

Memorandum of Understanding (MOU)
on
Co-operation for the Supervision of Eurex Clearing AG
between the Financial Services Authority
and Bundesanstalt für Finanzdienstleistungsaufsicht
and
Deutsche Bundesbank

PREAMBLE

- A. Eurex Clearing AG ("EC AG") has applied to become a recognised clearing house as an overseas applicant ("ROCH") in the United Kingdom pursuant to sections 288 and 292 of The Financial Services and Markets Act 2000 ("FSMA").
- B. EC AG is a company incorporated in Germany and is licensed as a credit institution under the Banking Act (*Gesetz über das Kreditwesen*).
- C. The following Authorities in Germany and the United Kingdom have or will have responsibility for the supervision of EC AG:

In Germany:

- 1. As the central body in accordance with the law on a single financial services supervisory authority (*Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht*), the Banking Act and other special laws, the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin") is entrusted with the supervision of banks, financial service providers, investment firms, insurance undertakings and securities trading in Germany. As an independent superior federal authority within the purview of the Federal Ministry of Finance, the BaFin forms a part of the direct federal administration and as such is responsible for the supervision of EC AG. In exercising its sovereign functions pursuant to section 7 of the Banking Act, the BaFin closely co-operates with the Deutsche Bundesbank in carrying out the supervision of banks, financial service providers and investment

firms. BaFin and Deutsche Bundesbank are hereinafter jointly referred to as the "German Banking Supervisors".

2. The Hessisches Ministerium für Wirtschaft, Verkehr und Landesentwicklung - Börsenaufsichtsbehörde - (Exchange Supervisory Authority - "ESA") is responsible for the supervision of the exchanges domiciled in the State of Hessen and the orderly clearing and settlement of the exchange transactions by EC AG under the Exchange Act (*Börsengesetz*). Regulatory co-operation between BaFin, Deutsche Bundesbank and ESA is governed by section 6 para. 2 of the Securities Trading Act (*Wertpapierhandelsgesetz*) and section 7 para. 1 of the Banking Act.

In the United Kingdom:

3. The Financial Services Authority ("the FSA") is responsible for the supervision of clearing and settlement services and recognised clearing houses. As such it will be responsible for supervising EC AG as an ROCH under FSMA.

D. Co-operation with competent authorities.

In Germany:

1. Under section 7 of the Securities Trading Act, section 8 of the Banking Act and the Guideline on the execution and quality assurance of the ongoing supervision of credit and financial services institutions by the Deutsche Bundesbank pursuant to section 7 para. 2 of the Banking Act of 10 October 2003¹ BaFin co-operates with competent authorities, inter alia, in an EU Member State or in a State of the European Economic Area ("EEA").

In the United Kingdom:

2. Under FSMA, the FSA is responsible for the supervision of clearing and settlement services and recognised clearing houses. It co-operates in this regard with any relevant authorities in EU Member States or States of the EEA.

¹ Available in German on the Homepage of Deutsche Bundesbank - www.bundesbank.de.

- E. The FSA and the German Banking Supervisors therefore wish to enter into this MOU to further facilitate, through the exchange of information and any other assistance, their co-operation in relation to the supervision of EC AG.

Interpretation

1. In this MOU:

"Authorities" means the authorities listed in paragraph C of the preamble.

"German Banking Supervisors" means the BaFin and Deutsche Bundesbank.

"Person" means a natural person, legal entity, partnership or unincorporated association.

"Requested Authority" means the Authority to whom a request is made under this MOU.

"Requesting Authority" means the Authority making a request under this MOU.

Purpose of the MOU

2. The purpose of this MOU is to facilitate co-operation between the German Banking Supervisors and the FSA in order to promote effective supervision of EC AG by the Authorities and to reduce any regulatory overlap.

Effect of the MOU

3. This MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Germany or the United Kingdom. It is a statement of intent of the FSA and the German Banking Supervisors and is not intended to create any binding legal obligations, or to fetter the discretion of the Authorities in any way in the discharge of their functions. It is also not intended to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not affect any other arrangements between the Authorities or any arrangements between the Authorities and third parties.

Principles for the Supervision of EC AG

4. The Authorities are or will be, in relation to EC AG, responsible for performing the respective supervisory functions set out in paragraph C of the preamble.
5. Any division of responsibility for the supervision of EC AG and for the oversight of the clearing system operated by EC AG shall be based on the respective legal or supervisory responsibilities of each of the Authorities.

Principles for co-operation between the FSA and the German Banking Supervisors

6. The FSA and the German Banking Supervisors will co-operate closely and specifically exchange information in a timely way to assist each other and the other Authority to perform their respective functions relating to the supervision of EC AG.
7. The FSA will (either on its own initiative or at the request of BaFin or Deutsche Bundesbank) provide either one of the German Banking Supervisors with relevant information about any matter that is likely to assist the German Banking Supervisors or the other Authority perform their respective functions relating to the supervision of EC AG.
8. The German Banking Supervisors will (either on their own initiative or at the request of the FSA) provide the FSA with relevant information about any matter that is likely to assist the FSA perform its functions relating to the supervision of EC AG.
9. Without limiting the scope of clauses 7 and 8, information to be provided under those clauses should include information relevant to:
 - a) systemic risk issues;
 - b) the ability of EC AG to meet its financial requirements;
 - c) the fitness or propriety of EC AG, or a person employed or associated with EC AG, to perform its functions; and

- d) the adequacy of the systems and controls, the management policy, the organisation and the internal control systems of EC AG.
10. The FSA will endeavour to notify one of the German Banking Supervisors if it proposes to take any regulatory action in relation to EC AG which might have a material effect on the performance by BaFin or the other Authorities of their functions. If it is not possible to notify one of the German Banking Supervisors before taking such action, notification to one of them shall be made as soon as practicable thereafter.
11. BaFin will endeavour to notify the FSA if it or any of the other Authorities propose to take any regulatory action in relation to EC AG which might have a material effect on the performance by the FSA of its functions. If it is not possible to notify the FSA before taking such action, notification shall be made as soon as practicable thereafter.

Meetings of the Authorities

12. Representatives of the FSA and either or both of the German Banking Supervisors will meet periodically, as necessary, to discuss issues of common interest relating to the supervision of EC AG and to improve co-operation between the Authorities. Without prejudice to any of the Authorities' domestic competences and responsibilities, the issues to be discussed at these meetings may include, but will not be limited to:
- a) the assessment of risks affecting EC AG's clearing services or systems subject to the Authorities' supervision;
 - b) compliance with EU and other international standards for clearing services or systems; and
 - c) improving co-operation and co-ordination between the Authorities.

Representatives of EC AG may be invited for meetings with the FSA and either or both of the German Banking Supervisors.

Additional Arrangements

13. Practical arrangements regarding the modalities of co-operation between the FSA and the German Banking supervisors may be agreed upon.

Requests for Assistance

14. Requests for the provision of information or other assistance will, wherever possible, be made in writing, but in cases of urgency may be oral and confirmed in writing within 5 business days. To facilitate assistance, the Requesting Authority should specify in any written request:

- a) the information or other assistance sought by the Requesting Authority;
- b) a general description of the matter which is the subject of the request;
- c) the purpose for which the information or other assistance is sought;
- d) if information is provided by the Requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- e) where onward disclosure of information provided to the Requesting Authority is likely to be necessary, the identity of the person to whom disclosure may be made and the reasons for such disclosure;
- f) the desired time period for a reply;
- g) any other matters specified by the Requested Authority.

15. Where the Requested Authority is either of the German Banking Supervisors, the Requested Authority will notify the other German Banking Supervisor of the request as soon as practicable.

Treatment of Requests

16. If a request for information or assistance is made, the Requested Authority will use all reasonable efforts to provide the information or assistance to the Requesting

Authority, subject to its applicable laws, regulations and requirements and overall policy.

17. In any case where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.

Permissible uses of requested information

18. The Authorities shall use any information provided by the Requested Authority solely for the purposes of carrying out their functions relating to the supervision of EC AG.

Confidentiality

19. Each Authority shall maintain the confidentiality of any non-public information it receives under this MOU. The Authorities shall not disclose such information, including by transmission to any other authorities, without the prior approval of the Authority that provided the information and subject to any other legal and regulatory constraints.
20. In the event of a legally enforceable demand to disclose any information received under this MOU, the Authority receiving the demand will notify the Authority that provided the information of such a demand prior to complying with it, and will assert all appropriate legal exemptions or privileges from disclosure with respect to that information as may be available.

Contact Points

21. A list of contact points to which information or requests for information and assistance under this MOU should be directed is set out in Appendix 1. Any Authority may amend its contact information set out in the list by giving written notice to the other Authorities.

Costs

22. The Requested Authority may, as a condition of agreeing to give information or assistance under this MOU, require the Requesting Authority to make a contribution to costs if the cost of fulfilling a request is likely to be substantial.

Entry into effect and termination

23. This MOU shall come into force on the date when it is executed by the FSA and the German Banking Supervisors, and will continue to have effect until the expiration of 30 days after either the FSA or the German Banking Supervisors, acting jointly, give written notice to the other of their intention to terminate co-operation under the MOU. If either the FSA or the German Banking Supervisors give such notice, co-operation will continue with respect to all requests for information or assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which information or assistance was requested. In the event of the termination of this MOU, information obtained under it will continue to be treated in the manner prescribed under clauses 19 and 20.

Review of the MOU

24. The FSA and the German Banking Supervisors will keep the operation of this MOU under review and will consult when necessary with a view to improving its operation and resolving any matters.

Amendment of the MOU

25. This MOU may be amended by the joint agreement of the FSA and the German Banking Supervisors.

Additional Parties

26. The FSA and the German Banking Supervisors may jointly agree that other authorities may become signatories of this MOU.

Executed by the FSA and the German Banking Supervisors

Executed on 20. February 2007

Sally Dewar

For the FSA

Sally Dewar, Director

Thomas Eufinger

For BaFin

Thomas Eufinger, Head of Department WA 2

Haug

For Deutsche Bundesbank

Dr Ulrich Haug, Head of Banking Law and International Supervision Division

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CONTACT INFORMATION

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BAFIN

In urgent cases, the first and second named persons should be contacted initially. In all other cases, the third named person should be contacted.

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DEUTSCHE BUNDESBANK

In an urgent case, contact Rolf Klug in addition to the BaFin contacts.

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