clear to trade

eurex clearing *circular 038/09*

Date: Frankfurt, July 17, 2009
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

⚠ **Action required** ⚠ **High priority**

CCP: Extension of Product Scope by selected British Stocks: Information on Stamp Duty Reserve Tax

Related Eurex Clearing Circular: 037/09

Contact: Member Service & Admission Team, tel. +49-69-211-17 00

Content may be most important for:

- Middle + Backoffice
- IT/System Administration
- Auditing/Security Coordination

Attachments:

1. Information Memorandum Stamp Duty Reserve Tax
2. Extract of Finance Act 1986, amended by Finance Act 2007
3. Parliamentary Answer in which the former Economic Secretary to the Treasury explained how the UK tax authorities would seek to interpret this legislation
4. Application form for recognition as an options intermediary

The introduction of physically deliverable British equities as underlying instruments for options contracts will take place at **January 18, 2010**. These derivative products will be traded on Eurex Deutschland and Eurex Zürich (Eurex Exchanges) or entered in the Eurex® system by participants as bilateral transactions. Settlement will take place in Euroclear UK & Ireland.

The attached document "Information Memorandum Stamp Duty Reserve Tax" (attachment 1) describes arrangements which Eurex Members can undertake to obtain tax relief from the British Stamp Duty Reserve Tax (SDRT) in connection with the clearing and settlement of British equities as underlyings for options contracts introduced at Eurex. This document is not to be considered as tax advice; compliance with tax rules is the members' sole responsibility.

To obtain Stamp Duty Reserve Tax relief, a Eurex member must be recognised as an options intermediary by the Eurex Exchanges in accordance with arrangements approved by the British tax authorities.

Please find enclosed the relevant application form for recognition as an options intermediary (attachment 4) which we kindly ask you to complete and send back to Eurex Clearing.

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Aktiengesellschaft mit
Sitz in Frankfurt/Main
HRB Nr. 44828
Amtsgericht
Frankfurt/Main

Attachment 1 to Eurex Clearing Circular 038/09

Arrangements for Stamp Duty Reserve Tax

1. Information Memorandum UK Stamp Duty Reserve Tax

1. **Introduction**

1.1 In order to ensure liquidity in the relevant financial markets, the UK Government implemented certain provisions in UK domestic legislation to allow for market participants dealing in UK company securities and options relating to UK company securities to undertake certain trades without attracting either UK stamp duty or UK SDRT.

1.2 The purpose of this document is:

(a) to describe tax relief available to Eurex members; and

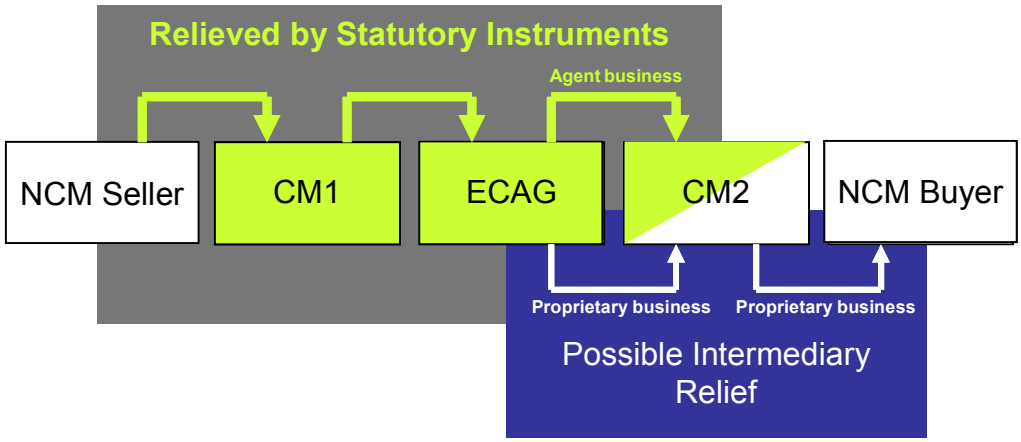
(b) to set out the procedure to be followed by any member who wishes to be recognised as an "options intermediary" in order to qualify for tax relief.

2. **Overview over the different types of tax relief in the Eurex transaction chain:**

2.1 In general, a charge of SDRT arises each time there is a contractual change in beneficial ownership of shares as a result of an agreement to transfer securities including exercises/assignments of options, payable by the purchaser (i.e. NCM Seller, CM 1, ECAG, CM 2, NCM Buyer, Client).

2.2 The Eurex Exchanges and Eurex Clearing have applied for Statutory Instruments to achieve tax relief for the clearing transaction chain. With Statutory instruments No. 1097/2007 (please see "The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Eurex Clearing AG) Regulations 2007 No. 1097") and No. 164/2008 (please see "The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Eurex Clearing AG) (Amendment) Regulations 2008 No. 164") Eurex Deutschland and Eurex Zürich are prescribed as recognized investment exchanges and Eurex Clearing AG is prescribed as a recognized clearing house for the purposes of sections 116 and 117 of the Finance Act 1991. Furthermore with these Statutory Instruments the circumstances for the SDRT exemption of transfers of securities are prescribed. They effect that no charge of SDRT will arise for an agreement to transfer UK equities from a Non-Clearing Member to a Clearing Member on the sell side, from a Clearing Member (DCM or GCM) to Eurex Clearing AG (ECAG) and from ECAG to a Clearing Member for his agent business.

2.3 In the following figure the green color outlines these types of tax relief in the Eurex transaction chain granted by statutory instruments.



2.4 Furthermore *"Intermediaries Relief"* allows that agreements to transfer equities

(a) from Eurex Clearing AG to a Clearing Member acting for his own account or

(b) from a Clearing Member to a Non-Clearing Member acting for his own account

might be exempted provided such Non-Clearing Members or Clearing Members meet certain requirements under applicable UK legislation. For the purposes of these types of tax relief, each member must be recognised as an "**Options Intermediary**" pursuant to the requirements of the relevant UK domestic legislation.

2.5 The tax relief from UK stamp duty and UK SDRT are provided for in sections 80A-80C (UK stamp duty) and 88A-88B (UK SDRT) of the Finance Act 1986, amended by Finance Act 2007.

3. Application for status of "options intermediary"

3.1 The approach adopted by the UK tax authorities is one of self-certification. Each member who wishes to be recognised by the Eurex Exchanges as an options intermediary for the purposes of the legislation must satisfy himself that he falls within the statutory definition. For a Eurex Member, the relevant definition of intermediary is "a person who carries on a bona fide business of dealing in quoted or listed options to buy or sell stock and does not carry on an excluded business"

3.2 "Excluded business" comprises:

(a) the making and managing of investments;

(b) the provision of services to a connected person;

(c) insurance;

(d) pension scheme management and trusteeship; and

(e) trusteeship of a collective investment scheme.

3.3 The Parliamentary Answer (attachment 3) gives some guidance on how the UK tax authority interprets these categories of excluded business.

3.4 Where a member is not certain that he qualifies, he should seek clarification from the Stamp Office of the UK tax authorities. The contact telephone number at the Stamp Office is +44-207-147-2801.

3.5 When a member has satisfied himself that he qualifies, he can apply to the Eurex Exchanges for recognition using the form attached to this document (attachment 4). Please send the original form to

Eurex Clearing AG
Member Services & Admission
Neue Börsenstr. 1
60487 Frankfurt / Main
Germany

3.6 The list of members recognised by the Eurex Exchanges as options intermediaries will be provided to the UK tax authorities and to Euroclear UK & Ireland Limited.

3.7 As soon as the UK tax authorities (i.e. HM Revenue & Customs) has successfully validated that the member is entitled to stamp relief, and the member, Euroclear UK & Ireland and the Eurex Exchanges are informed of that decision, the member will be set up in the CREST system by Eurex Clearing as an intermediary.

4. Process Description

4.1 On the exercise date of the option the ECAG CCP system receives transactions from exercises & assignments in physical deliverable securities. These transactions are registered as gross transactions within the ECAG CCP system and are sent by ECAG to Euroclear UK & Ireland Ltd. for settlement.

4.2 Within Euroclear UK and Ireland, these transactions are considered as gross transactions. Euroclear UK & Ireland Ltd. participants may opt into “direct input” for these transactions to automatically match, meaning that they do not need to input a settlement instruction into Euroclear UK & Ireland Ltd. for the transaction.

4.3 A Stamp Duty Reserve Tax (SDRT) charge for UK equities arises on the underlying purchase of UK equities in line with existing market practices.

4.4 Euroclear UK & Ireland Ltd. will populate SDRT fields on the gross transactions using the trade information received from the relevant exchange / CCP. The fields will be populated according to existing market practice and the gross transactions will then be assessed for SDRT by the Stamp Processing Unit.

4.5 There are three key inputs for SDRT purposes. These are:

(a) Agent Indicator

(b) Transaction Stamp Status

(c) **Stampable Consideration**

4.6 In addition, if intermediary relief is being claimed, the following two fields are necessary:

(a) Trade System of Origin

(b) Trade Date

4.7 On the gross transactions, the stamp fields will be completed as follows.

(a) “Agent Indicator” on the transaction will be defaulted from the Account Type field in Eurex as indicated on the trade feed.

— Where the Account Type (Buyer or Seller) is ”A” the agent indicator on the transaction will be completed with “A” for Agent.

— Where the Account Type (Buyer) is ”P” Euroclear UK & Ireland Ltd. will complete the agent indicator with ‘”P” for Principal Purchase.

— Where the Account Type (Seller) is “P” Euroclear UK & Ireland Ltd. will complete the agent indicator with ”S” for Principal Sale.

— The Account Type “M” (Buyer or Seller) is mapped to “P” and will be handled accordingly.

(b) Euroclear UK & Ireland Ltd. will complete the “Transaction Stamp Status” with “P” for the standard rate of 0.5 percent ad valorem SDRT for all direct input gross purchases.

(c) Euroclear UK & Ireland Ltd. will complete the “Stampable Consideration” field from the input in the consideration field if the party is a principal purchaser (P). If the party is an agent, this field will be left blank. This is consistent with market norms for agency transactions. If the stampable consideration is missing, Crest will calculate the stamp duty considering the current market price and not the settlement amount.

(d) “Trade System of Origin” is Eurex®

4.8 Euroclear UK & Ireland Ltd. will send transaction reports to the “Her Majesty's Revenue and Customs (HMRC)” for every transaction assessed by the Stamp Processing Unit, irrespective of whether it was automatically matched via direct input or not.

4.9 For more information about the processing please refer to the Euroclear UK & Ireland Ltd. White Book “UK Stamp Duty Reserve Tax: tax relief for principal traders”, the Euroclear UK & Ireland Ltd. Blue Book “Stamp Duty Reserve Tax in CREST: A guide to market practice” or to the Euroclear UK & Ireland “CREST Reference Manual”.

5. **Further Information**

5.1 For any information regarding SDRT as well as regarding the application process please contact HM Revenue & Customs directly (contact telephone number at the Stamp Office is +44-207-147 2801).

5.2 For any further information regarding the form collection please do not hesitate to contact your Key Account Manager at Member Service & Admission via telephone +49-69-211-1 17 00 or via email clearing@deutsche-boerse.com.

2. Extracts of sections of the Finance Act 1986 as amended by Finance Act of 2007

Stamp duty Sales to Intermediaries	80A	(1) Stamp Duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or to the person's nominee if – (a) the person is a member of a regulated market on which stock of that kind is regularly traded; and (b) the person is an intermediary and is recognised as such by the market in accordance with arrangements approved by the Commissioners.
		(1A) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is a member of a multilateral trading facility, or a recognised foreign exchange, on which stock of that kind is regularly traded; (b) the person is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the Commissioners; and (c) the sale is effected on the facility or exchange.
		(1B) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is an intermediary who is approved for the purposes of this section by the Commissioners; and (b) stock of that kind is regularly traded on a regulated market.
		(1C) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is an intermediary who is approved for the purposes of this section by the Commissioners; (b) stock of that kind is regularly traded on a multilateral trading facility or a recognised foreign exchange; and (c) the sale is effected on the facility or exchange.
		(2) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if – (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange; (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and (d) stock of that kind is regularly traded on a regulated market.

		(2A) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange; (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and (d) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that exchange; and in paragraph (d) "relevant qualifying exchange" means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.
		(2B) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is an options intermediary who is approved for the purposes of this section by the Commissioners; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and (c) stock of that kind is regularly traded on a regulated market.
		(2C) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if— (a) the person is an options intermediary who is approved for the purposes of this section by the Commissioners; (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and (c) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that exchange; and in paragraph (*c*) "relevant qualifying exchange" means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.

		(4) For the purposes of this section – (a) an intermediary is a person who carries on a bona fide business of dealing in stock and does not carry on an excluded business; and (b) an options intermediary is a person who carries on a bona fide business of dealing in quoted or listed options to buy or sell stock and does not carry on an excluded business.
		(5) The excluded businesses are the following – (a) any business which consists wholly or mainly in the making or managing of investments; (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business; (c) any business which consists in insurance business; (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme; (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.
		(6) A sale is effected on a facility or an exchange for the purposes of this section if (and only if) – (a) it is subject to the rules of the facility or exchange; and (b) it is reported to the facility or exchange in accordance with the rules of the facility or exchange.
		(6A) The Commissioners may approve a person for the purposes of this section only if the person is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account), whether or not the person is authorised under the Directive.
		(7) An instrument on which stamp duty is not chargeable by virtue only of this section shall not be deemed to be duly stamped unless it has been stamped with a stamp denoting that it is not chargeable with any duty; and notwithstanding anything in section 122(1) of the Stamp Duty Act 1891, the stamp may be a stamp of such kind as the Commissioners may prescribe

Intermediaries: Supplementary	80B	(1)	For the purposes of section 80A above the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988.
		(2)	In section 80A above and this section – "collective investment scheme" has the meaning given in section 235 of the Financial Services and Markets Act 2000; "the Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time; "EEA State", in relation to any time, means a State which at that time is a member State or any other State which at that time is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993 (as modified or supplemented from time to time); "insurance business" means business which consists of the effecting or carrying out of contracts of insurance and, for the purposes of this definition, "contract of insurance" has the meaning given in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; "the operator", in relation to a collective investment scheme, shall be construed in accordance with section 237(2) if the Financial Services and Markets Act 2000; "quoted or listed options" means options which are quoted on or listed by an EEA exchange or a recognised foreign options exchange; "stock" includes any marketable security; "trustee", in relation to a collective investment scheme, means a trustee or a depositary within the meaning given in section 237(2) of the Financial Services and Markets Act 2000.
		(2A)	Each of the following expressions— "multilateral trading facility", and "regulated market", has the same meaning in section 80A above as it has for the purposes of the Directive.
		(3)	In section 80A above "recognised foreign exchange" means a market which – (a) is not in an EEA State; and (b) is specified in regulations made by the Treasury under this subsection.
		(4)	In section 80A above and this section "recognised foreign exchange options exchange" means a market which – (c) is not in an EEA State; and (d) is specified in regulations made by the Treasury under this subsection.

		(5) In section 80A above and this section "the exercise of a relevant option" – (e) the exercise by the options intermediary concerned of an option to buy stock; or (f) the exercise of an option binding the options intermediary concerned to buy stock. (5A) The Treasury may by regulations amend section 80A above and this section (as they have effect for the time being) in order to extend the exemption from duty under that section.
		(6) The Treasury may by regulations provide that section 80A above shall not have effect in relation to instruments executed in pursuance of kinds of agreement specified in the regulations.
		(7) The Treasury may by regulations provide that if – (g) an instrument falls within subsection (1) to (2C) of section 80A above; and (h) stamp duty would be chargeable on the instrument apart from that section, stamp duty shall be chargeable on the instrument at a rate, specified in the regulations, which shall not exceed 0.1% of the consideration for the sale.
		(8) The Treasury may by regulations change the meaning of "intermediary" or "options intermediary" for the purposes of section 80A above by amending subsection (4) or (5) of that section (as it has effect for the time being).
		(9) The power to make regulations under subsections (3) to (8) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons."

"Section 87: Exceptions for Intermediaries		Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if- B is a member of a regulated market on which securities of that kind are regularly traded; and B is an intermediary and is recognised as such by the market in accordance with arrangements approved by the Commissioners for Her Majesty's Revenue and Customs (the "Commissioners"). Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if— B is a member of a multilateral trading facility, or a recognised foreign exchange, on which securities of that kind are regularly traded; B is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the Commissioners; and the agreement is effected on the facility or exchange. Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind on sale to B or B's nominee if— B is an intermediary who is approved for the purposes of this section by the Commissioners; and securities of that kind are regularly traded on a regulated market.

		Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind on sale to B or B's nominee if— B is an intermediary who is approved for the purposes of this section by the Commissioners; securities of that kind are regularly traded on a multilateral trading facility or a recognised foreign exchange; and the agreement is effected on the facility or exchange.
		Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if – B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange; B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and securities of that kind are regularly traded on a regulated market.
		Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if— B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange; options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange; B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange; and in paragraph (d) "relevant qualifying exchange" means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange. Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if— B is an options intermediary who is approved for the purposes of this section by the Commissioners; options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and securities of that kind are regularly traded on a regulated market. Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if— B is an options intermediary who is approved for the purposes of this section by the Commissioners; options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange

		pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange; and in paragraph (*c*) "relevant qualifying exchange" means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.
		For the purposes of this section – an intermediary is a person who carries on a bona fide business of dealing in chargeable securities and does not carry on an excluded business; and an options intermediary is a person who carries on a bona fide business of dealing in quoted or listed options to buy or sell chargeable securities and does not carry on an excluded business.
		The excluded businesses are the following – any business which consists wholly or mainly in the making or managing of investments; any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business; any business which consists in insurance business; any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme; any business which consists in operating or acting as a trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.
		An agreement is effected on a facility or an exchange for the purposes of this section if (and only if) – it is subject to the rules of the facility or exchange; and it is reported to the facility or exchange in accordance with the rules of the facility or exchange. The Commissioners may approve a person for the purposes of this section only if the person is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account), whether or not the person is authorised under the Directive.
Intermediaries: supplementary		For the purposes of section 88A above the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988.
		In section 88A above and this section: "collective investment scheme" has the meaning given in section 235 of the Financial Services and Markets Act 2000; "the Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time; "EEA State", in relation to any time, means a State which at that time is a member State or any other State which at that time is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993 (as modified

		or supplemented from time to time); "insurance business" means business which consists of the effecting or carrying out of contracts of insurance and, for the purposes of this definition, "contract of insurance" has the meaning given in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; "the operator", in relation to a collective investment scheme, shall be construed in accordance with section 237(2) if the Financial Services and Markets Act 2000; "quoted or listed options" means options which are quoted on or listed by an EEA exchange or a recognised foreign options exchange; "recognised foreign exchange" and "recognised foreign options exchange" have the meanings given, respectively, by subsections (3) and (4) of section 80B above; "trustee", in relation to a collective investment scheme, means a trustee or a depositary within the meaning given in section 237(2) of the Financial Services and Markets Act 2000. Each of the following expressions— "multilateral trading facility", and "regulated market", has the same meaning in section 80A above as it has for the purposes of the Directive.
		In section 88A above "the exercise of a relevant option" means – the exercise by B of an option to buy securities; or the exercise of an option binding B to buy securities. The Treasury may by regulations amend section 88A above and this section (as they have effect for the time being) in order to extend the exemption from tax under that section.
		The Treasury may by regulations provide that section 88A above shall not have effect in relation to kinds of agreement specified in the regulations.
		The Treasury may by regulations provide that if - an agreement falls within any of subsections (1) to (2C) of section 88A above; and section 87 above would, apart from section 88A, apply to the agreement, section 87 shall apply to the agreement but with the substitution of a rate of tax not exceeding 0.1 per cent. for the rate specified in subsection (6) of that section.
		The Treasury may by regulations change the meaning of "intermediary" or "options intermediary" for the purposes of section 88A above by amending subsection (3) or (5) of that section (as it has effect for the time being).
		The power to make regulations under subsections (3A) to (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons."

3. Parliamentary Answer, 21 March 1997

Finance Act 1997

Mr. Matthew Banks: To ask the Chancellor of the Exchequer if he will make a statement about the operation of sections 97 and 102 of the Finance Act 1997.

Mrs. Angela Knight: The definition of "intermediary" for the purposes of the new relief aims broadly to distinguish between dealers and end-investors, on the lines recommended by the Securities and Investments Board in its report to the Chancellor in July 1996.

Sections 97 and 102 of the Finance Act 1997 define "intermediary" as a person who carries on a bona fide business of dealing in stock or securities, and who does not also carry on a business which the sections describe as an "excluded business". It will depend on the facts of the particular case whether a dealer is also carrying on an "excluded business".

One category of "excluded business" is a business which consists wholly or mainly in making or managing investments. Thus if the dealing firm also carries on a separate business of making and managing investments in exchange-traded chargeable securities or stock on its own behalf, that would be an excluded business and the dealer would not qualify as an intermediary. But if the dealer is holding such investments merely as an incidental part of a dealing activity taxable under case 1 of schedule D, and not as a separate business, that would not disqualify the firm from being an intermediary. For example, if the dealer buys and holds shares merely to hedge derivative contracts which it has made, that would not be regarded as a business of making investments for the purpose of the excluded business test.

Similarly, the Inland Revenue would not regard a dealer as disqualified merely because the firm also makes and manages investments for clients, if the investments are not beneficially owned by the dealer. By contrast, if the dealer purchases investments for clients and the clients hold something short of beneficial ownership in those investments – as would happen, for example, under the American arrangements known as prime brokerage - that would be regarded as a business of making or managing investments for the purpose of the excluded business test.

A firm may also be excluded from relief it is carries on a business which consists wholly or mainly of providing services to persons with which the firm is connected, such as members of the same group of companies. For example, if the dealer carries on a business of taking positions in equities as a service to connected persons who would not themselves qualify for relief as intermediaries, the sections would exclude the firm from relief. The Inland Revenue would not however regard the dealer as disqualified if business with connected persons is merely an incidental part of the firm's business with third parties, or if the services the firm provides are not related to handling securities within the scope of stamp duty and stamp duty reserve tax - such as research, secretarial or cleaning services. If the dealing firm buys chargeable securities merely in order to hedge the group's exposure as a result of derivative contracts undertaken with third parties by other members of the group, that would not be regarded as an excluded business.

The sections include a power for the Treasury to make regulations to alter the definition of intermediary, if that proves necessary. That will give flexibility to respond to market developments, or to deal with any particular practical problems which emerge as the new regime is introduced.

I understand that concern has also been expressed about the way in which relief may be withdrawn if the Inland Revenue concludes that a firm which has been recognised as an intermediary has in fact been carrying on an excluded business. The treatment of a particular case will depend on the precise facts. For example if the intermediary had been recognised on the basis of incorrect or misleading information which it had provided about the nature of its business, any relief already given would be withdrawn. Similarly, if the firm had knowingly started to carry on an excluded business after being recognised as intermediary, it would generally be appropriate to withdraw relief from the time the excluded business started. On the other hand, where the business was extended inadvertently into an excluded area, or there were genuine doubts about whether a particular part of the business came into the excluded category, the Inland Revenue's practice would be to give the intermediary an opportunity to modify or reorganise the business so as to retain intermediary status; and if a decision was taken to discontinue the relief, past transactions would not be affected. If firms have doubts about whether particular types of business are excluded business, they may discuss the issues with the Inland Revenue. The Inland Revenue will consider issuing guidance on other aspects of the new regime if it proves necessary.

In order to qualify for the intermediaries' relief, intermediaries will have to be recognised as such by the exchange of which they are members, under arrangements approved by the Inland Revenue.

Attachment 4 to Eurex Clearing Circular 038/09

4. Options Intermediary Application Form

To: Eurex Deutschland / Eurex Zürich

Name of Member _____

Member ID _____

We hereby apply for recognition as an Options Intermediary and confirm that we:

(a) carry on a bona fide business of dealing in Eurex equity options; and

(b) do not carry on an excluded business, as defined in the Finance Act 1986.

Signed _____
(authorised signatory)

Name _____

Position _____

Date _____

Number of Euroclear UK & Ireland Ltd. Code for Settlement Purposes: _____

Name of GCM _____
(if applicable)

Contact at GCM _____

Signed: GCM _____

A member with a UK presence should complete **both** the following addresses –

UK Address _____

_____

Telephone No. _____

Registered Address _____
(if different from the above)

_____

_____

Telephone No. _____

.....

Please note: A member without a UK presence *must* appoint either a UK affiliate or its General Clearing Member to act as its agent for the purpose of providing access to records of trading activity to HM Revenue & Customs when required. Accordingly, a member without a UK presence must fill in the following section for the affiliate/Clearing Member:

Name _____

Address _____

_____

_____

Contact _____

Telephone No. _____

Facsimile No. _____

E-mail Address _____

.....

Name of Member _____

hereby nominates the above named affiliate/Clearing Member (delete as applicable) as its agent for the purpose of providing access to records of trading activity to HM Revenue & Customs, as required to qualify for status of options intermediary.

Signed .....
(authorised signatory)

Name .....

.....

Name of affiliate/GCM _____

hereby agree to act as agent for

Name of Member _____

the purpose of providing access to records of trading activity to HM Revenue & Customs, as required under stamp duty legislation.

Signed .....
(authorised signatory)

Name .....