X-pand into the **Future**

Mr. Fabrice Demarigny
Secretary General CESR
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France

May 12, 2005

Response to CESR/ 05-245;
CESR-CFTC Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business

Dear Mr. Demarigny,

Eurex and U.S. Futures Exchange, L.L.C. (USFE) (together, “the Exchanges”), appreciate the opportunity to comment on the Committee of European Securities Regulators (CESR)--Commodity Futures Trading Commission (CFTC) Communiqué requesting comment on a common work programme to facilitate trans-Atlantic derivatives business (the “Communiqué”).

Eurex, an all-electronic market, is the world’s largest futures and options exchange. Eurex was created in 1998 with the merger of DTB (Deutsche Terminbörse) and SOFFEX (Swiss Options and Financial Futures Exchange). Eurex is a public company, jointly operated by Deutsche Börse AG and SWX Swiss Exchange. Eurex is approved to conduct business in twenty-eight jurisdictions.

USFE is an all-electronic futures and options exchange which on February 4, 2003, was designated by the CFTC as a U.S. contract market. USFE is 80% owned by a U.S. subsidiary of Eurex Frankfurt, AG, and 20% by a Delaware limited partnership. USFE is recognized to do business in fourteen jurisdictions.

All USFE transactions are cleared by The Clearing Corporation, an independent clearing house which is registered by the CFTC as a Derivatives Clearing Organization. Transactions executed on Eurex are cleared by Eurex Clearing, AG. Currently, as the result of a link agreement between CCorp and Eurex Clearing, transactions in futures contracts executed on Eurex can be carried by CCorp Clearing participants. USFE has asked the CFTC’s permission to use the clearing link to enable transactions executed on USFE to be carried by Eurex Clearing members. Upon the CFTC granting its permission to use the clearing link, USFE will list for trading, and treat as fungible, a number of Euro-denominated contracts that are currently listed for trading on Eurex. Accordingly, the Exchanges have a profound interest in the issues on which CESR and the CFTC are seeking comment.

- **General comments**

The Exchanges applaud the CESR and the CFTC for their foresight in raising for discussion and consideration issues related to trans-Atlantic access, and commend this initiative to facilitate trans-Atlantic derivatives business.

Clearly, the derivatives business in Europe and the United States is more inter-dependent than ever before. As described generally in the Communiqué, the Exchanges include among their participants, both “local and distant customers and intermediaries.” The CESR-CFTC plan to enhance transparency of the relevant regulatory requirements regarding intermediated and direct access to foreign markets will benefit our respective members greatly.

Moreover, the plan’s focus on simplifying access or recognition procedures for markets and intermediaries is vitally important to the derivatives industry. The enhanced competition occasioned by Eurex’s recent initiative to launch a U.S. designated contract market has resulted in dramatically lower transaction costs and substantial growth in overall trading activity. Despite the predictable benefits to market users which come from enhanced competition, entering a new market can be a difficult, if not a daunting undertaking. Greater transparency in, and any easing of, the application process to commence and operate cross-border business would encourage greater competition in these markets. In this regard, the Communiqué’s inclusion of “substituted compliance, reliance or recognition-like procedures,” for consideration by the Task Force is likely to be especially helpful.

- **Some considerations**

With respect to the request for comment on the issues set forth in the work programme, the Exchanges recommend the following for consideration:

1. The work programme make clear that its focus is not limited to regulatory requirements that apply uniquely to derivatives trading or derivatives businesses and that it include, as relevant, requirements which may apply more generally to financial services companies or markets. Thus, for example, it would be understood that “account opening procedures” would include a comparison of applicable anti-money laundering (AML) requirements, whether or not these requirements apply to derivatives firms as a consequence of an authority’s oversight generally of financial services firms or as a direct requirement applicable to derivatives firms.
2. The work programme make clear that substituted compliance or reliance may also be a practical arrangement applicable to on-going requirements for recognized persons or markets, specifically as a means of addressing duplicative or inconsistent requirements. For example, one way of avoiding duplicative or inconsistent record-keeping requirements would be for the authorities to agree on a system whereby an entity which operates in multiple jurisdictions could, based on concepts of substituted compliance, adhere to a single standard.
3. The work programme sets forth a very ambitious timetable. It might be conducive to accomplishment of these goals to also set forth intermediate targets and to make clear that the authorities will take steps to make final the intermediate goals as they are reached.

- **Conclusion**

The CESR-CFTC Communiqué is an important and valuable step in reducing regulatory duplication, lowering regulatory barriers and enhancing the transparency of the requirements of the national regulatory authorities. This consultative process between the CESR and the CFTC holds a great deal of promise in facilitating trans-Atlantic derivatives business to the benefit of customers, market users and the markets themselves. Insofar as this important CESR-CFTC initiative necessarily will also affect the European national regulatory authorities, we hope that the Task Force will consult, and closely coordinate its work, with those regulatory authorities. Through such consultation and cooperation CESR and the CFTC will ensure that the Task Force considers the views and interests of all European national regulatory authorities in its deliberations regarding these important issues. We hope that you find our comments useful in implementing the work programme, and the Exchanges look forward to continue working with CESR and the CFTC on successfully reaching the goals set forth in the Communiqué.

Yours faithfully,

Signed

Daniel Gisler
Member of the Executive Board

Signed

Peter Reitz
Member of the Executive Board