

November 13, 2020

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VIA E-MAIL AND FEDERAL EXPRESS

Mr. Brett Redfearn
Director
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-7010
United States of America

Re: Intent of Cboe Europe to Rely on No-Action Relief for Foreign Options Markets and Their Members That Engage in Familiarization Activities

Dear Mr. Redfearn:

At the request of our client, Cboe Europe B.V. ("Cboe Europe"), we are writing to provide you with a notification of Cboe Europe'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 ("Division") for foreign options markets and their members that engage in familiarization activities with certain U.S.-based persons.¹

BACKGROUND

In the Class Relief, the Division took a no-action position under which a Foreign Options Market², its Representatives³ and the Foreign Options Market's members, could engage in

¹ See LIFFE A&M and Class Relief, SEC No-Action Letter (Jul. 1, 2013) ("Class Relief"). Capitalized terms used herein and not otherwise defined have the meanings given in the Class Relief. Pursuant to the Class Relief, a Foreign Options Market is not required to apply de novo for similar no-action or other relief; it can file with the Division a notice of intent to rely on the Class Relief.

² The Class Relief defines a Foreign Options Market as a "non-U.S. derivatives market: (i) on which Eligible Options trade; and (ii) that is an organized exchange operated and regulated outside the United States." Cboe Europe qualifies as a Foreign Options Market. An Eligible Option is defined in the Class Relief 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."

³ 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 undertake the activities described in Section II [of the Class Relief] with respect to Eligible Broker-Dealers/Eligible Institutions [as defined below]."

activities to familiarize Eligible Broker-Dealers/Eligible Institutions⁴ regarding the Foreign Options Market and Eligible Options available on that market without the Division 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 Division, such as Cboe Europe, may rely on the Class Relief to engage in familiarization activities if it notifies the Director of the Division 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 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; and
 - 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.

DESCRIPTION OF CBOE EUROPE

⁴ 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 Exchange Act).

Cboe Europe is an entity organized under the laws of the Netherlands. The company holds a license as a regulated market authorized by the Dutch Authority for the Financial Markets, Autoriteit Financiële Markten (“AFM”) and is compliant with the requirements of the Dutch Act on Financial Supervision, transposing the revised Markets in Financial Instruments Directive (“MiFID II”) into Dutch law. The company operates a MiFID regulated market for trading in equity and, subject to regulatory approval, expected before 30 June 2021, futures and options on equity indices, and not on any exchange-traded funds (“ETFs”), exchange-traded products (“ETPs”) or individual stocks. Until Cboe Europe obtains such regulatory approval from the AFM, it cannot list or offer any option products to investors in any jurisdiction, including the Netherlands, on equity indices.⁵

DESCRIPTION OF ELIGIBLE OPTIONS

The Eligible Options that are the subject of this notification are options on equity indices that Cboe Europe offers or may in the future offer on various equity indices, across 18 countries, pan-European and Eurozone regions, which shall include, without limitation, the Cboe France 40 Index, Cboe Netherlands 25 Index, Cboe Switzerland 20 Index, Cboe UK 100 Index, Cboe Germany 30 Index and Cboe Eurozone 50 Index. The Eligible Options are not fungible or interchangeable with options traded on any market other than Cboe Europe. In addition, each position in an Eligible Option on Cboe Europe can be closed out only on Cboe Europe and is cleared by European Central Counterparty N.V. (“EuroCCP”), a central counterparty established in the Netherlands and authorized by De Nederlandsche Bank and by the AFM. Cboe Global Markets, Inc. recently completed its acquisition of EuroCCP.

Options on any ETF, ETP or individual stocks are not Eligible Options and do not form part of this request and are therefore not to be included as part of the Class Relief.⁶

CLASS RELIEF AND REPRESENTATIONS

⁵ Once Cboe Europe has obtained the requisite approval from the AFM to list and offer options on the equity indices, Cboe Europe will send a second letter (“Second Letter”) to the Division, informing the Division of the AFM’s approval. Once the Second Letter has been posted on the SEC’s website, Cboe Europe will commence familiarization activities of the Eligible Options, which could result in an Eligible Broker-Dealer/Eligible Institution trading in such Eligible Option. Prior to the posting of the Second Letter, Cboe’s familiarization activities cannot result in any Eligible Broker-Dealer/Eligible Institution trading in any Eligible Option because Cboe Europe is prohibited under Dutch law from listing or offering the Eligible Options.

⁶ Cboe Europe has no immediate plans to list or offer options on ETFs, ETPs or on individual stocks. Cboe Europe has not included options on ETFs, ETPs or individual stocks as part of its request for regulatory approval from the AFM. If in the future Cboe Europe does determine to seek regulatory approval from the AFM to list and offer options on ETFs, ETPs and individual stocks for which it would also like to engage in familiarization activities with Eligible Broker-Dealers/Eligible Institutions, Cboe Europe will update the Commission accordingly, and send an amended letter to the Commission before engaging in any such familiarization activities with Eligible Broker-Dealers/Eligible Institutions.

In order to be able to rely on the Class Relief, Cboe Europe makes the following representations:

- Cboe Europe will provide Commission staff promptly upon request with 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;
- Cboe Europe has taken steps to comply with, and assure continued compliance by Cboe Europe, 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 Cboe Europe, its personnel and its members are in compliance with each of the representations and conditions contained in the Class Relief; and
- 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.

Pursuant to the Class Relief, Cboe Europe further represents that:

- Cboe Europe is, and shall remain to be, an organized exchange operated and regulated outside of the United States (*i.e.*, in the Netherlands);
- Cboe Europe does not engage in any general solicitation or general advertisements concerning Eligible Options in the United States;
- Cboe Europe does not provide direct electronic access for Eligible Options trading to persons located in the United States (including through any OTC Options Processing Service⁷ offered by Cboe Europe);
- Cboe Europe maintains on its website current information, in English, concerning its trading rules, clearance and settlement procedures, hours of operation, holidays, and other material information that would be relevant to an Eligible Broker-Dealer/Eligible Institution trading on Cboe Europe;
- With respect to the Eligible Options it intends to offer and sell in the United States, Cboe Europe has in place a market-to-market surveillance sharing agreement with the primary market for the underlying securities or other surveillance sharing arrangement (*e.g.*, an information sharing agreement between the respective regulatory authorities

⁷ The Class Relief defines an OTC Options Processing Service to mean a mechanism for submitting to a Foreign Options Market an options contract on a foreign security that has been negotiated and completed in an over-the-counter ("OTC") transaction so that the Foreign Options Market may replace the OTC contract with an equivalent exchange-traded options contract.

of Cboe Europe and the market for the underlying security) through which Cboe Europe would be able to obtain information concerning trading in the underlying securities;

- Cboe Europe is supervised by the Dutch Authority for Financial Markets, the AFM, which is a signatory to the International Organization of Securities Commission's ("IOSCO") Multilateral Memorandum of Understanding for Consultation Cooperation and the Exchange of Information;⁸
- Members or participants of Cboe Europe are obligated to provide information to or otherwise assist Cboe Europe in relation to activities carried out on the exchange, and Cboe Europe is able to provide, and would provide, information obtained from a member or participant to the Commission upon request;⁹
- Cboe Europe advises its members that, under U.S. law, members of Cboe Europe that are not 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 Rule 15a-6;
- Cboe Europe institutes rules requiring its members, before effecting a transaction in Eligible Options with an Eligible Broker-Dealer/Eligible Institution, to obtain, and maintain from such Eligible Broker-Dealer/Eligible Institution, signed by an appropriate officer, a record of the representations set forth in Section B of the Class Relief;
- Cboe Europe advises its members that any options on securities of U.S. issuers, or on any ETF or ETP that contains the securities of one or more U.S. issuers, or on an index that includes any securities of U.S. issuers, that are traded on Cboe Europe are not available for sale to U.S. persons; and
- Cboe Europe adopts written policies and procedures to monitor for and assure compliance with the terms of the Class Relief, and will make such policies and procedures available in English promptly to the Commission staff upon request.

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⁸ IOSCO, Signatories to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of information, available at: <https://www.iosco.org/about/?subSection=mmou&subSection1>.

⁹ Foreign broker-dealers electing to deal with U.S. institutional investors pursuant to Rule 15a-6(a)(3) under the Exchange Act are required to provide directly to the Commission upon request or pursuant to agreements reached between any foreign securities authority and the Commission, information, documents, testimony, and assistance in taking the evidence of persons that relate to transactions pursuant to Rule 15a-6(a)(3) under the Exchange Act.

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We would be pleased to answer any questions that you or the Staff might have with regards to this notification of Cboe Europe's intention to rely on the Class Relief. Please feel free to contact me at + 44 207 776 7625 or at carolyn.jackson@katten.co.uk.

Sincerely,



Carolyn H. Jackson

cc. Mr. Richard Holley III, Assistant Director - U.S. Securities and Exchange Commission