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

Re: Request for Exemptive Relief

Dear Ms. Murphy:

The trading of credit default swaps (“CDS”) has grown exponentially in recent years.¹ As a consequence of this growth and the current, unprecedented conditions in the financial markets, including the markets for CDS, financial regulatory authorities in both the European Union and in the United States have recommended Central Counterparty clearing (“CCP”) as one means of reducing systemic and operational risk arising from such transactions.²

Eurex Clearing AG (“Eurex Clearing”) plans to offer clearing services for over-the-counter (“OTC”) CDS transactions within the framework envisioned by the European financial regulatory authorities, beginning no later than July of 2009. In response to inquiries from certain market participants in the U.S. who would strongly like to use Eurex Clearing’s clearing and settlement services through their U.S. affiliates, Eurex Clearing would also like to make such clearing services available to U.S. market participants as of July, 2009. These participants would include U.S. entities that are members of Eurex Clearing (“CDS Clearing Members”), affiliates of such members and

¹ As of December 26, 2008, the Depository Trust and Clearing Corp. Deriv/Serv’s Trade Information Warehouse for CDS held \$29.2 trillion of outstanding notional CDS transactions.

² 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).

inter-dealer brokers in connection with their entry into, and submission to Eurex Clearing for clearance and settlement of, such CDS transactions.³

Accordingly, in order to avoid uncertainty and for the reasons set forth below, Eurex Clearing requests that the U.S. Securities and Exchange Commission (“SEC” or “Commission”) grant exemptive relief to Eurex Clearing and to U.S. persons⁴ which would like to become Clearing Members of Eurex Clearing and to their affiliates and inter-dealer brokers in connection with Eurex Clearing’s clearing and settlement services for certain OTC CDS transactions based upon the representations and undertakings in this request.⁵ Specifically, Eurex Clearing respectfully requests:

(1) for the avoidance of uncertainty, that the U.S. SEC issue an Order pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”), exempting Eurex Clearing from the clearing agency registration requirements set forth in Section 17A(b)(a)⁶ 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 from any provisions of the Exchange Act governing securities transactions, to the extent otherwise applicable, in connection with the activities described in this request;

(2) for the avoidance of uncertainty, that the SEC issue an Order 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 from any requirement under Section 15(a)(1)

³ Starting in July, 2009, Eurex Clearing also intends to clear CDS transactions of its CDS Clearing Members on behalf of their customers. Eurex recognizes, however, that the Commission will not consider granting the requested relief in this timeframe with respect to clearing transactions (other than in connection with affiliates of CDS Clearing Members) by U.S. CDS Clearing Members on behalf of their customers or by non-U.S. CDS Clearing Members on behalf of U.S. customers. Eurex Clearing requests that the Commission grant additional relief in connection with the clearing of such customer transactions as soon as possible.

⁴ Natural persons are not permitted to become members of Eurex Clearing.

⁵ Eurex Clearing is requesting this 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 are not within the scope of this request.

The Commission has adopted interim temporary final rules exempting certain credit default swaps from the Securities Act of 1933 and the Trust Indenture Act of 1939, as amended. *See*, “Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps.” Release Nos. 33-8999; 34-59246; 39-2549 (January 22, 2009). Eurex Clearing is relying upon these interim final rules with respect to certain credit default swaps (involving U.S. underlying reference entities) for which it may in the future offer clearing services and with respect to U.S. clearing participants.

⁶ Including 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 to act as a CCP.

of the Exchange Act to register as a U.S. broker-dealer and from the reporting and other requirements of the Exchange Act and the rules and regulations thereunder, that apply to a broker or dealer whether or not registered with the Commission or to comply with any provisions of the Exchange Act and the regulations thereunder governing securities transactions; and

(3) that the relief in paragraphs (1) and (2) 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.

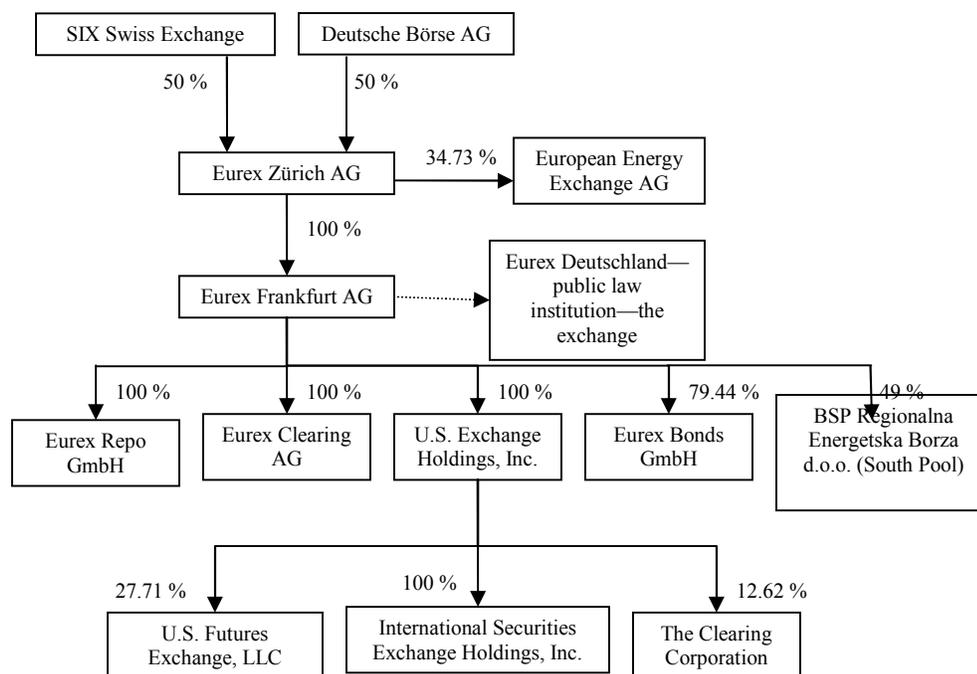
As detailed below, Eurex Clearing operates under a regulatory regime that provides an appropriate level of protection to market participants using its clearing services, and its robust risk management and operational processes safeguard those market participants and protect against systemic risk to the general markets. Granting the requested exemptive relief will provide greater certainty with respect to Eurex Clearing's also making available its clearing services to U.S. CDS Clearing Members and their affiliates and thereby foster the development of CCP clearing for such financial instruments. For these reasons, we believe that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors.

I. Eurex Clearing

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. It is a wholly owned subsidiary of Eurex Frankfurt AG ("Eurex Frankfurt") a German stock corporation which is itself wholly owned by Eurex Zürich AG ("Eurex Zürich"), a Swiss stock corporation. Eurex Zürich has two 50% parents, Deutsche Börse AG ("DBAG"), a German stock corporation listed at the Frankfurt Stock Exchange, and the SIX Swiss Exchange ("SIX"). Affiliates of Eurex Clearing include the trading platforms Eurex Bonds GmbH and Eurex Repo GmbH. Eurex Frankfurt operates the Eurex Deutschland exchange. The International Securities Exchange, the operator of a U.S. securities market, is owned by U.S. Exchange Holdings, Inc., a fully-owned subsidiary of Eurex Frankfurt.

A structure chart is set out below:

Eurex Companies Structure



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). Under the German regulatory framework, the Deutsche Bundesbank cooperates and coordinates with BaFin in the supervision of Eurex Clearing. 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. Eurex Clearing has filed with the U.S. Commodity Futures Trading Commission a request for an Order under Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act of 1991 so that it may act as a Multilateral Clearing Organization thereunder with respect to certain over-the-counter contracts, agreements or transactions.⁷

⁷ The contracts, agreements or transactions that would be cleared by Eurex Clearing as a multi-lateral clearing organization include over-the-counter contracts that have terms and conditions that are the same as futures contracts traded on Eurex Deutschland in addition to CDS transactions.

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.⁸

II. Regulation of Eurex Clearing

Eurex Clearing is regulated as a CCP under the German Banking Act ("Banking Act"), which explicitly treats the provision of central counterparty services as a banking activity.⁹ Various Directives of the Commission of the European Union, which are aimed at harmonizing banking supervision in all E.U. member states, have been implemented through the Banking Act. These include: the Conglomerates Directive (Directive 2002/87/EC), Banking Consolidation Directives (Directives 2000/12/EC and 2000/28/EC), Capital Adequacy Directive (Directive 93/6/EC), the second Capital Adequacy Directive (Directive 2004/155/EC), Investment Services Directive (Directive 93/22/EEC) and Markets in Financial Instruments Directive (Directive 2004/39/EC, "MiFID").

Operation of a banking institution, including a CCP, requires prior written authorization from BaFin.¹⁰ The Banking Act imposes on financial institutions broad, general obligations, similar in nature to the Core Principles of the Commodity Exchange Act which apply to U.S. Derivatives Clearing Organizations. A fundamental principle of the Banking Act is that supervised entities must maintain complete books and records of their activities and keep them open to supervisory authorities. BaFin and the Deutsche Bundesbank operate using a risk-based philosophy, adjusting the intensity of supervision to various financial services institutions depending on the type and scale of the financial services provided.

In relation to its members, Eurex Clearing operates under the provisions of the German Civil Code. That code, among other things, requires any debtor of an obligation to perform in good faith. This provides the way in which contractual performance must be rendered and gives rise to a number of ancillary or supplementary duties: for example duties of information, cooperation, protection and fairness. Moreover, this provision serves to limit the exercise of contractual rights, a concept commonly referred to as inadmissible exercise of rights. This principle in particular applies where a party to a contract uses standard terms of business, such as the Eurex Membership Agreement and Clearing Conditions. Section 307 (1) 1 German Civil Code provides that provisions of general terms and conditions are void in the event that they operate to the detriment of the counterparty. Consequently, Eurex Clearing is strictly bound by the principle of good faith in its relationship to the clearing members.

⁸ 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>.

⁹ See section 1 (1) 2 Nos. 1 to 12 Banking Act.

¹⁰ Section 32 (1) 1 Banking Act.

Taken as a whole, these provisions act to promote and maintain standards of integrity and fair dealing by Eurex Clearing. The high standards of integrity of Eurex Clearing are further evidenced by its compliance with all financial and organizational duties, which, are currently audited annually by Eurex Clearing's external auditors. Specifically, on an annual basis, BaFin requires Eurex Clearing to undergo an audit that covers financial requirements and risk management practices.

BaFin is Eurex Clearing's principal regulator, and as such, is responsible for all sovereign measures, including licensing, monitoring and - if necessary - closing individual institutions. BaFin can also issue general instructions, including principles and regulations which establish rules for carrying out banking business, providing financial services and for limiting risks. The Deutsche Bundesbank is responsible for current, on-going oversight and supervision with respect to the safety and soundness of the institution's operations.

As noted above, in order to operate as a CCP in Germany, an institution must first apply to BaFin for issuance of written permission. An application for such permission must contain among other things, the following:

- suitable evidence of the resources needed for business operations;
- the names of the managers (e.g. the members of the "Executive Board");
- the information which is necessary for assessing the professional qualifications, as required for managing the institution, of the proprietors and of the persons specified; and
- a viable business plan showing the nature of the planned business, the organizational structure and the planned internal monitoring procedures of the institution.

BaFin may make the granting of its permission subject to conditions consistent with the purpose and intent of the Banking Act. For instance, in the case of applications for a banking or financial services permission, it may limit the scope to certain types of banking businesses or financial services.

Section 25a of the Banking Act requires that an institution, including a CCP must have in place suitable arrangements for managing, monitoring and controlling risks and appropriate arrangements by means of which its financial situation can be accurately gauged at all times.¹¹ In addition, the institution must have a proper business organization,

¹¹ The guidelines BaFin issued with respect to capital adequacy and risk management of institutions, like Eurex Clearing AG, pursuant to the German Banking Act are in set forth in BaFin Circular 5/2007, entitled, "Minimum Requirements for Risk Management."

This Circular provides, among other things, a flexible framework for risk management at institutions based on section 25a (1) of the Banking Act. Furthermore, it refines the requirements placed on a proper business organization for the outsourced activities and processes pursuant to section 25a (2) Banking Act. Within the meaning of this Circular, risk management – taking into account the institution's risk-bearing capacity – includes in particular the determination of appropriate strategies, as well as the establishment of appropriate

an appropriate internal control system and adequate security precautions for the deployment of electronic data processing.¹² Lastly, the institution must ensure that the records of executed business transactions permit full and unbroken supervision by BaFin for its area of responsibility. Records must be retained for six years.

If the institution chooses to outsource an operation to another enterprise that is essential for conducting banking business or providing financial services, it must ensure that such outsourcing arrangement neither impairs the orderliness of such business or services nor the managers' ability to manage and monitor them nor BaFin's right to audit and ability to monitor them. In particular, the institution must ensure by contractual means that it has the required powers to give instructions to the contractor in question and include the outsourced areas in its internal monitoring procedures. The institution must immediately report its intention to outsource operations as well as the realization of such intention to BaFin and Deutsche Bundesbank immediately.

Books and records

A number of German statutory provisions require the keeping of books and records relating to the clearing operations of Eurex Clearing and to its business operations. A fundamental principle of the Banking Act is that supervised entities must maintain complete books and records of their activities and keep them open to supervisory authorities. Specifically, section 25a(1)3 of the Banking Act provides that a licensed institution, such as a CCP, must "ensure that the records of executed business transactions permit full and unbroken supervision" by BaFin. That section further provides that the requisite records must be retained for six years. It further explicitly preserves the applicability of section 257(3) and (5) of the German Commercial Code ("HGB").

The retention of the provisions of the HGB is significant because the HGB and German General Fiscal Law (*Abgabenordnung*, "AO"), which also applies, provide additional, explicit requirements with respect to the audit trail/recordkeeping requirements. Section 257 HGB provides that Eurex Clearing has the duty to keep business books, inventories, and annual financial statements at least ten years and business letters at least six years.

These Acts also apply specifically with respect to electronic recordkeeping systems. These Acts require the keeping of clear and complete audit trails of all uses of information technology systems and to reconcile (where appropriate) the audit trails with equivalent information held by system users and other interested parties. These principles are included within German generally accepted accounting principles. In order to

internal surveillance procedures. The internal surveillance procedures comprise the internal control system and internal audit.

¹²*Compare*, Policy Statement: Automated Systems of Self-Regulatory Organizations, Release No. 34-27445, File No. S7-29-89 and Policy Statement: Automated Systems of Self-Regulatory Organizations (ii), Release No. 34-29185; file No. S7-12-91 ("Automation Review Policy Statements").

comply with these accounting principles, the IT based records system must ensure the following functionalities:

- documentation of the originating records,
- journal function (complete recording of transactions), and
- accounting function (logical recording of accounting records).

Eurex Clearing's business practices, procedures and rules with respect to the retention of documents are memorialized in written policies¹³ and are compliant with the German statutory requirements. Its compliance with those provisions and with its internal written policies Eurex Clearing is audited regularly by its external auditors.

III. Eurex's Plan to Clear CDS Transactions

CDS are agreements in which the protection buyer of the CDS makes a series of fixed periodic payments to the protection seller and, in exchange, is compensated if a company or sovereign experiences a credit event. The most common credit events are failure to pay, bankruptcy and, for European CDS, restructuring. Eurex Clearing's new clearing service for OTC CDS contracts will accept for clearing bi-lateral CDS transactions within the product scope of its rules, which are discussed below, and that are recorded in the DTCC Deriv/Serv Trade Information Warehouse ("TIW").

Eligible instruments

Initially, Eurex Clearing will accept for clearing CDS transactions on the iTraxx® indexes and their constituents. The iTraxx® Europe indexes are published by Markit, Limited, an independent index supplier headquartered in London, which constructs and publishes a number of indexes on various financial instruments traded in the OTC fixed income, credit derivatives and FX markets.

The iTraxx® Europe credit indexes include only European reference entities. The reference entities that are included in an index are selected by Markit through a poll of licensed market makers for the iTraxx® Europe Indices.¹⁴ Market makers, based on their actual traded volumes during the prior 6 months, will indicate the reference entities with

¹³ Section 3.4 of the Policy on Retention of Documents provides that documents or information may be kept in micrographs or on IT supported media provided that the reproduction or recording of the original document or information at the origin of the recording is faithful, long lasting, readable and reproducible. The types of information and details of transactions which are recorded include daily positions, margins and deliveries of the Clearing Member.

¹⁴ The licensed market makers include the following: ABN AMRO, Bank of America, Bank of Montreal, Barclays Capital, Bayerische Landesbank, BBVA, Bear Stearns, BNP Paribas, CALYON, Citigroup, Commerzbank, Credit Suisse, Deutsche Bank, Dresdner Kleinwort, DZ Bank, Goldman Sachs, HSBC, HypoVereinsbank, ING, IXIS, JP Morgan, Landesbank Baden-Württemberg, Bank of America (Merrill Lynch), Morgan Stanley, Natixis, Nomura, Nordea, Royal Bank of Scotland, Santander, Société Générale and UBS.

the highest volume of CDS contracts traded by them in the OTC market. The reference entities of the 125 most highly traded CDS contracts are then selected for inclusion in the iTraxx® Europe (Main) CDS Index subject to certain industry sector criteria and credit rating rules.¹⁵

Eurex Clearing will offer its clearing and settlement services on the iTraxx® Europe (Main), iTraxx® HiVol and iTraxx® Europe Crossover CDS Indexes. It will also offer clearing services for transactions on single-name reference entities that are the constituents of those indexes.

Once it has offered clearing and settlement services for CDS transactions on the iTraxx® Indexes and their constituents, it will subsequently accept bi-lateral transactions on the CDX® Index. Eventually, depending upon market demand, Eurex Clearing may accept for clearing CDS contracts on single name reference entities on the CDX constituents.

Eurex Clearing will establish the terms of the contracts which are novated by the clearing house in a new chapter, entitled “Clearing of OTC Derivatives Transactions,” of its rulebook--the “Clearing Conditions of Eurex Clearing AG” (hereafter the “CDS Chapter”). The terms established by the CDS Chapter of the Clearing Conditions are intended to be consistent with the terms most commonly used for CDS transactions in the OTC markets as incorporated in ISDA® documentation to the greatest degree possible consistent with clearing such transactions, and will adhere closely to European market conventions. Eurex Clearing anticipates that the CDS which it plans to clear will 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). Eurex Clearing will not determine a credit event on its own. In the event the ISDA® procedure does not operate as envisioned, the fall back solution will be physical settlement.

In case of restructuring events, which are mainly applicable for European CDS contracts, Eurex Clearing would also follow OTC procedures. ISDA® is currently working with market users to design a settlement procedure which would apply in cases of restructuring events.

Eurex Clearing specifies in its rules the CDS contracts that are acceptable for clearing. In addition, Eurex Clearing understands that CDS transactions with U.S. persons under the exemptive relief requested may only be submitted for clearing on the following reference entities:

¹⁵ The IIC selection rules can be found at <http://www.indexco.com/download/Products/CDS/iTraxx.EUR.product.rules.pdf?download=2007216>.

- (i) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;
- (ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;
- (iii) a foreign sovereign debt security;
- (iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or
- (v) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or
- (vi) an index of reference entities in which 80 percent or more of the index's weighting is comprised of the entities or securities described in (i)-(v) above.

Eligible Participants

Generally, cleared transactions are made between Eurex Clearing and the member firm that holds a “clearing license,” which is a permit by Eurex Clearing to an enterprise enabling that entity to clear a particular instrument or class of instruments. A clearing license is granted when the applicant satisfies the prerequisites for clearing membership and executes the appropriate Clearing Agreement. Eurex Clearing will issue a separate clearing license for its members that wish to clear OTC CDS contracts—the CDS Clearing Members. Eurex CDS Clearing Members will be required to meet a number of requirements in order to obtain a CDS Clearing License. These include in addition to the requirements that generally apply to be a Eurex Clearing Member, payment of a contribution to the separate CDS Clearing Fund, granting of a power of attorney to capture information from an approved trade source system (like DTCC) by the CDS Clearing Member and a higher capital requirement.¹⁶ CDS Clearing Members will be required to have at least €1 billion in liable equity capital. Eurex Clearing may permit a bank guarantee and/or collateral in the form of cash or securities to supplement a member's liable equity capital or proprietary funds.

Eurex Clearing will admit U.S. entities for membership in its CDS clearing facility. U.S. CDS Clearing Members will be required to meet similar requirements as would apply to non-U.S. entities holding a CDS Clearing License. These would include the requirements that the entity be a credit institution, bank, or other financial institution which has a license covering the conduct of safe custody business, lending operations and

¹⁶ Generally, all members of Eurex Clearing must have €12.5 million in liable equity capital and its General Clearing Members must have at least €125 million in liable equity capital (approximately \$164 million at the January 26, 2009 exchange rate of one €1 equals \$1.312.)

the receipt of collateral in the form of cash or securities and that the institution meet the applicable equity capital requirement. An affiliate of one of the foregoing entities which is subject to consolidated holding company group supervision may also be permitted to apply to become a CDS Clearing Member.

From a technical perspective, the CDS Clearing Member must have arrangements to effect payment obligations to the clearing house through a Target2 account. It must also have account arrangements to effect collateral and delivery obligations to Eurex Clearing for credit clearing with the securities depositories and global custodians Clearstream or Sega Intersecttle (“SIS”), respectively. The CDS Clearing Member must also have adequate systems and operational support, including back-up and business continuity arrangements.

In addition to the above requirements, Eurex Clearing understands that under U.S. law, its CDS clearing services will only be available to U.S. entities that satisfy the definition of “eligible contract participant” under sections 1a(12)(A) and (B) of the Commodity Exchange Act.

Mechanics of clearing

Eurex Clearing’s legal relationship, and its clearing guarantee, extends only to its CDS Clearing Members. Eurex Clearing will act on behalf of its Clearing Members to avoid duplicative actions on the DTCC platform.¹⁷ At the time of novation, the original CDS transaction is terminated and replaced by two CDS contracts. These are between Eurex Clearing and each of the original counterparties. Thus, the Eurex Clearing trade submission process is designed to ensure that it maintains a matched book of off-setting CDS contracts.

At the time of novation, therefore, new trade entries for the novated transaction are entered into the DTCC records. The terms of the substitute CDS contracts are set by the CDS Chapter of Eurex Clearing’s Clearing Conditions, which also set forth the criteria for CDS contracts to be accepted for clearing. As discussed above, the determination of credit events, succession events and deliverable obligations are intended to follow the actions of ISDA[®]’s Determination Committees.

The mechanics of clearing will make use of existing infrastructure providers. Operationally, in order for a transaction to be cleared, it must first be recorded in the

¹⁷ Major market participants frequently use DTCC’s Deriv/Serv comparison and confirmation service when documenting their CDS transactions. This service creates electronic records of transaction terms and counterparties. As part of this service market participants separately submit the terms of CDS transactions to Deriv/Serv in electronic form. Paired submissions are compared to verify that their terms match in all required respects. If a match is confirmed, the parties receive an electronic confirmation of the submitted transactions. All submitted transactions are recorded in the Deriv/Serv TIW, which serves as the primary registry for submitted transactions.

TIW. Eurex Clearing will establish an interface to DTCC Deriv/SERV's TIW to capture matched and confirmed trades as well as post-trade events. Only confirmed CDS contracts as defined by DTCC Deriv/SERV may be submitted to Eurex Clearing for clearing. Trades designated by the parties to be submitted for clearing will be received over the interface from DTCC.

Eurex Clearing will require CDS Clearing Members to deposit sufficient collateral with Eurex Clearing, to cover the calculated risk resulting from the cleared transactions. Prior to novation, Eurex Clearing will conduct a pre-risk evaluation and other pre-novation checks. These relate to member and product-specific requirements.¹⁸ If all such pre-novation checks are satisfactory, Eurex Clearing will proceed to novate the contract, replacing the prior bi-laterally negotiated contracts.

Eurex Clearing has not ruled out the future possibility, in addition to the trades submitted from the DTCC Warehouse, of also accepting contracts that have been executed on or entered through another facility or venue. Depending on the specifications of such other facility or venue, Eurex Clearing could adjust its process automatically to accept trades submitted from such facilities. However, Eurex Clearing has no plans to accept such contracts at the time it begins offering its CDS clearing services.

Cash payments will also be settled primarily by using the existing Eurex Clearing cash infrastructure. Euro payments will be settled via the TARGET 2 Cash environment. Other currencies will be settled either through a cash agent network or through direct access to central banks. For fixed payments, Eurex Clearing will use the DTCC Settlement Service and settle those payments via the CLS payment infrastructure.

IV. Financial safeguards

Perhaps the single most important contribution of a CCP to systemic protection (and the protection of customers) is the amelioration of risk through a robust system of margining and the CCP's mutualisation of counterparty risk. Eurex Clearing maintains adequate financial resources to assure no material adverse break in operations would occur in varying market conditions. As CCP for the Eurex exchange and for other regulated markets as well as Multilateral Trading Systems, Eurex Clearing is responsible for guaranteeing the financial performance of the contracts traded on several trading venues.

Eurex Clearing relies on various safeguards to reduce the likelihood that losses arising from a default will not be covered. It has also created a multilevel system to cover any shortfalls in the case of default. An initial level of protection is provided by a

¹⁸ 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.

sophisticated system of margining, which is described in greater detail below. The margining system, which includes up-front collateralization of risk associated with cleared CDS contracts, is supplemented by: (1) mandatory contributions to the Eurex CDS Clearing Fund by CDS Clearing Members; and (2) reserves maintained by Eurex Clearing. The amount of margin and Clearing Fund required of each Eurex CDS Clearing Member will be continuously monitored and periodically adjusted as required to reflect the size and profile of, and risk associated with, the Eurex CDS Clearing Member's cleared CDS transactions (and related market factors). Eurex Clearing represents that it will maintain strict, objectively determined, risk-based margin and guaranty fund requirements, which will be subject to ongoing regulation and oversight by the BaFin. These requirements will also be consistent with clearing industry practice and international standards established for central counterparties as articulated in the Bank of International Settlements/International Organization of Securities Commissions ("IOSCO") CCP Recommendations.

CDS margin system

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.

Positions will be revalued on an at least a daily basis using the reference market price. Pays and collects will be timely so that a clearing member's exposure to market risk in case of a default is both accurately measured and contained.

Margin in the form of collateral will be pledged at the approved collateral location. Eligible collateral is based on the current list of collateral which is approved by Eurex Clearing. All collateral is daily marked to market but specific limits for certain collateral to be pledged may apply. Only collateral owned by the CDS Clearing Member is accepted.

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, including the risk of its futures and option positions. The risk exposure of its cleared CDS transactions will be based upon the following five components, which are discussed in greater detail below:

- Mark-to-market margin,
- Next day margin,
- Liquidity margin,
- Accrued premium margin (which applies only to the protection buyer), and
- Credit event margin (which applies only to the protection seller).

Mark-to-market

Eurex Clearing on a daily basis will determine the difference between the net present values based on the CDS spread in the agreement and the most recently observed market spread based on a standard market formula

Next day margin

Next day margin accounts for the decay in value in liquidating outstanding positions of a defaulting member. The next day margin component is calculated based on the estimated time to unwind or cover positions. Eurex Clearing will use a VaR (Value at Risk) method such as historical simulation to determine the next day margin requirements.

Liquidity Margin

Liquidity margin is calculated by taking into account the next day margin and the time necessary to unwind a position that is in default.

Accrued premium margin

In a typical CDS, the protection buyer pays a fixed fee or premium to the seller for a period of time. This payment is often termed the “spread.” The premium margin component is based upon the value of these payments. The accrued premium is paid daily as margin.

Credit event margin

In a typical CDS contract, a payment from the seller to the protection buyer is made when a credit event occurs. Eurex Clearing includes in its margin calculation a component relating to the potential occurrence of a credit event. Eurex Clearing determines this amount by collecting from protection sellers the full credit event margin for the n net positions in a portfolio bearing the highest potential loss. It calculates this amount by

- taking the entire CDS (index) portfolio across all reference obligations;
- identifying the n most risky positions in a portfolio (in term of notional amounts issued by the same company);
- assuming a Recovery Rate for these positions; and
- collecting the full credit event margin for the identified positions.

The cleared CDS transaction is also valued on a daily basis. Eurex clearing will establish a price reflecting the true market conditions for a CDS based on a number of parameters, including quotes, traded prices and third-party market data providers. Specifically, Eurex Clearing will determine the valuation of cleared transactions on a daily basis based on the midpoint of bid-ask spreads determined according to the true market conditions of the respective contract and with regard to its risk assessment. Eurex Clearing will gather data from CDS Members with respect to quotes, traded levels and end-of-day pricing. As a CCP, Eurex Clearing will collect and process information about CDS transactions, prices and positions from all of its CDS clearing members. It will extract data from various third-party data vendors and cross check data among different sources, against past time-series and against published benchmarks. If a satisfactory spread cannot be determined using this process, Eurex Clearing will calculate a value based on a theoretical model.

Acceptable Collateral

Under the Clearing Conditions, the margin may be in cash, securities or book-entry securities acceptable to Eurex Clearing. Cash margin may be provided in the currencies determined by the Executive Board of Eurex Clearing, currently EUR, CHF, GBP and USD. Securities collateral may be deposited in the form of securities denominated in a number of currencies which include the aforementioned currencies. Margin in EUR is provided by a timely instruction of the Clearing Member of the respective branch of Deutsche Bundesbank to honor the transfer instructions received from Eurex Clearing with respect to such Clearing Member's account at the branch and to transfer the amounts to the account of Eurex Clearing. Collateral in securities must be deposited by the Clearing Member in its pledged securities account at Clearstream or SegInterSettle Zurich (SIS), and the Clearing Member must grant a lien in favor of Eurex Clearing on all securities deposited in its pledge account. Once Eurex Clearing has received notice that the securities have been transferred to the pledge account, it will credit the value or the number of such securities to the collateral clearing account of the Clearing Member.

Clearing Fund and default procedures

Eurex Clearing will establish a separate Clearing Fund to guarantee CDS transactions. CDS Clearing Members will contribute a minimum amount to the fund plus a dynamic amount determined by the volume of each clearing member's open positions. Specifically, CDS Clearing Members will contribute 5% of their Margin Requirement to the CDS Guarantee Fund, subject to a minimum of €50 million. Because of its dynamic component, the exact level of contribution cannot now be determined. However, the fund will maintain adequate, liquid resources to enable it to handle a default in which the margin requirement (pledged collaterals) of a defaulted entity is insufficient to cover losses. The initial payment into the Clearing Fund is due upon granting of the CDS Clearing License by Eurex Clearing.

Following a default by a CDS Clearing Member, Eurex would follow a procedure to help ensure an orderly liquidation and unwinding of the open positions of the defaulting member. The measures that Eurex Clearing may take in response to a default of a CDS Clearing Member are specific to the CDS clearing facility. In the event of a default by a CDS Clearing Member, under the CDS Chapter, the Clearing Member is required to close its existing cleared CDS transactions (and to notify its customers, if any, so that they can transfer their transactions to another CDS Clearing Member). If the CDS Clearing Member does not close or transfer CCP transactions within an appropriate time, Eurex Clearing can close the positions on behalf of the defaulting member. If Eurex Clearing is unable to close the CCP transactions within a reasonable period, Eurex Clearing may use a voluntary auction process to liquidate the defaulter's position as a whole or in meaningful amounts to the non-defaulting CDS Clearing Members. Finally, Eurex Clearing may assign the remaining positions to the non-defaulting CDS Clearing Members pro rata.

Each CDS Clearing Member must pledge margin collateral as required by Eurex Clearing's margin calculation. That calculation is based on a dynamic valuation model relating to the clearing member's risk exposure to cleared CDS contracts. Margins are set so as to cover any scenario of consecutive credit events of n reference entities a day, and the default of the Clearing Member. In the unlikely event that this margin is insufficient to cover the default, the clearing house would deploy the following layered defenses sequentially:

1. Utilize the collateral of the defaulting CDS Clearing Member;
2. Utilize the contribution to the CDS Clearing Fund of the defaulting CDS Clearing Member;
3. Utilize the reserve fund of Eurex Clearing;
4. Utilize the contributions to the CDS Clearing Fund of non-defaulting CDS Clearing Members; and
5. One assessment to CDS Clearing Members to replenish the CDS Clearing Fund.

Stress testing

Eurex Clearing conducts routine stress testing periodically throughout the trading day to ensure that it can meet its obligations as a CCP in both normal and under the most extreme market conditions. Eurex's stress testing stipulates that margin requirements and available post-default financial resources should be adequate to cover at least 999 out of 1,000 events. Post-default resources include the collateral and the CDS Clearing Fund contribution of a defaulting member, the reserve fund of Eurex Clearing and Clearing Fund contributions of non-defaulting members, in that order.

Each clearing member's risk exposure is stress tested against a comprehensive set of scenarios for all the product groups that it clears. Scenarios include the worst historical observations that have been experienced in each of the product groups as well as

executive management's expectations on worst potential future price movements. Potential losses based on stress scenarios are compared to each member's additional margin. Losses beyond additional margin are then compared to the CDS Clearing Fund. How much of the CDS Clearing Fund is consumed by the theoretical stress-test calculations is identified and analyzed on a daily basis.

As soon as the consumption of the Clearing Fund by any clearing member - irrespective of its credit quality - breaches a defined threshold, the Eurex Clearing board takes risk mitigating actions. These include member-specific actions, such as extra margin requirements or generalized requirements, such as calling for additional contributions by Members to increase the size of the CDS Clearing Fund.

Treatment of funds

Margin and treatment of funds is provided in Chapter I Part 3 of the Clearing Conditions of Eurex Clearing and will apply to CDS clearing. Margins are accepted by Eurex Clearing either in cash, securities or book-entry securities.¹⁹ The CDS Clearing Member must pay margin due to Eurex Clearing from its own funds.²⁰ Thus, Eurex Clearing holds only the proprietary funds of clearing members.

V. 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.²¹

Moreover, 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. 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

¹⁹ Section 3.4 Clearing Conditions.

²⁰ Chapter I section 3.4(1) Clearing Conditions.

²¹ 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.

Information” which provides for the sharing 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.

The Commission and BaFin on April 26, 2007, entered into a wide-ranging bilateral MOU related to cooperation and information-sharing with respect to market oversight and the supervision of financial services firms. This MOU, entitled, “Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight and the Supervision of Financial Services Firms” (“2007 MOU”), is “a comprehensive arrangement to facilitate their (SEC and BaFin’s) supervision of internationally active firms and their oversight of markets.”²² The MOU is a statement of intent to consult, cooperate and exchange information in connection with the oversight of Firms that conduct financial service business in the United States and Germany.²³ The 2007 MOU defines “Firm” as a person that conducts “securities processing” or a “banking business.” As noted above, Eurex Clearing is treated under the Banking Act as conducting a banking business.

The 2007 MOU broadly relates to cooperation by the regulatory authorities with respect to entities that conduct business in the U.S. and Germany and is designed to complement the earlier-enforcement related MOUs. It should be noted that Article, 2, Paragraph 15 of the 2007 MOU specifically provides that the MOU does not limit the right of either regulatory authority to conduct on-site visits, which includes any routine sweep or for-cause regulatory visit or inspection of the books, records and premises of a Firm, in the territory of the other.²⁴ Article 4 of the 2007 MOU specifically provides that the Commission may conduct on-site visits of dually regulated entities and establishes procedures for the conduct of such on-site visits. These include the notification by the inspecting authority to the Host Authority of its intent to conduct an on-site visit and the intent of the authorities to cooperate in the conduct of the on-site visit, including the ability of the Host authority to accompany the inspecting Authority during the on-site visit. Based on the 2007 MOU and the procedures that it establishes for sharing of information, cooperation and conduct of on-site visitation, Eurex Clearing will be able to comply fully with all information and oversight conditions of the exemptions.²⁵

²² See, <http://sec.gov/news/press/2007/2007-76.htm>.

²³ See, 2007 MOU, Article 2, Paragraph 13, http://sec.gov/about/offices/oia/oia_bilateral/germany_regcoop.pdf

²⁴ Paragraph 15 provides that:

This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of, or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.

²⁵ Eurex Clearing bases this requested relief on a number of conditions, which are detailed *infra*. One of the conditions relates to the conduct of examinations of Eurex Clearing by the Commission. Eurex Clearing understands that the Commission’s inspections shall be subject to cooperation with BaFin and upon terms

VI. Public interest considerations

The Commission and its staff have recognized both the important purposes served by CDS as well as the risks that CDS pose systemically to financial stability.²⁶ 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."²⁷

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 a CCP will ameliorate these risks.

First, clearing of OTC CDS contracts by a CCP will reduce risk. The specific risks of CDS contracts with contingent liabilities that arise only upon the default of the contract's reference entity and the dual risks of a default of the reference entity and the subsequent default of the protection writer before settlement, require an independent, neutral and strongly collateralized CCP with a proven risk management capability.

Specifically, as a central counterparty to each novated CDS contract, Eurex will be able to net offsetting positions on a multilateral basis. Multilateral netting will significantly reduce the outstanding notional amount of each CDS Clearing Member's portfolio. Moreover, and perhaps most critically, a CCP provides post-default backing, and by mutualising potential counterparty default risk, central counterparty clearing will ameliorate one of the most glaring systemic risks raised by the current market turmoil. Mutualising counterparty risk results in enhanced certainty with respect to legal enforceability and lines of defence in case of a default by a clearing member.

and conditions agreed to between the Commission and BaFin in the bilateral MOU related to cooperation and information-sharing. "Memorandum of Understanding Concerning Consultation, Cooperation, and the Exchange of Information Related to Market Oversight and the Supervision of Financial Services Firms," April 26, 2007.

such on-site inspections would be subject to coordination with the German Federal Financial Supervisory Authority ("BaFin") and to the procedures established by the "Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight and the Supervision of Financial Services Firms," (April 26, 2007), Eurex Clearing understands that such on-site routine examinations will be conducted no more often than annually, although Eurex Clearing understands that the Commission may inspect more frequently for cause.

²⁶ 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).

²⁷ *Id.* at p. 3.

Second, clearing of OTC CDS contracts by a CCP will increase the transparency of position risk. Valuation of the risk of the netted positions is made by the CCP, an independent and market neutral party. The CCP requires that this risk be collateralized under a fully transparent and robust framework. Moreover, the collateralization framework, which includes daily mark-to-market of risk, provides an early warning mechanism with respect to the overall ability of parties to carry the risk of their positions.

Finally, central counterparty clearing addresses current operational weaknesses through standardized, straight-through processing. In this regard, multilateral netting of transactions reduces the complexity of back office processes and the number of fails and the CCP will simplify trade assignments.

Eurex Clearing believes that offering these services, which have a proven track record with respect to listed derivatives, will bring significant benefits to the OTC market in CDS transactions and, for the reasons discussed above, reduce systemic risk to the financial market and increase market integrity.

For these reasons, Eurex Clearing plans to offer clearing services for OTC CDS transactions within the framework envisioned by the European financial regulatory authorities. Initially, Eurex Clearing will offer clearing on the iTraxx® Indexes and their constituents as described above, which include only European reference entities, but intends to expand the instruments for which it offers clearing services to include indexes on U.S. reference entities and CDS on constituent single name reference entities.

Within that framework, U.S. market participants have expressed interest in participating in the Eurex Clearing services as clearing members of Eurex Clearing.

Eurex Clearing understands that certain of the instruments for which it may wish to offer clearing services to U.S. market participants may be treated in the U.S. as securities. To the extent that that is the case, Eurex Clearing believes that granting the requested exemptive relief to Eurex and to U.S. entities wishing to participate as Eurex CDS Clearing Members and others will provide U.S. participants legal certainty under the Exchange Act with respect to the clearing services that Eurex Clearing will offer for such instruments. Eurex Clearing further believes that the temporary exemption being requested would enable the Commission to monitor Eurex Clearing's clearing and settlement services to its U.S. CDS Clearing Members in respect of CDS transactions and to coordinate with BaFin with respect to Eurex Clearing's clearing and settlement services to such U.S. participants.

VII. Conditions for exemptive relief

Eurex Clearing bases its request for exemptive relief on the following representations. Eurex Clearing meets, and will continue to meet on an on-going basis the standards for central counterparties set forth in the CPSS/IOSO recommendation for

Central Counterparties.²⁸ Eurex Clearing will make available to all Eurex 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.

Eurex Clearing further represents that it will conduct its CDS clearing services under the exemptive relief requested in the following manner:

- (1) Eurex Clearing shall make available on its Web site its annual audited financial statements.
- (2) Eurex Clearing shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts and other such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.
- (3) Eurex Clearing shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and shall provide access to the Commission to conduct on-site inspection of all facilities (including automated systems and systems environment), records, and personnel related to Eurex Clearing's Cleared CDS clearance and settlement services.
- (4) Eurex Clearing shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members using its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. Eurex Clearing shall notify the Commission promptly when Eurex Clearing terminates on an involuntary basis the membership of an entity that is using Eurex Clearing's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to Eurex Clearing's action.
- (5) Eurex shall notify the Commission of all changes to its rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, not less than one day prior to effectiveness or implementation of such changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. All such rule changes will be posted on Eurex's Web site. Such notifications will not be deemed rule filings that require Commission approval.

²⁸ Bank for International Settlements, Committee on Payments and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, "Recommendations for Central Counterparties," (November 2004).

- (6) Eurex Clearing shall provide the Commission with reports prepared by independent audit personnel concerning its Cleared CDS clearance and settlement services that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. Eurex Clearing shall provide the Commission with annual audited financial statements for Eurex prepared by independent audit personnel.
- (7) Eurex Clearing shall report all significant systems outages to the Commission. If it appears that the outage may extend for 30 minutes or longer, Eurex shall report the systems outage immediately. If it appears that the outage will be resolved in fewer than 30 minutes, Eurex shall report the systems outage within a reasonable time after the outage has been resolved.
- (8) Eurex Clearing, directly or indirectly, shall make available to the public, on terms that are fair and reasonable and not unreasonably discriminatory: (1) all end-of-day settlement prices and any other prices with respect to Cleared CDS that Eurex Clearing may establish to calculate mark-to-market margin requirements for Eurex Clearing Clearing Members; and (2) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by Eurex Clearing.

Eurex clearing understands that its clearance and settlement services may be made available only to U.S. persons that are "eligible contract participants" within the meaning of section 1a(12) of the U.S. Commodity Exchange Act. In addition, Eurex Clearing understands that CDS transactions with U.S. persons under the exemptive relief requested may only be submitted for clearing on the following reference entities:

- (i) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;
- (ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;
- (iii) a foreign sovereign debt security;
- (iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or
- (v) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or
- (vi) an index of reference entities in which 80 percent or more of the index's weighting is comprised of the entities or securities described in (i)-(v) above.

VIII. Conclusion

Based on the foregoing, we respectfully request that:

(1) for the avoidance of uncertainty, the U.S. SEC issue an Order pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”), exempting Eurex Clearing from the clearing agency registration requirements set forth in Section 17A(b)(a)²⁹ of the Exchange Act with respect to its performance of the functions of a clearing agency with respect to certain CDS transactions involving U.S. persons and from any provisions of the Exchange Act governing securities transactions, to the extent otherwise applicable, in connection with the activities described in this request;

(2) for the avoidance of uncertainty, the SEC issue an Order 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 from any requirement under Section 15(a)(1) of the Exchange Act to register as a U.S. broker-dealer and from the reporting and other requirements of the Exchange Act and the rules and regulations thereunder, that apply to a broker or dealer whether or not registered with the Commission or to comply with any provisions of the Exchange Act and the regulations thereunder governing securities transactions; and

(3) the relief in paragraphs (1) and (2) be subject to Eurex Clearing, and such CDS Clearing Members and others 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 discussed above, international regulatory authorities support central counterparty clearing of credit default swaps as an important step in addressing systemic risk and ameliorating one of the underlying factors in the current economic crises. Eurex Clearing has robust risk management and operational processes. Eurex Clearing is supervised by regulators applying a regulatory regime that meets accepted international standards and that provides an appropriate level of protection to market participants. Eurex Clearing operates in compliance with that regulatory framework, which offers to market participants financial and regulatory protections that are comparable to those provided by the Exchange Act. For these reasons, Eurex Clearing believes that granting the requested relief would be in the public interest and is consistent with the protection of investor.

* * * * *

²⁹ Including 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 license granted December 12, 2006, by the German Federal Financial Supervisory Authority (“BaFin”) to Eurex Clearing to act as a CCP.

If you have any questions or require additional information concerning this request, please contact Dr. Ekkehard Jaskulla, Director 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
James Brigagliano
Daniel Gallagher
James Eastman
Elizabeth King
Dr. Thomas Book
Mr. Christoph Kraus
Dr. Ekkehard Jaskulla