X-pand into the Future

eurex circular 015/12

Date: January 26, 2012
Sender: 1. Eurex Deutschland and Eurex Zürich
2. Eurex Clearing AG
Recipients: All Trading Participants of Eurex Deutschland, all Clearing Members and Non-Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

High priority

Potential Designation of Eurex Deutschland as a "Qualified Board or Exchange" for Purposes of Section 1256(g)(7) of the United States Internal Revenue Code

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Content may be most important for:

➲ All departments

Attachments:

Eurex Deutschland and Eurex Zürich

1. United States Taxpayer Identification Form

Eurex Clearing AG

2. Updated sections of Clearing Conditions for Eurex Clearing AG

Summary:

This circular informs Trading Participants of Eurex Deutschland, Clearing Members and Non-Clearing Members of Eurex Clearing AG (in this circular referred to together as "participants") of amendments to the Clearing Conditions for Eurex Clearing AG, which are required for Eurex Deutschland to be designated as a "qualified board or exchange" for the purposes of Section 1256 of the U.S. Internal Revenue Code. These amendments are similar to those made by other major exchanges to be treated as a qualified board or exchange. Such designation will generally benefit eligible U.S. taxpayers who transact futures on Eurex Deutschland. The revised Clearing Conditions potentially affect all participants.

Each participant who has, or is required to have, a United States Taxpayer Identification Number (TIN) should complete the form contained in attachment 1 of this circular and return it to the given address.

Potential Designation of Eurex Deutschland as a "Qualified Board or Exchange" for Purposes of Section 1256(g)(7) of the United States Internal Revenue Code

U.S. Qualified Board or Exchange Status

Eurex Deutschland has applied to the U.S. Internal Revenue Service ("IRS") for a ruling (the "Ruling") to be treated as a "qualified board or exchange" under Section 1256 of the U.S. Internal Revenue Code ("Section 1256"). This treatment would generally benefit eligible U.S. taxpayers by reducing their effective rate of taxation on gains from certain transactions undertaken on Eurex Deutschland. The purpose of this circular is to highlight participant obligations that are required to receive the Ruling and to point out that it will potentially affect all participants. Please note that the status of Eurex Deutschland as a "qualified board or exchange" will not be effective unless and until the IRS grants this designation.

The tax treatment provided by Section 1256 is commonly referred to as "60/40 tax treatment" and allows eligible U.S. taxpayers to treat 60 percent of the profits and losses realized from transactions with certain futures, options and other contracts as long-term capital gains and losses, and 40 percent of these gains and losses as short-term capital gains and losses for U.S. tax purposes regardless of the period during which these contracts are held by the taxpayer. Long-term capital gains of certain U.S. taxpayers are currently taxed at more favourable rates than short-term capital gains. Section 1256, however, requires that each such contract held by a U.S. taxpayer at the close of the taxable year must be marked-to-market on the last business day of each taxable year, and any gain or loss shall be taken into account in that taxable year.

In order to achieve designation as a qualified board or exchange (which will make 60/40 tax treatment available), a number of measures are necessary. These representations require amendments to the Clearing Conditions for Eurex Clearing AG which are set out in attachment 2. In addition, participants who have, or are required to have, a TIN are required to complete and return the form contained in attachment 1 of this circular.

Revised Clearing Conditions

To identify whether U.S. taxpayers have satisfied their U.S. tax obligations with respect to transactions effected through Eurex, the revised Clearing Conditions require participants to provide certain information to the IRS, on request, about relevant Eurex Deutschland transactions. The revised Clearing Conditions also require participants to comply with U.S. tax reporting requirements for brokers, to the extent those reporting requirements apply to a participant. The Clearing Conditions further stipulate that in the event of an infringement of obligations, (i) in case of a non-compliant Clearing Member, the right of this Clearing Member to participate in the clearing of own account or customer related Eurex transactions and (ii) in case of a non-compliant Non-Clearing Member, the right of the Non-Clearing Member to participate in the clearing of Eurex transactions (including transactions between the respective Clearing Member and a non-compliant Non-Clearing Member), shall be suspended. This suspension would remain in force until such time as the IRS confirmed to Eurex Deutschland that the participant has become compliant with the applicable IRS requirements.

Gathering Information

Eurex Deutschland requires all participants, who either have or are required to have a TIN to complete the form attached and return it to Eurex Deutschland, c/o Christian Ochsner & Vassilis Vergotis, fax. +1-(0) 312-544-10 01 by close of business on February 29, 2012.

Once Eurex Deutschland is designated as a "qualified board or exchange", Eurex Deutschland will provide TIN information to the IRS on request. Participants should notify Eurex Deutschland immediately as and when they are given a TIN or where there is any change to TIN information which has already been submitted to Eurex Deutschland.

Next Steps

Subject to the IRS designating Eurex Deutschland as a "qualified board or exchange", Eurex Deutschland will issue a further circular confirming the IRS Ruling and the date on which the tax treatment outlined in this circular will become effective.

Participants are advised to consult their tax advisers in relation to the consequences for them of Eurex Deutschland's designation as a "qualified board or exchange".

DISCLAIMER

Pursuant to IRS Circular 230: Nothing contained in this circular concerning any U.S. Federal tax issue is intended or written to be used, and it cannot be used, by anyone for the purpose of avoiding U.S. Federal tax penalties under the code.

This circular is not intended to be, and should not be construed as, legal or tax advise. Each participant and any other interested person should seek tax advice, based on such person's particular circumstances, from an independent tax advisor.

For further information, please contact Christian Ochsner at tel. +1-(0) 312- 544 1055 or e-mail christian.ochsner@eurexchange.com or Vassilis Vergotis at tel. +1-(0) 312- 544 10 58 or e-mail vassilis.vergotis@eurexchange.com.

January 26, 2012

Information required in connection with the Ruling of Eurex as a "Qualified Board or Exchange" within the meaning of Section 1256 of the U.S. Internal Revenue Code:

Member Name	
United States Tax Identification Number	

I certify that the above information is provided in good faith and is, to the best of my knowledge and belief, correct:

Signed ……

Print Name: ……

Title: ……

Date: ……...

Please contact Christian Ochsner at tel. +1(0) 312-544-10 55 or e-mail christian.ochsner@eurexchange.com if you have any questions relating to the completion of this form.

When completed, please fax this form to +1-(0) 312-544-10 01 or e-mail a scanned version to customer.support.chicago@eurexchange.com by no later than close of business on February 29, 2012.

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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Chapter II Transactions Concluded at Eurex Deutschland and Eurex Zürich (Eurex Exchanges)

Part 1
General Provisions

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1.7 Obligations with regard to the Tax Legislation of the United States of America

(1) Clearing Members and Non-Clearing Members admitted to trading on Eurex Deutschland agree to provide, upon request by Eurex Deutschland, the U.S. Internal Revenue Service (the "**Service**") or any grand jury properly convened within the United States with any data, books or papers related to transactions which are concluded at Eurex Deutschland. Such requests will be made by Eurex Deutschland whenever it receives a written request, summons or subpoena to produce such information from the Service or from any grand jury.

(2) Clearing Members and Non-Clearing Members admitted to trading on Eurex Deutschland agree to comply, with the reporting requirements under section 6045 of the United States Internal Revenue Code of 1986 and the regulations thereunder if such requirements are applicable to such Clearing Members and Non-Clearing Members.

(3) Clearing Members and Non-Clearing Members admitted to trading on Eurex Deutschland consent to Eurex Deutschland or Eurex Frankfurt AG – which is the exchange operating company – submitting any information described in Sentence 1 of Paragraph (1) to the Service upon its request or to another authority within the United States as specified in such request. Clearing Members and Non-Clearing

Members submitting personal data within the meaning of the German Federal Data Protection Act *(Bundesdatenschutzgesetz der Bundesrepublik Deutschland)* to Eurex Deutschland or Eurex Frankfurt AG, shall ensure, that Eurex Deutschland and Eurex Frankfurt AG are authorised to submit such data to comply with Eurex Deutschland's obligations as a "qualified board or exchange" to authorities in the United States.

(4) As soon as Eurex Deutschland, Eurex Frankfurt AG or the Service notify Eurex Clearing AG of a Clearing Member or a Non-Clearing Member not complying with its obligations under Paragraphs (1) and (2), Eurex Clearing AG shall immediately notify the respective Clearing Member or the respective Non-Clearing Member and its Clearing Member of such fact. Upon receipt of such notification of Eurex Clearing AG according to Sentence 1, (i) in case of a non-compliant Clearing Member, the right of this Clearing Member to participate in the clearing of Own Transactions and Customer-Related Transactions (as defined in Chapter I Part 1 Number 1.2.3 Paragraphs (1) and (2)) concluded at Eurex Deutschland and the right to participate in the clearing of other Eurex Transactions (as defined in Chapter I Part 1 Number 1.1.2 Paragraph (1) and (ii) in case of a non-compliant Non-Clearing Member, the right of this Non-Clearing Member and the respective Clearing Member to participate in the clearing of NCM-Related Transactions (as defined in Chapter I Part 1 Number 1.2.3 Paragraph (3)) concluded at Eurex Deutschland on behalf such non-compliant Non-Clearing Member and the right to participate in the clearing of other Eurex Transactions on behalf such non-compliant Non-Clearing Member shall immediately be suspended. Such suspension includes the conclusion of any new Eurex Transactions from the point in time of receipt of such notification (other than transactions undertaken to close, transfer or exercise any position or Transaction of such Clearing Member or Non-Clearing Member that exists at the time of such notification). Eurex Clearing AG shall notifiy the Management Board of Eurex Deutschland of such suspension. The suspension shall be revoked by way of notification by Eurex Clearing AG vis-à-vis the respective Clearing Member or the respective Non-Clearing Member and its Clearing Member as soon as the respective party provides proof to Eurex Clearing AG that the obligations according to Paragraphs (1) and (2) have been fulfilled. Any obligations of the involved parties arising from the clearing relationship shall continue to exist even during the period of suspension.

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