clear to trade

eurex clearing *circular 102/10*

Date: December 23, 2010
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

High priority

Ban on Naked Short Sales: Reporting of Suspicious Transactions

Related Eurex Circular: 144/10

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Content may be most important for:	**Attachments:**
➲ Front Office/Trading ➲ Middle + Backoffice ➲ Auditing/Security Coordination	none

Summary:

By means of the German *Abusive Securities and Derivatives Trades Prevention Act* from July 21, 2010, a ban on naked short sales in certain shares and government bonds was introduced (§ 30h of the German *Securities Trading Act*, WpHG). At the same time, credit institutions have been obliged to report facts which justify suspicion of a violation of this ban immediately to the German *Federal Financial Supervisory Authority* (BaFin) according to § 10 WpHG.

With respect to the ongoing monitoring of the ban on naked short sales by BaFin in accordance with § 4 para. 1 and para. 2 WpHG, BaFin notified Eurex Clearing AG (ECAG) in a letter from December 15, 2010 that according to BaFin's legal conception a default in delivery in connection with orders in securities might justify the suspicion of a naked short sale pursuant to § 30h WpHG. Particularly in case of transactions in aforementioned securities which have not been settled after the contractual settlement day (SD) plus ten business days (SD+10), the necessity of reporting a suspicious transaction in accordance with § 10 para. 1 WpHG is given.

On the grounds of its notification from December 15, 2010 and **with immediate effect**, BaFin expects ECAG to report on a weekly basis such transactions in securities within the meaning of § 30h WpHG as suspicious. Legal exemptions from the ban on naked short sales (§ 30h para. 2 WpHG) will not be considered for the reporting.

Ban on Naked Short Sales: Reporting of Suspicious Transactions

By means of the German *Abusive Securities and Derivatives Trades Prevention Act* (Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte) from July 21, 2010, a ban on naked short sales in certain shares and government bonds was introduced (§ 30h of the German *Securities Trading Act* (Wertpapierhandelsgesetz, WpHG). At the same time, credit institutions have been obliged to report facts which justify suspicion of a violation of this ban immediately to the German *Federal Financial Supervisory Authority* (Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) according to § 10 WpHG.

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On Clearing Member level, ECAG's reporting of suspicious transactions will consider the following securities transactions:

- transactions in shares (according to Chapters II and V of the Clearing Conditions for Eurex Clearing AG) and physical deliveries out of derivatives transactions in the categories defined in § 30h para. 1 WpHG for which a buy-in on the tenth business day after the contractual settlement day failed
- transactions concluded at Eurex Bonds GmbH which have not been delivered after the tenth business day after the contractual settlement day.

Due to the clearing algorithms that are applied only the outstanding settlements of net positions, independent from their original transactions, are considered for calculation of the ten days' term and for reporting.

Pursuant to the regulation in § 10 para. 1 sentence 2 WpHG, ECAG is subject to a legal duty to observe secrecy and will thus not supply any information about its reportings to BaFin.

Please refer to the BaFin website (www.bafin.de) and to the BaFin consumer hotline +49-(0)228-299 70-299 for additional information about content and application of the ban on naked short sells according to § 30h WpHG.

December 23, 2010