

The Honorable Collin C. Peterson
Chairman
U.S. House of Representatives Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

12 February 2009

**Additional responses for the record - House of Representatives Committee on Agriculture
Hearing of February 4, 2009**

Dear Chairman Peterson:

During the hearing, "To Review Derivatives Legislation," held by the U.S. House of Representatives Committee on Agriculture on February 4, 2009, I testified on behalf of Eurex Deutschland ("Eurex") and Eurex Clearing AG ("Eurex Clearing") with respect to Section 3 of the proposed "Derivatives Markets Transparency and Accountability Act of 2009" that the information collection systems of other countries may differ on a Foreign Board of Trade from that of U.S. contract markets. Congressman Boswell, Chairman of the Subcommittee on General Farm Commodities and Risk Management, asked me to explain the reporting requirements that apply and whether there were any prohibitions in providing that information to U.S. regulatory authorities. I offered to provide a written response with respect to these questions. In this regard, it should be noted that my responses are limited to the rules which apply to trading on Eurex and the laws of Germany. I have not addressed the rules of, or laws applicable to, other Deutsche Börse Group exchanges.

Please accept the following as responses for the record.

Reporting requirements on Eurex

Eurex lists for trading futures contracts, options on futures and equity options, including contracts on interest rates, equity indices, currencies and other financial instruments. Eurex recently listed for trading cash-settled contracts on gold, but we otherwise do not list for trading contracts on physical commodities. Accordingly, our market surveillance and the associated reporting systems are geared toward the market characteristics of financial and cash-settled derivatives.



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In the first instance, Eurex and Eurex Clearing have information with respect to their members' positions at the trading member and clearing member levels, respectively. As at U.S. futures exchanges, they do not have information with respect to the customer positions of their members routinely available to them.

A reporting requirement that may ultimately reach customer-level positions does apply to Eurex members. This reporting requirement is tied to the market surveillance program and Eurex's imposition of position limits. The responsibility for market supervision at Eurex is divided between the exchange and an independent regulatory entity established under German law, the Trading Surveillance Office or "TSO." Exchange management determines which contracts will be subject to position limits and sets the position limit levels for those contracts. The TSO has authority to conduct both real time and post-trade market surveillance on Eurex to detect aberrational trades and for compliance with Eurex's rules.

Eurex currently imposes position limits on, among other contracts, the two-, five-, and ten-year German government bond futures contracts. Unlike U.S. speculative position limits which apply only to speculators, Eurex's position limits apply to all traders. The position limit level is adjusted for each contract expiration and is set by exchange management at approximately 25%-30% of the cheapest to deliver government security deliverable on that contract.

TSO monitors compliance with these limits for Eurex. During the week prior to contract expiration, TSO checks members' positions in real time by examining position levels to determine if any exceed the limits. This is done separately for the member's proprietary account from its customer accounts. If the member's aggregate customer account is over the limit, TSO asks the member to provide evidence that no single customer exceeds the limit. TSO can also obtain reports on all or some of the customers carried in a member's customer account. TSO will continue to request reports and other information so long as the position exceeds or could exceed the position limit. Reports are received by TSO on the day following contract execution (T+1).

In addition to the reports that are provided to the TSO, the German Federal Financial Supervisory Authority ("BaFin") administers the German Securities Act. Under that law, each trading member must provide information with respect to every trade on an individual customer basis for German customers and in aggregate for non-German customers. Initially, customer identities are masked in routine transaction information reporting provided to BaFin. But each party in the chain of ownership must know, and upon request disclose to BaFin, the true name and identity of its customer.

In addition to the above provisions, Eurex Clearing has the authority, through the operation of its rules, to provide information concerning its clearing members' positions as requested by foreign regulatory authorities.

Information sharing

Congressman Boswell also asked about whether there were statutory prohibitions on sharing information. Germany does have laws limiting the conditions under which certain types of information—such as the identity of bank customers—can be shared. It should be noted however,

that BaFin has entered into a number of information sharing agreements with international regulatory authorities.

Pursuant to the German Securities Trading Act, BaFin is empowered to cooperate with competent authorities of other countries in connection with the supervision of securities and derivatives markets and trading activity thereon, including sharing non-public market surveillance information. BaFin and its predecessor agency have entered into memoranda of understanding ("MOUs") as well as various other information-sharing arrangements with the U.S. Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission. In addition to these bi-lateral agreements with U.S. financial regulatory authorities, BaFin has entered into bi-lateral information sharing with financial regulatory authorities in approximately 17 other nations. BaFin is also a member of the International Organization of Securities Commissions ("IOSCO"), which promotes cooperation among more than 150 regulators of stock exchanges all over the world. In this regard, BaFin is a signatory to the May 2002 IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, which is an agreement to share information relating to enforcement investigations on an equal basis with all other signatories.

In addition, Eurex's TSO is authorized under the German Exchange Act to obtain information directly from and share information directly with similar trading surveillance offices of other exchanges or regulators outside of Germany, and, as noted above, Eurex Clearing may share information about its members with domestic and foreign regulators.

Relevance to Section 3 of the Draft DMTAA

As I noted in my testimony, Section 3 of the draft Derivatives Markets and Accountability Act of 2009 ("DMTAA") would require that if a foreign board of trade makes available to participants located in the United States direct access to contracts that settle against any price of one or more contracts listed for trading on a registered entity, it must among other conditions, adopt position limits (including related hedge exemptions) adopted by the U.S. registered entity and provide information to the CFTC regarding large trader positions that is "comparable" to the large trader information collected by the Commission.

As described above, the position limits and reporting regime on Eurex accomplish the same objectives as the CFTC's, but in a somewhat different manner. We believe that in light of the differences between the surveillance and reporting systems of various jurisdictions, such as those described above, additional flexibility should be added to Section 3 of the DMTAA. This could be accomplished by permitting the CFTC to make an alternative finding that, given the characteristics of the contracts and the system for information-sharing in effect at the foreign board of trade, the CFTC has a reasonable belief it will have the necessary information to conduct market surveillance on the linked contracts. The Committee could, alternatively, provide guidance with respect to the meaning of "comparable" by recognizing that the tools that a foreign board of trade uses to conduct market surveillance which achieve the same end as the Commission's position limit and reporting rules but which use a different form, should nevertheless be considered to be "comparable."

Again, I would like to thank the Committee for extending to Eurex and Eurex Clearing the opportunity to testify on these important issues.

Yours faithfully,

Thomas Book
Member of Executive Board

Heike Eckert
Executive Vice President