clear to trade

eurex clearing *circular 058/11*

Date: July 15, 2011
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

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

Change of the Conditions for Utilization of the OTC Trade Entry Facilities of Eurex Clearing AG effective August 1, 2011 following U.S. Legislation

Related Eurex Clearing circular: 015/10

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Content may be most important for:

➲ All departments

Attachments:
Updated sections of the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions for Participation)

Summary:

On July 15, 2011 the Executive Board of Eurex Clearing AG decided to amend the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions for Participation) as shown in the attachment with effect from **August 1, 2011**.

Change of the Conditions for Utilization of the OTC Trade Entry Facilities of Eurex Clearing AG effective August 1, 2011 following U.S. Legislation

On July 31, 2009, the Commodity Futures Trading Commission (CFTC) issued an order that permitted Eurex Clearing AG to operate a Multilateral Clearing Organization (MCO) in the U.S. On the basis of this order and since April 1, 2010, Eurex Clearing has offered its OTC Trade Entry Facilities for Eurex products also to participants legally organized or resident in the U.S.

Section 740 of the Dodd-Frank Act, which will come into force on July 16, 2011, repeals Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) on the basis of which the status of MCO had been established. As a result, the current MCO status will be cancelled and the legal basis for Eurex Clearing's offering of OTC Trade Entry Facilities for U.S. participants will cease.

Accordingly, on July 15, 2011, the Executive Board of Eurex Clearing AG decided to amend the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions for Participation) as shown in the attachment with effect from August 1, 2011.

July 15, 2011

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CHANGES ARE MARKED AS FOLLOWS:

ADDITIONS ARE UNDERLINED

DELETIONS ARE STRUCK THROUGH

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[...]

6. General Conditions of Utilization

[...]

~~6.3 Regarding the inclusion of OTC transactions listed in Annex B into clearing, the following additional requirements pursuant to Chapter 6.3 shall apply, if one or more Participants and/or one or more Customers to such transaction are companies legally organized or resident in the U.S. ("U.S. Participants" or "U.S. Customers").~~

~~6.3.1 The U.S. Commodity Futures Trading Commission ("CFTC") issued an Order entitled "Determination of Appropriateness of the Supervision by the *Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)*, in conjunction with *Deutsche Bundesbank* (Bundesbank), both of the Federal Republic of Germany, with Respect to the Clearing Activities of Eurex Clearing AG," 74 Federal Register 39303 (August 6, 2009) ("MCO Order"). The MCO Order is available under http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/e9-18854a.pdf. Provided that one or more Participants and/or one or more Customers to such OTC transaction are U.S. Participants or U.S. Customers, Eurex Clearing AG shall - pursuant to the MCO Order and this General Conditions for Participation, especially Annex B - only accept, and a Participant or a U.S. Participant may only submit for clearing OTC transactions of U.S. Participants or U.S. Customers that meet the special requirements of this section 6.3.~~

~~6.3.2 OTC transactions pursuant to section 6.3.1 and Annex B shall in addition to the conditions determined within this General Conditions for Participation fulfill the following criteria:~~

~~a) Each of the parties to an OTC transaction which is subject to the CFTC's MCO Order in which at least one of the parties is a U.S. Participant or a U.S.~~

~~Customer must be an Eligible Contract Participant as that term is currently defined in Section 1a(12) of the U.S. Commodity Exchange Act;~~

~~b) The conditions of the OTC transaction subject to the CFTC's MCO Order must be subject to individual negotiation between the parties;~~

~~c) The OTC transaction subject to the CFTC's MCO Order must be entered into on a principal-to-principal basis ("*Eigengeschäft*");~~

~~d) The parties must enter into the OTC transactions bi-laterally and not through a facility or system that permits the interaction of multiple bids or offers;~~

~~e) Each U.S. Participant and each Participant which submits for clearing OTC transactions of U.S. Customers respectively, must provide to Eurex Clearing AG any information that Eurex Clearing AG requests with respect to a cleared OTC transaction subject to the CFTC's MCO Order, or, as applicable, any transaction or transactions associated with the cleared OTC transaction; and must have in place arrangements to obtain such information from the party or parties to the OTC transaction for which the Participant or the U.S. Participant submits such transaction for clearing and to transfer such information to Eurex Clearing AG;~~

~~f) Eurex Clearing AG shall be authorized - within the provisions it is subject to - to transfer data and information received from a U.S. Participant or a Participant, which submits for clearing OTC transactions of U.S. Customers, regarding such Participant/U.S. Participant or his U.S. Customer as well as data and information which are in the possession of Eurex Clearing AG and which are related to the Participant or the U.S. Participant or its U.S. Customers 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;~~

~~g) A U.S. Participant or a Participant clearing OTC transactions of U.S. Customers under these General Conditions for Participation must comply with CFTC Rule 30.7 "Foreign Futures and Foreign Options Secured Amount Requirement" in respect of the money, securities or property of its respective U.S. Customer that secures or guarantees the obligations arising from such cleared transactions;~~

~~h) A U.S. Participant or a Participant which submits for clearing OTC transactions of U.S. Customers respectively, must as required by U.S. regulation be a registered futures commission merchant under the Commodity Exchange Act or be recognized under an Order of the Commodity Futures Trading Commission under Rule 30.10 as being exempt from such registration.~~

~~i) U.S. Participants which clear OTC transactions on their own behalf or on behalf of Customers or Participants which clear OTC transactions on behalf of U.S. Customers shall only enter transactions into the Eurex Clearing System using the corresponding OTC Trade Entry Facility for clearing which are explicitly listed in Annex B to this General Conditions for Participation.~~

6.4~~3~~ Participants are permitted to utilize the OTC Trade Entry Facilities at Eurex Clearing AG for futures and options contracts which are admitted to the OTC Trade Entry Facilities at the times pursuant to Annex A of these General Conditions for Participation (OTC Period of Use). Participants are obligated to comply with the position limits by applying subsection 4.7 of the Exchange Rules for Eurex Deutschland and Eurex Zürich. Participants shall be notified by Eurex Clearing AG in due time of any exceptions to the provisions in sentence 1.

6.~~5~~4 Participants must be available by telephone or fax at any time during the OTC Period of Use. The OTC Period of Use in the respective OTC Trade Entry Facilities shall correspond to the underlying products.

6.~~6~~5 Eurex Clearing AG is entitled to demand from all national and international Participants, at any time, information and evidence as far as necessary for the examination of the obligations Participants are subject to according to these General Conditions for Participation. Furthermore, all Participants are obligated to grant the right to Eurex Clearing AG or its representatives to enter their premises in order to verify, at any time, the compliance with the provisions of such General Conditions for Participation.

6.~~7~~6 The entry of trades on behalf of customers ~~or U.S. Customers~~ in the OTC Trade Entry Facilities named under Number 1 shall also be permitted in form of an automated transfer of the ~~client's~~ customer's trades to the Eurex Clearing system if such procedure has previously been announced to Eurex Clearing AG in writing. The announcement of the ~~participant~~ Participant shall contain details of the codes used for access to the OTC Trade Entry Facilities. Such codes shall exclusively be used for the automated transfer of OTC trades.

Furthermore, Participants ~~or U.S. Participants~~ shall add to the data of the automatically transferred information regarding client's trades for purposes of verifying the beneficial owner.

By entering into according agreements with its ~~clients~~customers, the ~~participant~~ Participant shall guarantee compliance with these General Terms and Conditions and the fulfillment of all obligations resulting therefrom.

~~In case of OTC transactions as specified in Annex B of these General Conditions for Participation, which should be cleared on behalf of the U.S. Participant's customers or the Participant's U.S. Customers, the additional requirements pursuant to subsection 6.3 shall apply.~~

In case the ~~U.S. P~~Participant or its customer~~, the Participant or its U.S. Customer~~ does not comply with aforementioned provisions, Eurex Clearing AG may with immediate effect exclude such ~~U.S. Participant or~~ Participant from using a code for automatic transfer of OTC trades for a certain or an indefinite period of time.

[…]

~~Annex B to the General Conditions for Participation:~~

~~OTC transactions eligible for Clearing to Participants legally organized or resident in the US ("U.S. Participants") and to Participants which clear OTC transactions on behalf of U.S. Customers~~

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~							
	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~Euro-Schatz Futures (FGBS)~~	~~X~~	~~X~~					
~~Euro-Bobl Futures (FGBM)~~	~~X~~	~~X~~					
~~Euro-Bund Futures (FGBL)~~	~~X~~	~~X~~					
~~Euro-Buxl® Futures (FGBX)~~	~~X~~						
~~Short term Euro-BTP Futures~~	~~X~~						
~~Euro-BTP Futures (FBTP)~~	~~X~~						
~~CONF Futures (CONF)~~	~~X~~						
~~Options on Euro-Schatz Futures (OGBS)~~	~~X~~	~~X~~					~~X~~

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~

	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~Options on Euro-Bobl Futures (OGBM)~~	~~X~~	~~X~~					~~X~~
~~Options on Euro-Bund Futures (OGBL)~~	~~X~~	~~X~~					~~X~~
~~One-Month EONIA Futures (FEO1)~~	~~X~~						
~~Three-Month EURIBOR Futures (FEU3)~~	~~X~~	~~X~~					
~~Options on Three-Month EURIBOR Futures (OEU3)~~	~~X~~	~~X~~					
~~One-Year Mid-Curve Options Contracts on Three-Month EURIBOR Futures~~	~~X~~						
~~EURO STOXX 50® Index Futures (FESX)~~	~~X~~					~~X~~	
~~EURO STOXX® Select Dividend 30 Index Futures (FEDV)~~	~~X~~					~~X~~	
~~STOXX® Europe 50 Index Futures (FSTX)~~	~~X~~					~~X~~	
~~EURO STOXX® Banks Futures (FESB)~~	~~X~~					~~X~~	
~~STOXX® Europe 600 Banks Futures (FSTB)~~	~~X~~					~~X~~	
~~STOXX® Europe~~	~~X~~					~~X~~	

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~

	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~600 Industrial Goods & Services Futures (FSTG)~~							
~~STOXX® Europe 600 Insurance Futures (FSTI)~~	~~X~~					~~X~~	
~~STOXX® Europe 600 MediaFutures (FSTM)~~	~~X~~					~~X~~	
~~STOXX® Europe 600 Personal & Household Goods Futures (FSTZ)~~	~~X~~					~~X~~	
~~STOXX® Europe 600 Travel & Leisure Futures (FSTV)~~	~~X~~					~~X~~	
~~STOXX® Europe 600 Utilities Futures (FSTU)~~	~~X~~					~~X~~	
~~Dow Jones Global Titans 50SM SM Index Futures (FGTI)~~	~~X~~					~~X~~	
~~DAX® Futures (FDAX®)~~	~~X~~					~~X~~	
~~MDAX® Futures (F2MX)~~	~~X~~					~~X~~	
~~TecDAX® Futures (FTDX)~~	~~X~~					~~X~~	
~~Swiss Market Index Midcap SMIM® Futures (FSMM)~~	~~X~~					~~X~~	
~~SLI Swiss Leader Index® Futures~~	~~X~~					~~X~~	

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~

	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~(FSLI)~~							
~~Euro-Inflation Futures (HICP)~~	~~X~~					~~X~~	
~~European Processing Potato Futures (FEPP)~~							
~~London Potato Futures (FLPI)~~							
~~Piglet Futures (FPIG)~~							
~~Hog Futures (FHOG)~~							
~~Gold Futures (FGFX)~~	~~X~~					~~X~~	
~~Gold Options (OGFX)~~	~~X~~	~~X~~					~~X~~
~~Silver Futures (FSFX)~~	~~X~~					~~X~~	
~~Silver Options (OSFX)~~	~~X~~	~~X~~					~~X~~
~~EUA Futures (F2PE)~~							
~~CER Futures (FCER)~~							
~~Options on EUA Futures (O2PE)~~							
~~Hurricane Futures Florida 30bn 2010 (HF30)~~	~~X~~						
~~Hurricane Futures Florida 40bn 2010 (HF40)~~	~~X~~						
~~Hurricane Futures Florida 50bn 2010 (HF50)~~	~~X~~						
~~Hurricane Futures~~	~~X~~						

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~

	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~Gulf 10bn 2010 (HG10)~~							
~~Hurricane Futures Gulf 20bn 2010 (HG20)~~	~~X~~						
~~Hurricane Futures USA 10bn 2010 (HU10)~~	~~X~~						
~~Hurricane Futures USA 20bn 2010 (HU20)~~	~~X~~						
~~Hurricane Futures USA 30bn 2010 (HU30)~~	~~X~~						
~~Hurricane Futures USA 40bn 2010 (HU40)~~	~~X~~						
~~Hurricane Futures USA 50bn 2010 (HU50)~~	~~X~~						
~~Hurricane Futures Florida 30bn 2011 (HF31)~~	~~X~~						
~~Hurricane Futures Florida 40bn 2011 (HF41)~~	~~X~~						
~~Hurricane Futures Florida 50bn 2011 (HF51)~~	~~X~~						
~~Hurricane Futures Gulf 10bn 2011 (HG11)~~	~~X~~						
~~Hurricane Futures Gulf 20bn 2011 (HG21)~~	~~X~~						
~~Hurricane Futures~~	~~X~~						

~~The Eurex products shown in the following table, which are marked with "x", are eligible for clearing to U.S. Participants and to Participants which clear OTC transactions on behalf of U.S. Customers:~~

	~~Block Trade*~~	~~Vola Trade*~~	~~EFP/ EFPI*~~	~~EFS*~~	~~MTR*~~	~~Flexible Futures*~~	~~Flexible Options*~~
~~USA 10bn 2011 (HU11)~~							
~~Hurricane Futures USA 20bn 2011 (HU21)~~	~~X~~						
~~Hurricane Futures USA 30bn 2011 (HU31)~~	~~X~~						
~~Hurricane Futures USA 40bn 2011 (HU41)~~	~~X~~						
~~Hurricane Futures USA 50bn 2011 (HU51)~~	~~X~~						
~~Phelix Futures~~							
~~IPD UK Annual All Property Index Futures (PUKA)~~	~~X~~						

~~* Block Trade, Vola Trade, EFP/EFPI, EFS, MTR, Flexible Futures and Flexible Options have the meaning as defined in this General Conditions for Participation, particularly within Section 2 of General Conditions for Participation~~