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CFTC RIN 3038-AF71
SEC RIN 3235-AN79
File Number S7-2026-21

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Vanessa Countryman
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

August 24, 2026

Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance

Dear Mr. Kirkpatrick and Ms. Countryman,

Eurex Deutschland ("Eurex") appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC") and Securities Exchange Commission ("SEC") (collectively, "Commissions") regarding the Commissions' Joint Request for Comment on Further Definition of "Swap" and "Securities-Based Swap" and on Alternative Compliance published on June 24, 2026 ("Request for Comment").[1] Eurex has been a registered foreign board of trade ("FBOT") with the CFTC since October 31, 2016 and is also authorized by the Exchange Supervisory Authority of the State of Hesse, Germany as an exchange under the German Stock Exchange Act. Eurex is the leading European derivatives exchange and—with Eurex Clearing AG—one of the leading central counterparties globally, pioneering innovative products and infrastructures, offering a broad range of international benchmark products,

[1] CFTC and SEC, Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, 91 Fed. Reg. 37873 (June 24, 2026).

operating the most liquid fixed income markets in the world, and featuring open and low-cost electronic access.

Eurex welcomes the Commissions' Request for Comment, which seeks ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests. The Request for Comment further represents the Commissions' strong commitment to harmonization efforts between the agencies in areas where collaboration can enhance regulatory effectiveness and market integrity.

Regarding the Request for Comment, Eurex notes that it limits its comment to Number 5, which asks, in part:

> The Commissions have adopted rules addressing tolerance periods and grace periods for products referencing securities indexes traded on designated contract markets, swap execution facilities ("SEFs"), foreign boards of trade, security-based SEFs, or national securities exchanges, where the securities index temporarily moves from broad-based to narrow-based or from narrow-based to broad-based. Should the Commissions revise or clarify those rules or provide additional clarity, transition rules, or safe harbors for products that are based on a securities index that transitions between narrow-based and broad-based, or vice versa?

Eurex believes the issue of how security indices transition between narrow-based and broad-based, and vice versa, is an extremely important and timely topic, which has been affecting U.S. access to foreign markets and for which targeted amendments to existing rules and/or an interpretive guidance would be extremely beneficial for a wide cross-section of market participants. In the years since 2012 when the Commissions jointly adopted rules and interpretations to, among other things, further define the terms "swap," "securities-based swap," and "securities-based swap agreement," Eurex believes it has been uniquely situated to view the evolution of trading by U.S. participants on foreign markets. Specifically, since 2012, Eurex and other foreign exchanges have seen how existing rules by the Commissions pertaining to transitions of security index futures between broad-based and narrow-based, and vice versa, have created unstable security index futures in U.S. markets as well as frequent disruptions and uncertainty for U.S. participants. Eurex has aligned with industry partners and believes that targeted amendments and/or interpretive guidance as further discussed below would alleviate current issues faced by U.S. participants and provide for more stable regimes for foreign broad-based and narrow-based security index futures.

Eurex Response to Request No. 5 in the Request for Comment

I. Proposed Amendments for Transitions of Security Index Futures from Broad-Based to Narrow-Based, and Vice Versa

A. Change in window for transitions from 3 calendar months to 6 calendar months

Currently, SEC Rule 240.3a55-2(b) and CFTC Regulation 41.12(b) provide a first three-calendar-month window whereby an index that is broad-based for the first thirty days of trading pursuant to paragraph (a) will become a narrow-based security index if such index has been a narrow-based security index for more than forty-five business days over three consecutive calendar months. SEC Rule 240.3a55-2(c) and CFTC Regulation 41.12(c) additionally provide that an index that becomes a narrow-based security index solely because it was a narrow-based security index for more than forty-five business days over three consecutive calendar months pursuant to paragraph (b) will not be a narrow-based security index for a second three-calendar-month window.

The second three-calendar-month period set forth in SEC Rule 240.3a55-2(c) and CFTC Regulation 41.12(c) has proven insufficient for U.S. participants holding transitioning security index futures, as it guarantees that U.S. participants only have one quarterly roll to exit or transition their positions. U.S. participants with large, illiquid positions are then forced to push 100% of their volume through a single quarterly roll, creating market friction and artificially spiking transition costs. Extending the 3-month grace period to 6 calendar months, covering two sequential quarterly rolls, would allow U.S. participants to exit or transition their positions in a more orderly manner (e.g., transitioning a first block of their open interest at the first quarterly roll and utilizing the second quarterly roll to transition their remaining exposure).

Eurex believes that a fixed window of 6 calendar months is the simplest solution and is preferable to an amendment that expressly references a period encompassing two quarterly rolls. Given the presence of, for example, perpetual futures, reference to quarterly rolls could cause ambiguity and confusion. Eurex also believes that this amendment should pertain both to security index transitions from broad-based to narrow-based, and narrow-based to broad-based as provided in CFTC Regulation 41.14(b).

Proposed amendment to SEC Rule 240.3a55-2(c) and CFTC Regulation 41.12(c):

"An index that becomes a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to paragraph (b) of this section shall not be a narrow-based security index for the following ~~3~~6 calendar months."

Proposed amendment to CFTC Regulation 41.14(b):

Transition period for indexes that cease being narrow-based security indexes for more than forty-five days. An index that is a narrow-based security index that becomes a broad-based security index for more than 45 business days over 3 consecutive calendar months shall continue to be a narrow-based security index for the following ~~3~~6 calendar months.

B. Elimination of the “gap period” for security index futures transitioning from narrow-based to broad-based

CFTC Regulation 41.14(a) and (b) provide the mirror-image rule for an index that transitions from narrow-based to broad-based as CFTC Regulations 41.12(b) and (c) provide for an index that transitions from broad-based to narrow-based. Specifically, Regulations 41.14(a) and (b) provide that a narrow-based index that becomes a broad-based index for more than forty-five business days over three consecutive calendar months will transition to broad-based after an additional three-calendar month period.

Currently, under CFTC Regulation 30.13, a foreign exchange may only apply for CFTC certification of a broad-based index to allow U.S. direct trading once the index has officially transitioned to broad-based, i.e., after the second three-month period set forth in CFTC Regulation 41.14(b). CFTC Regulation 30.13 provides a forty-five day review period for a CFTC certification request. This means that, for indexes transitioning to broad-based, there necessarily will be a gap period of at least forty-five days (or longer depending on when the foreign exchange submits its certification request after the transition) between an index’s transition date and the date in which the contract is certified under CFTC Regulation 30.13. During this gap period, the contract’s regulatory status is a non-CFTC-certified broad-based index future, which is not available to be traded or held by any U.S. Person. Therefore, the scenario can present where a contract: (i) first, is a narrow-based security index eligible for indirect trading by U.S. Qualified Institutional Buyers under the 2009 SEC Order governing foreign security futures products (“FSFPs”) [2]; (ii) then transitions to a non-CFTC-certified broad-based security index futures not available for trading or holding by any U.S. Persons; and (iii) and then becomes certified by the CFTC as a broad-based security index future available for U.S. direct access by all U.S. Persons.

To prevent a significant disruption in U.S. trading of a narrow-based security index future that transitions to broad-based in the period described in (ii) above, this necessarily means that the foreign exchange listing the contract must apply to the CFTC for no-action relief to allow U.S. Persons to hold the contract

[2] SEC, Release No. 34-60194, Order under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Exchange Act Section 6(h)(1) for Certain Persons Effecting Transactions in Foreign Security Futures and under Exchange Act Section 15(a)(2) and Section 36 Granting Exemptions from Exchange Act Section 15(a)(1) and Certain Other Requirements (June 30, 2009) (“2009 Order”), ***available at:*** https://www.sec.gov/files/rules/exorders/2009/34-60194.pdf.

during this gap period. This has occurred three times for KOSPI 200 Futures since 2021.[3]

Eurex respectfully submits that the CFTC should either implement a rule or interpretive guidance, stating that where an index transitions from narrow-based to broad-based, as long as the foreign exchange submits a certification request under CFTC Regulation 30.13 within a specified period of time, the index will remain accessible as a narrow-based index until the earliest of when the contract is certified or when the CFTC terminates its review or denies certification. Eurex believes one month would be a sufficient period of such time for foreign exchanges to submit a certification request under CFTC Regulation 30.13 after a transition from narrow-based to broad-based.

Proposed new CFTC Rule 41.14(e) or interpretive guidance:
An index that becomes a broad-based security index pursuant to this section shall continue to be treated as a narrow-based index for one additional month if the foreign board of trade listing a contract overlying the index files for Commission certification of such contract under CFTC Regulation 30.13 within one month. In this case, the contract overlying the index will continue to be treated as a narrow-based security index future until the earliest of (i) the certification of the contract pursuant to CFTC Regulation 30.13 or (ii) the CFTC's termination of its review or denial of certification of the contract pursuant to CFTC Regulation 30.13.

II. Proposed Amendments to the FSFP Regime

A. Change in eligibility threshold for narrow-based security indexes from 90% to 80%

The 2009 Order provides that, for a narrow-based security index future to be foreign and eligible for U.S. trading, subject to the terms of the Order,

- At least 90 percent of the underlying securities in the index, at the time of the transaction, both in terms of the number of underlying securities and their weighting in the index, must be (1) issued by foreign private issuers where the primary trading market of each such underlying security is outside the U.S., or (2) debt securities issued or guaranteed by a foreign government that are eligible to be registered with the Commission under Schedule B of the Securities Act; and

[3] *See* CFTC Letter No. 25-03 (Feb. 3, 2025) (providing the Korea Exchange with no-action relief with respect to KOSPI 200 Futures and Mini KOSPI Futures between February 6, 2025, when the contracts transitioned from narrow-based to broad-based, to the earliest of (i) certification of the contracts under CFTC Regulation 30.13; (ii) the CFTC's termination of its review or denial of certification of the contracts under CFTC Regulation 30.13; or (iii) March 5, 2026); CFTC Letter No. 22-13 (providing same relief for KOSPI 200 Futures and Mini KOSPI 200 Futures when the contracts transitioned from narrow-based to broad-based on October 24, 2022); CFTC Letter No. 21-15 (providing same relief when KOSPI 200 Futures transitioned from narrow-based to broad-based on December 1, 2021).

- No more than 10 percent of the number and weighting of securities in the index at the time of the transaction can fail to meet the above criteria, and the issuers of such securities must be required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.[4]

While 10 percent was the appropriate threshold when the 2009 Order was issued, evolution of European and U.S. markets since this time strongly counsel in favor of raising this threshold to 20 percent. First, since 2009 and with the implementation of MiFID I in 2008 and MiFID II in 2018, European cash markets have increasingly shifted from on-exchange venues to alternative execution channels, including Multilateral Trading Facilities ("MTFs"), dark MTFs operating under transparency waivers, Systematic Internalizers ("SIs"), bilateral/OTC execution, and other non-primary venues.[5] As reputable third-party information service providers have much more difficulty obtaining, and frequently cannot obtain, trading volume for alternative execution channels, this trend inherently disadvantages FSFPs under the 2009 Order's eligibility test. Second, the past decade has also seen a large increase in European securities trading as American Depository Receipts, trading that must be included as U.S. trading volume for purposes of the 2009 Order.[6] These two trends have combined to push more and more FSFPs to have their primary trading market outside the U.S. under the 2009 Order.

Proposed amendment to the 2009 Order:

Change the threshold for narrow-based security indexes so that at least 80 percent of the underlying securities in the index must be foreign and no more than 20 percent of the number and weighting of securities in the index can fail to be foreign under the 2009 Order's criteria.

[4] 2009 Order at 8.

[5] *See, e.g.*, The Trade News, Bilateral Trading Accounts for 55% of Total European Market Activity, Finds Report (Sept. 11, 2025) (providing that bilateral trading—which spans SIs, off-book on-exchange trades, and OTC trades—now accounts for 55% of total European market activity, while lit market trading dropped from 47% in Q1 2018 to 40% in Q1 2025), *available at:* https://www.thetradenews.com/bilateral-trading-accounts-for-55-of-total-european-market-activity-finds-report/; Oliver Wyman & Federal of European Securities Exchanges, The Liquidity Matrix: Addressing Fragmentation in European Equity Markets at 7 (July 2025) (chart showing from 2020 to 2025 a decrease in equity trading on primary lit channels from 38% to 30% and increases on bilateral and MTF lit channels of 25 to 35% and 11% to 15%, respectively), *available at:* the-liquidity-matrix-addressing-fragmentation-in-european-equity-markets-july-2025.pdf. BMLL Technologies, How Accessible is Off-Book On-Exchange Trading? (May 2, 2025) (providing that between January 2023 and December 2024, off-book on-exchange trading rose from 13% to 23% (+77%) while lit volume declined from 29% to 24% (-17%), and that 76% of off-book on-exchange volume is now non-price forming), *available at:* https://www.bmlltech.com/news/market-insight/how-accessible-is-off-book-on-exchange-trading.

[6] *See* Exchange Act Rule 3a55-1. Specifically, non-U.S. Level II and Level III ADR volume has grown from 127.2B annual volume in 2009 to 236.8B annual volume in 2025, an increase of approximately 86%. *See* J.P. Morgan, Depository Receipts, *at:* https://www.adr.com/dr/drdirectory/drUniverse.

B. *Clarification of transition window to permit U.S. Persons 6 calendar months to exit or transition positions*

The 2009 Order provides that, when an FSFP ceases to satisfy the eligibility conditions of the Order, persons may close such positions, but the Order does not provide the time period that persons have to close positions.[7] Eurex has seen that there is ambiguity in the market regarding this point and believes a clarification that persons have 6 calendar months to close newly ineligible FSFP positions would alleviate this ambiguity and allow for orderly transitions in the U.S. market. Eurex believes that use of a 6-calendar-month period would prevent U.S. market disruptions in FSFPs for the same reasons stated in Section I.A.

Proposed amendment to the 2009 Order:
Add new language to or interpretive guidance covering Section B.4 of the 2009 Order to provide that U.S. Persons with open positions in FSFPs that become ineligible under the Order's primary trading market test have 6 calendar months to transition or close such positions.

Conclusion

Eurex reiterates its appreciation for the opportunity to provide comments to the Commissions in the Request for Comment pertaining to this extremely important and timely topic of U.S. access and trading on foreign markets. Eurex recognizes and applauds the Commissions' current dedication to harmonizing existing rule frameworks to improve regulatory lines between the agencies, which in turn can provide for improved U.S. and global markets. Eurex looks forward to working with the Commissions on this Request for Comment and on other proposals and initiatives in the future.

Yours faithfully,

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[7] 2009 Order at 16.