

ALBERTA SECURITIES COMMISSION

**EXEMPTION ORDER
FOREIGN DERIVATIVES EXCHANGE**

Citation: Re Eurex Deutschland, 2017 ABASC 151

Date: 20170915

Eurex Deutschland and Eurex Frankfurt AG

Background

1. Eurex Deutschland (**Eurex**) and Eurex Frankfurt AG (**EFAG**, and together with Eurex, the **Applicants**) seek an order of the Alberta Securities Commission (the **Commission**) under:
 - (a) section 213 of the *Securities Act* (Alberta) (the **Act**) exempting the Applicants from the exchange recognition requirement of section 62(1) of the Act;
 - (b) section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) exempting the Applicants from the requirements of NI 21-101; and
 - (c) section 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) exempting the Applicants from the requirements of Part 4 of NI 23-103 where an exchange contract is also a security as defined in the Act.

Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

3. The Applicants represent as follows:
 - (a) Eurex is a German public law entity and self-regulatory organization governed by the *German Stock Exchange Act* (**GSEA**).
 - (b) Eurex is an electronic futures and options exchange operated by EFAG, a stock corporation (*Aktiengesellschaft*) incorporated under German law.
 - (c) EFAG is a wholly-owned subsidiary of Deutsche Börse AG, a publicly traded company listed on the Frankfurt Stock Exchange.
 - (d) The Applicants do not maintain an office or place of business in Alberta.

- (e) Eurex makes exchange contracts available for trading on an electronic trading platform owned, operated, leased, licensed or otherwise made available by EFAG in accordance with rules promulgated by Eurex (the **Exchange Platform**).
- (f) Eurex offers direct access to the Exchange Platform to participants (**Exchange Members**) whereby an Exchange Member has an explicit grant of authority to enter trades directly into the Exchange Platform (**Direct Access**). Eurex intends to offer Direct Access to participants resident in Alberta that apply to and are approved by Eurex as Exchange Members and agree to comply with its rules (**Alberta Participants**).
- (g) Eurex is responsible for regulation, market surveillance and exchange operations, while EFAG is responsible for providing Eurex, upon request by Eurex, with the financial resources, staff and facilities necessary for the operation of the exchange. EFAG is responsible for all liabilities arising from its functions as a service provider.
- (h) Eurex is authorized by the Exchange Supervisory Authority of the State of Hesse, Germany (the **ESA**) as an exchange under the GSEA. The ESA reviews, assesses and enforces Eurex's adherence to regulatory requirements applicable to authorized exchanges in Germany.
- (i) Each exchange subject to the ESA's supervision, including Eurex, is required to house at the exchange a Trading Surveillance Office (**TSO**), which is an independent body responsible for monitoring trading on Eurex and the settlement of exchange transactions. The TSO conducts investigations where circumstances indicate a violation of rules of the exchange. The TSO reports directly to the ESA.
- (j) EFAG is authorized by the ESA to operate Eurex as an exchange. The provision by EFAG of the financial resources, staff and facilities necessary for the operation of Eurex is monitored by the ESA.
- (k) The ESA's regulation of the Applicants addresses similar public interest concerns in respect of the execution and clearing of exchange contracts to those of interest to the Commission in the exercise of its jurisdiction under the Act.
- (l) Germany has a two-tiered surveillance structure whereby the TSO conducts trade monitoring for insider trading, market manipulation, and the codes of conduct of German exchanges and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, **BaFin**) exercises federal-level responsibilities for the oversight of insider trading and market manipulation.
- (m) Eurex is registered as a foreign board of trade with the United States Commodity Futures Trading Commission.
- (n) Eurex Clearing AG (**Eurex Clearing**) is a wholly-owned subsidiary of EFAG.

- (o) Eurex Clearing clears, settles and guarantees the performance of all transactions to its members in exchange contracts executed on the Exchange Platform.
- (p) Eurex Clearing is authorized by BaFin as a central counterparty and is subject to comprehensive supervision, regulation and oversight by BaFin. Eurex Clearing is in good standing with BaFin as a central counterparty.
- (q) Eurex Clearing is a qualifying central counterparty or QCCP under the European Union Capital Requirements Directive.
- (r) Eurex Clearing complies with requirements applicable to German clearing agencies implementing the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**) *Principles for financial market infrastructures*, as amended or superseded from time to time.
- (s) The Applicants adhere to IOSCO's *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products*, as amended or superseded from time to time, and IOSCO's *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, as amended or superseded from time to time.
- (t) BaFin is a signatory to:
 - (i) IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*;
 - (ii) the Futures Industry Association's *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations which endorses the International Information Sharing Memorandum of Understanding and Agreement* (the **Information-Sharing MOU**); and
 - (iii) the Tokyo *Communiqué on Supervision of Commodity Futures Markets*.
- (u) EFAG has executed the Information-Sharing MOU.
- (v) Eurex is able to exchange market surveillance information directly with the Investment Industry Regulatory Organization of Canada (IIROC) through the TSO.

Undertakings

4. The Applicants undertake:

- (a) to maintain Eurex's authorization with the ESA as an exchange in good standing in all material respects;

- (b) to maintain EFAG's authorization with the ESA to operate an exchange in good standing in all material respects;
- (c) to comply with all requirements applicable to ESA-regulated exchanges or exchange operators;
- (d) not to provide, and to take reasonable steps to prevent third parties from providing, Direct Access to persons in Alberta other than Alberta Participants;
- (e) to require each Alberta Participant that is not registered with the Commission as a dealer to file with Eurex:
 - (i) a written representation, executed by a person with the authority to bind the Alberta Participant, stating that as long as the Alberta Participant is granted Direct Access, the Alberta Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to this order; and
 - (ii) a written undertaking, executed by a person with the authority to bind the Alberta Participant, stating that the Alberta Participant will provide promptly to the Commission such information as the Commission may request, and access to all premises in or from which the Alberta Participant operates;
- (f) to require each Alberta Participant to confirm in writing to Eurex that the Alberta Participant understands that:
 - (i) the Alberta Participant may be unable to enforce any legal rights against the Applicants or any of their directors, officers, employees or agents as they are resident outside Alberta and all or substantially all of their assets are situated outside of Alberta; and
 - (ii) the Applicants are subject to primary regulatory oversight in their home jurisdiction under the regulatory regime of that jurisdiction which may not be equivalent in all respects to the regulatory regime administered by the Commission;
- (g) to file a document evidencing each Applicant's submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Alberta in any proceeding arising out of, related to, concerning, or in any other manner connected with, the Applicants carrying on business as an exchange in Alberta;
- (h) to maintain a valid and binding appointment of an agent for service in Alberta upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal,

penal or other proceeding arising out of, relating to, concerning, or in any other manner connected with, the Applicants carrying on business as an exchange in Alberta;

- (i) to report to the Commission in accordance with the reporting requirements set out in the Appendix to this order (the **Reporting Requirements**);
- (j) to provide promptly to the Commission any information that a Commission representative may request;
- (k) to employ reasonable procedures for monitoring and enforcing compliance with the undertakings herein;
- (l) to cooperate with the Commission with respect to arrangements established to address cross-market oversight issues, including surveillance, emergency actions and the monitoring of trading; and
- (m) to continue to ensure the representations herein remain accurate in all material respects except as reported to the Commission under the Reporting Requirements.

Decision

5. Based on the representations and undertakings herein, the Commission:

- (a) under section 213 of the Act, exempts the Applicants from the requirement to be recognized as an exchange under section 62(1) of the Act in connection with transactions in exchange contracts on the Exchange Platform with Alberta Participants through Direct Access;
- (b) under section 15.1(1) of NI 21-101, exempts the Applicants from the requirements of NI 21-101; and
- (c) under section 10(1) of NI 23-103, exempts the Applicants from the requirements of Part 4 of NI 23-103 where an exchange contract is also a security as defined in the Act;

for so long as the Applicants satisfy the undertakings herein and Eurex Clearing remains in good standing in all material respects as a central counterparty with BaFin.

For the Commission:

“original signed by”

Stan Magidson,
Chair & CEO

“original signed by”

Tom Cotter,
Vice-Chair

Appendix Reporting Requirements

This Appendix forms a part of, and adopts terms defined in, the order exempting the Applicants from section 62(1) of the Act, NI 21-101 and Part 4 of NI 23-103 (the **Order**).

Event reporting

1. The Applicants will notify the Commission promptly:
 - (a) if the ESA revokes, suspends or significantly changes the conditions of Eurex's authorization as an exchange;
 - (b) if the ESA revokes, suspends or significantly changes the conditions of EFAG's authorization to operate Eurex as an exchange;
 - (c) if BaFin revokes, suspends or significantly changes the conditions of Eurex Clearing's authorization as a central counterparty;
 - (d) of any significant change to any representation in the Order;
 - (e) of any breach of an undertaking in the Order; and
 - (f) of any material disciplinary action commenced against, or any sanctions imposed on, an Applicant, or a senior officer or director of an Applicant, by the ESA or BaFin.

Quarterly reporting

2. The Applicants will provide to the Commission, within 30 days after the end of each calendar quarter and at any time promptly upon the request of a Commission representative:
 - (a) a statement setting out:
 - (i) total volumes of exchange contracts traded in the quarter through the Exchange Platform worldwide;
 - (ii) the names and principal addresses of all Alberta Participants that have Direct Access to the Exchange Platform;
 - (iii) information, in a form and manner acceptable to the Executive Director, regarding exchange contracts traded in the quarter through Direct Access by Alberta Participants; and
 - (b) a list of all Alberta Participants against whom disciplinary action has commenced in the last quarter by one or more of the Applicants or, to the best of the

Applicants' knowledge, the ESA, with respect to activities undertaken by the Alberta Participant pursuant to its Direct Access to the Exchange Platform.

Annual reporting

3. The Applicants will provide to the Commission, within 30 days after the end of each calendar year:
 - (a) a description of any significant change to the regulatory requirements applicable in Germany relevant to Eurex's authorization as an exchange and EFAG's authorization to operate Eurex as an exchange;
 - (b) a certificate, executed by a senior officer of each Applicant, that:
 - (i) the representations in the Order remain accurate except to the extent of any change previously disclosed to the Commission under the Order;
 - (ii) the Applicants remain compliant with the undertakings in the Order;
 - (iii) the Applicants continue to maintain their authorizations in good standing with the ESA; and
 - (iv) Eurex Clearing has advised the Applicants that Eurex Clearing continues to maintain its status as a central counterparty in good standing with BaFin.