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December 1, 2015

## VIA E-MAIL AND FEDERAL EXPRESS

Stephen Luparello  
Director  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Intent of Eurex Deutschland to Rely on Class No-Action Relief for Foreign Options Markets and their Members that Engage in Familiarization Activities

Dear Mr. Luparello:

On behalf of Eurex Deutschland (“Eurex” or the “Exchange”), we are writing to notify you of the Exchange’s intent to rely on the class no-action relief issued by the Securities and Exchange Commission’s (“SEC” or “Commission”) Division of Trading and Markets (“Staff”) for foreign options markets and their members that engage in familiarization activities with certain U.S.-based persons.<sup>1</sup>

### ***Background***

In the Class Relief, the Staff took a no-action position under which a Foreign Options Market,<sup>2</sup> its Representatives,<sup>3</sup> and the Foreign Options Market’s members, could engage in activities to

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<sup>1</sup> See LIFFE A&M and Class Relief, SEC No-Action Letter (Jul. 1, 2013) (“Class Relief”).

<sup>2</sup> The Class Relief defines a Foreign Options Market as a “non-U.S. derivatives market: (1) on which Eligible Options trade; and (2) that is an organized exchange operated and regulated outside the United States.” An Eligible Option is defined in the letter to mean “an index option or option on an individual security traded on a foreign options market that is not fungible or interchangeable with options traded on any market other than the foreign options market, and, accordingly, each position in an eligible option issued by a clearing member of the foreign options market can be closed out only on the foreign options market.”

<sup>3</sup> The Class Relief defines a “Representative” as “an employee of the Foreign Options Market located inside or outside the United States who has been appointed to act as representative of the Foreign Options Market and may

familiarize Eligible Broker-Dealers/Eligible Institutions<sup>4</sup> regarding the Foreign Options Market and Eligible Options available on that market without the Staff recommending enforcement to the Commission under Sections 5, 6, 15, or 17A of the Securities Exchange Act of 1934 (“Exchange Act”). Under the terms of the Class Relief, a Foreign Options Market that does not already have no-action relief from the Staff may rely on the Class Relief to engage in familiarization activities if it notifies the Director of the Division of Trading and Markets of its intent to do so. More specifically, in order to make use of the Class Relief, a Foreign Options Market must send a letter, signed either by the Foreign Options Market’s chief legal officer or the Foreign Options Market’s U.S. counsel, to the Director of the Division of Trading and Markets that:

- Identifies the Foreign Options Market;
- Describes the Eligible Options for which the Foreign Options Market, its personnel, and its members seek to engage in familiarization activities with Eligible Broker-Dealers/Eligible Institutions; and
- Makes the following representations:
  - The parties will provide Commission staff promptly upon request a list of the specific equity and index options covered by the request for relief and will identify a primary listing market for each underlying equity security and index component.
  - The requesting entities have taken steps to comply with, and assure continued compliance with, each of the representations and conditions contained in the Class Relief and acknowledge that the Class Relief is only available to the requesting entities to the extent they are in compliance with each of the representations and conditions contained in the Class Relief.
  - All subject entities covered by the Class Relief will comply with each of the representations and conditions contained in the Class Relief, including the restriction on securities of U.S. issuers.

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undertake the activities described in Section II [of the Class Relief] with respect to Eligible Broker-Dealers/Eligible Institutions [as defined below].”

<sup>4</sup> An “Eligible Broker-Dealer/Eligible Institution” (and, individually, an “Eligible Broker-Dealer” or “Eligible Institution”) is any entity that meets the following standards: (a) it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the Securities Act of 1933 (“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 (b) it must have had prior actual experience with traded options in the U.S. options market (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the Securities Exchange Act of 1934).

***Description of Eurex***

Eurex is a fully-electronic derivatives exchange that allows Eurex participants decentralized and standardized access from several global access points. Global Eurex access points are located in Finland, France, Germany, the Netherlands, Spain, Switzerland, the United Kingdom and the United States.<sup>5</sup> The Eurex system allows U.S. Eurex participants to trade certain futures contracts and futures options contracts pursuant to no-action relief granted by the Commodity Futures Trading Commission (“CFTC”).<sup>6</sup> The Eurex trading system, however, is not made available for the trading of any Eligible Options, including trading by U.S. Eurex participants that currently trade futures and futures options pursuant to the relief granted by the CFTC in its 1999 Letter.

Eurex is operated by Eurex Frankfurt AG, which is wholly-owned by Deutsche Borse AG. The regulatory umbrella which Eurex operates is governed by the German Exchange Act and the Securities Trading Act. These acts are collectively designed to (1) provides the means and measures necessary to maintain efficient and orderly trading and protect investors and the public; and (2) establish trade reporting obligations, insider trading rules, public disclosure rules and rule of conduct for enterprises admitted to trading on exchanges that deal with the public. Eurex is subject to supervision by the Exchange Supervisory Authority (*Börsenaufsichtsbehörde*) of the State of Hesse. In general, the business activities of the trading participants, such as banks, investment firms and other financial companies, are covered by federal law, with responsibility for regulatory oversight allocated to the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, “BaFin”). In Germany, the responsibility for the supervision of trading activities and market participants is shared between BaFin and the Exchange Supervisory Authority (*Börsenaufsichtsbehörde*) which are located in each federal state. For Eurex, which is principally located in Frankfurt, the Exchange Supervisory Authority of the State of Hesse is its regulator. For purposes of this letter, Eurex is a Foreign Options Markets in that it is a non-U.S. derivatives market (1) on which Eligible Options trade, or will trade, and (2) that is an organized exchange operated and regulated outside of the United States.

***Description of Eligible Options***

The Eligible Options that are the subject of this relief are options contracts that Eurex offers on (1) individual stocks that are listed and traded on other stock exchanges excluding options on U.S. securities, (2) exchange traded funds and (3) various equity indices. The Eligible Options are not fungible or interchangeable with options traded on any market other than Eurex. In addition, each position in an Eligible Option on Eurex can be closed out only on Eurex and is cleared by Eurex Clearing AG (“Eurex Clearing”), which is regulated and supervised by BaFin.

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<sup>5</sup> The access points consist of servers and routers through which Eurex participants connect to Eurex through their own dedicated lines or via the Internet.

<sup>6</sup> See letter from I. Michael Greenberger, Director, Division of Trading and Markets, CFTC, to Edward J. Rosen, Cleary, Gottlieb, Steen & Hamilton, dated August 10, 1999 (CFTC No-Action Letter No. 99-48) (“1999 Letter”).

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***Representations***

For purposes of relying on the Class Relief for the Eligible Options, Eurex makes the following representations:

- Eurex will provide Commission staff promptly upon request a list of the specific equity and index options covered by the request for relief and will identify a primary listing market for each underlying equity security and index component;
- Eurex has taken steps to comply with, and assure continued compliance by it, its representatives and its Members with, each of the representations and conditions contained in the Class Relief and acknowledges that the Class Relief is only available to the extent that Eurex, its personnel and its members are in compliance with each of the representations and conditions contained in the Class Relief; and
- Eurex will comply with each of the representations and conditions contained in the Class Relief, including the restriction on securities of U.S. issuers.

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We would be pleased to answer any questions that you or the Staff may have with regards to this notification of Eurex's intention to rely on the Class Relief. Please feel free to contact me at (202) 739-5946, or Vassilis Vergotis, Head of Eurex Offices – Americas at (312) 544-1058.

Sincerely,



John V. Ayanian

cc:

Vassilis Vergotis, Head of Eurex Offices – Americas  
Eric Seinsheimer, Vice President, Associate General Counsel, Eurex  
David Shillman, Associate Director, SEC  
John Roeser, Associate Director, SEC  
Richard Holley III, Assistant Director, SEC  
Yvonne Fraticelli, Special Counsel, SEC