; and that the clearing member keep such records as will fully, accurately and completely account for such customer funds .

7. Eurex Clearing will report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:
 - a. The total volume of transactions expressed in the currency of the underlying instrument executed during the quarter, broken down by reference entity, security, or index; and
 - b. The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.
8. Eurex Clearing will establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include:
 - a. limiting access to the confidential trading information of participants to those employees of Eurex Clearing who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and
 - b. establishing and maintaining standards controlling employees of Eurex Clearing trading for their own accounts.
9. Eurex Clearing will establish and maintain oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.

Conclusion

Accordingly, Eurex Clearing for the foregoing reasons and based upon the representations and undertakings in Eurex Clearing's Exemptive Requests as modified and supplemented herein, requests, pursuant to Section 36 of the Exchange Act, that the Commission extend the exemptive relief which it granted to Eurex Clearing and to Clearing Members of Eurex Clearing³¹ until the date that Section 763 of the Dodd-Frank Act and related provisions becomes effective, or such later date as the Commission may determine as is necessary and appropriate to provide for a seamless transition from the current clearing framework for CDS to the framework established under the Dodd-Frank Act.

* * * * *

³¹ Natural persons are not permitted to become clearing members of Eurex Clearing.

Elizabeth M. Murphy

November 29, 2010

Page 16

If you have any questions or require additional information concerning this request, please contact Mr. Fabian Ellert, Legal Affairs, Section Markets and Regulatory of Eurex at 011-49-69-2101-5133, or the undersigned at (202) 756-3492.

Respectfully submitted,



Paul M. Architzel

Cc: Hon. Mary Schapiro
Hon. Kathleen L. Casey
Hon. Elisse B. Walter
Hon. Troy A Paredes
Hon. Luis A. Aguilar
Robert W. Cook
Brian Bussey
Joseph Kamnik
Dr. Thomas Book
Mr. Matthias Graulich
Dr. Daniel Mirtschink
Mr. Fabian Ellert