



Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

November 29, 2010

Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC

Dear Ms. Murphy:

Eurex Clearing AG ("Eurex Clearing"), the leading futures and options clearing organization in Europe, welcomes this opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") proposed regulations to mitigate the potential for conflicts of interest at security-based swap clearing agencies, security-based swap execution facilities and national securities exchanges that trade security-based swaps.¹ The comments provided in this letter will be limited to the effects of the proposed rules on security-based swap clearing agencies as set forth in proposed §242.701 .

Eurex Clearing is fully owned by Eurex Frankfurt AG ("Eurex Frankfurt"), which in turn is fully owned by Eurex Zürich AG ("Eurex Zürich"). Eurex Zürich is fully owned in equal shares by Deutsche Börse AG ("Deutsche Börse"), a publicly traded company listed on the Frankfurt Stock Exchange, and SIX Swiss Exchange, a part of the SIX Group. As discussed in greater detail below, DBAG is publicly listed for trading on the Frankfurt stock exchange and has a free float of x amount. SIX Group is a joint stock corporation the shares of which are not publicly traded.

Background information on Eurex Clearing

Eurex Clearing clears, among other things, futures and options contracts traded on Eurex Deutschland ("Eurex") and identical contracts that are traded over-the-counter ("OTC"), as well as

¹ SEC, *Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC, Notice of Proposed Rulemaking*, 75 FR 65882, October 26, 2010, (the "Notice").



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otherwise unlisted credit default swaps contracts.² Last year – 2009, which was not a record year for volume at Eurex, Eurex Clearing cleared 1,687,487,486 futures and options contracts listed on Eurex, including contracts on interest rates, equity indexes, equities, equity-related indexes, commodities, and events.³

Eurex Clearing is incorporated under the laws of Germany. Accordingly, Eurex Clearing is governed by two boards of directors, its Supervisory Board and an Executive Board, the latter of which must vote on matters that require implementation at Eurex Clearing.

Under the Articles of Association of Eurex Clearing, its Supervisory Board has 12 members, elected for three-year terms by the shareholders. The most important functions and duties of the Supervisory Board are to supervise the work of the Executive Board, approve corporate decisions with a substantial financial or economic impact, approve company planning, appoint the Executive Board and decide on the remuneration of the Executive Board. A shareholders' meeting must be held at least once a year where the shareholders approve the annual financial statements and the work of the Executive and Supervisory Boards during the financial year. At this meeting, the shareholders also appoint the auditor of the company as well as the Supervisory Board members and decide on their remuneration. Transactions which have an impact on shareholders' rights, e.g. any dilution of their shareholding or amendments to the Articles of Association, also must usually be approved at the shareholders' meeting.

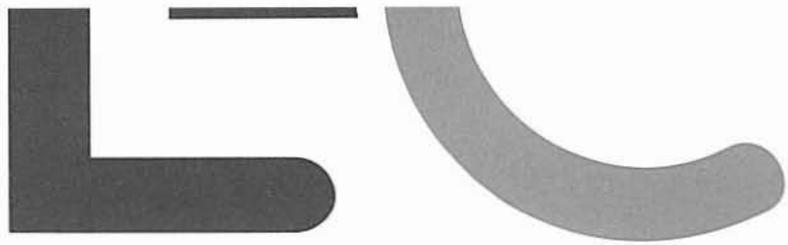
Eurex Clearing's Executive Board is responsible for day-to-day management and operations of Eurex Clearing pursuant to sections 76 through 78 of the German Stock Corporation Act, the *Aktiengesetz* ("AktG"). These sections of the AktG stipulate that Eurex Clearing be managed by the Executive Board at its sole discretion except with regard to transactions which need the approval of the Supervisory Board according to the Articles of Association or the Executive Board's rules of procedure.

Looking upstream through the ownership structure, Eurex Clearing has two owners, both of which are widely held. Deutsche Börse is listed on the Frankfurt Stock Exchange. As a stock company with publicly issued and widely held shares, Deutsche Börse is subject to one share one vote. Furthermore, it complies with the governance rules required of publicly traded companies in Germany. SIX Swiss Exchange is part of the SIX Group which, except for a 1.5% government holding, is owned by 150 Swiss and non-Swiss banks. Ownership shares are not freely transferable.

Eurex Clearing is licensed as a central counterparty by the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"). Its license was granted on December 12, 2006. Eurex Clearing received an exemption from the SEC on July 23, 2009 to admit certain US persons for the purpose of clearing credit default swaps ("CDS"). A few days later, on July 31, 2009, the Commodity Futures Trading Commission ("CFTC") recognized Eurex Clearing as a multilateral clearing organization. Eurex Clearing adheres to the internationally recognized standards of CPSS IOSCO.

² Eurex Clearing also acts as the central counterparty for and guarantees transactions on Eurex Bonds (a cash market for bonds), Eurex Repo (repurchase agreements), for equities on the Frankfurt Stock Exchange and the Irish Stock Exchange and for certain contracts executed on the European Energy Exchange.

³ Equity-related indexes include stock index volatility measures and stock dividend products.



Comments on the Commission's Proposed Rulemaking

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") mandates an enormous expansion of clearing for all types of OTC traded derivatives, none of which heretofore has not been cleared by a US clearing agency. A potentially vast expansion of the securities-based clearing industry therefore is likely to ensue both in the US and, we note, around the world. Developing the necessary financial, organizational, technical, regulatory and operational infrastructures to clear these contracts is a challenge for clearing organizations, their participants and their regulators.

Eurex Clearing compliments the Commission on the flexibility it has shown in meeting the challenges of supervising CDS clearing in the United States. Through its series of "CDS Clearing Exemption Orders,"⁴ the SEC facilitated the development of CDS clearing services by authorizing five different organizations to clear CDS, none of which was registered as a clearing agency.⁵ In issuing the CDS Clearing Exemption Orders the SEC has become familiar not only with a variety of organizational structures for clearing organizations but also with how their structures could affect those organizations' decision making.

Rules-based regulation

The purpose of the SEC's proposed rulemaking is to establish effective rules to avoid the potential for conflicts of interest in the organization of security-based swap clearing agencies which could lead to inappropriate constraints on either the instruments cleared, the entities allowed to participate in clearing or inappropriate risk management approaches. Eurex Clearing supports the effort to mitigate those conflicts of interest via a rule based approach limiting ownership and voting rights of parties with a potential conflict. Eurex Clearing believes that the neutrality from its user base is an important pillar to ensure the clearinghouse's contribution to increase market safety and integrity.

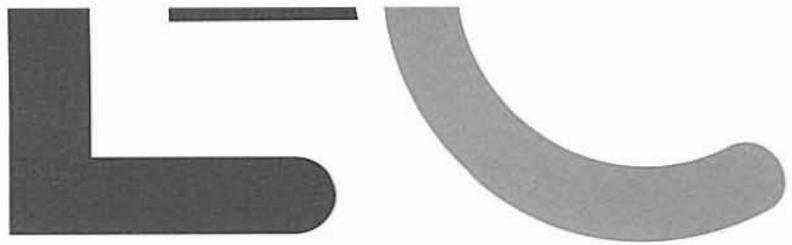
Ownership

While as the Commission states in the Notice, "The Exchange Act does not impose specific requirements regarding the ownership structure of a clearing agency," it also notes in a footnote, "The Commission's discussion is intended to forestall *possible* conflicts and does not reflect findings that particular conflicts are present."⁶ Because there is a very real potential for conflicts of interest to arise, Eurex Clearing recommends that the Commission adopt as one alternative the limits on voting interest that it has included in §242.701(a)(1). Compliance at these proposed levels (at 20% for a single clearing participant and 40% for all clearing participants combined) will provide the Commission and market participants confidence that clearing participants' influence is properly constrained.

⁴ See Footnote 17 (75 FR 65882-932, October 26, 2010), p. 65884.

⁵ Eurex Clearing has received such CDS Clearing Exemption Orders from the Commission.

⁶ Footnote 45 (75 FR 65882-932, October 26, 2010), p. 65888.



Publicly traded clearing organizations

Eurex Clearing believes that marketplace incentives combined with investor discipline minimize the chance that conflicts of interest affect decision making. Widely-held, for-profit entities best assure the broadest possible access to the widest array of security-based swaps. Publicly traded companies seek to leverage their investments in clearing technology. To optimize financial performance, for-profit clearing organizations maximize the number of products they clear within the constraints of prudent risk management and expand their distribution by providing access to all capable market participants. The professional management of for-profit clearinghouses like Eurex Clearing balance the conflicting shareholders' pressures for both capital preservation and realizing income. Based on its own experience, Eurex Clearing believes the profit motive is the force which best impels clearing organizations to be innovative and prudent in risk management and to clear as many products as possible for as many participants as are financially and operationally capable to take part in clearing. Eurex Clearing thus recommends that the Commission provide a safe harbor for fully or substantially owned subsidiaries of publicly listed companies that trade on a national or internationally recognized securities exchange with a significant free float from any specific limits on voting rights that the Commission may adopt for security-based swap clearing agencies.

Committees

In the proposed rules, the Commission would not require security-based clearing agencies to establish a risk management committee charged with admitting members, setting risk parameters, etc. Eurex Clearing believes that all such programs are properly executed by the clearing organization's professional staff under the sole authority of the board of directors. Eurex Clearing has created *advisory* committees which provide valuable input on the full range of technical, financial and risk management issues as well as the business and product development challenges with which a clearinghouse is confronted. Eurex Clearing endorses the respect that the Commission shows to the authority of boards of directors in its proposals.

Conclusion

Eurex Clearing thanks you for your attention to our concerns. If you have any questions please do not hesitate to contact us or Mr. Vassilis Vergotis, Head of US Offices (312-544-1058; vassilis.vergotis@eurexchange.com).

Yours sincerely,

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