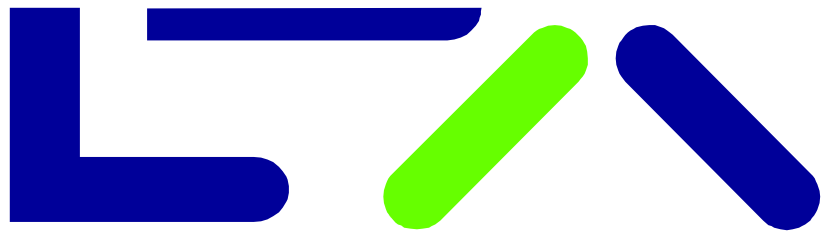


X-pand into the Future



## eurex circular 210/15

**Date:** 1 December 2015  
**Recipients:** All Trading Participants of Eurex Frankfurt AG and Vendors  
**Authorized by:** Michael Peters

**Requirements for Trading Participants of Eurex Deutschland that offer and sell equity options and equity index options in the United States pursuant to the SEC's 1 July 2013 Class No-Action Relief**

**Related Eurex circulars:** 101/06, 245/07

**Contact:** [info.usa@eurexchange.com](mailto:info.usa@eurexchange.com)

**Content may be most important for:**

☞ All departments

**Attachment:**

Template: Representation of Eligible Broker-Dealer/Eligible Institution Status

**Summary:**

This circular sets out the relevant terms and conditions of the 1 July 2013 class no-action relief issued by the U.S. Securities and Exchange Commission ("SEC") regarding the familiarisation of certain broker-dealers and large financial institutions in the United States with Eurex Deutschland ("Eurex" or the "Exchange") and specified equity options and equity index options listed and traded on Eurex, as well as the associated requirements for Eurex participants that wish to take advantage of the arrangements.



Eurex Deutschland  
Börsenplatz 4  
60313 Frankfurt/Main  
Mailing address:  
60485 Frankfurt/Main  
Germany

T +49-69-211-1 17 00  
F +49-69-211-1 17 01  
[memberservices@eurexchange.com](mailto:memberservices@eurexchange.com)  
Internet:  
[www.eurexchange.com](http://www.eurexchange.com)

Management Board:  
Thomas Book, Mehtap Dinc,  
Michael Peters, Andreas Preuss

ARBN: 101 013 361

**Requirements for Trading Participants of Eurex Deutschland that offer and sell equity options and equity index options in the United States pursuant to the SEC's 1 July 2013 Class No-Action Relief**

**Background**

On 27 July 2005, the U.S. Securities and Exchange Commission ("SEC") issued a no-action letter that has permitted employees of Eurex Frankfurt AG and Deutsche Börse AG ("DBAG") and Eurex participants to familiarise certain registered broker-dealers and large financial institutions in the United States with the following products traded on Eurex:

- (i) options on German, Swiss, Finnish, Dutch, Italian and French equities;
- (ii) options on the Dow Jones STOXX<sup>®</sup> 50 Index, the Dow Jones EURO STOXX<sup>®</sup> 50 Index, the Dow Jones Global Titans 50<sup>SM</sup> Index, the blue chip DAX Index<sup>®</sup>, the TecDAX<sup>®</sup> Index, the Swiss Market Index (SMI<sup>®</sup>) and the Finnish Stock Index (OMXH 25<sup>®</sup>); and
- (iii) options on the DAX<sup>®</sup> EX exchange-traded fund, Dow Jones EURO STOXX<sup>®</sup> 50 EX exchange-traded fund, the iShares DJ EURO STOXX<sup>®</sup> exchange-traded fund and the XMTCH on SMI<sup>®</sup> exchange-traded fund.

Eurex previously issued circulars 101/06 and 245/07, which provide further information on this no-action letter.

On 1 July 2013, the SEC, Division of Trading and Markets, provided class no-action relief, subject to certain conditions (the "Class No-Action Relief")<sup>1</sup>, to all foreign options markets, and their members and representatives to familiarise certain registered broker-dealers and large financial institutions in the United States ("Eligible Broker-Dealers/Eligible Institutions," and, individually, an "Eligible Broker-Dealer" or "Eligible Institution", as defined below) with certain options traded on their markets ("Eligible Options", as defined below).

On 1 December 2015, Eurex co-joined the Class No-Action Relief, which allows employees of Eurex Frankfurt AG and DBAG and Eurex participants to familiarise Eligible Broker-Dealers/Eligible Institutions with Eligible Options traded on Eurex, pursuant to the conditions of the Class No-Action Relief. The Class No-Action Relief replaces the 27 July 2005 no-action letter and now allows familiarisation with a broader array of Eurex options contracts. For the avoidance of doubt, direct trading access to Eligible Options from the United States is prohibited.

This circular sets out the relevant terms and conditions of the Class No-Action Relief and the associated requirements for Eurex participants that wish to take advantage of the arrangements.

**Definition of an Eligible Broker-Dealer or Eligible Institution**

Under the terms of the Class No-Action Relief, Eurex participants may treat as clients only Eligible Broker-Dealers or Eligible Institutions. The Class No-Action Relief defines an Eligible Broker-Dealer or Eligible Institution as any entity that meets the following standards:

- (i) It must be a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the United States Securities Act of 1933 ("Securities Act"), or an international organization excluded from the definition of "U.S. Person" in Rule 902(k)(2)(vi) of Regulation S under the Securities Act; and
- (ii) It must have had prior actual experience with traded options in the U.S. Options market (and, therefore, would have received the disclosure document for U.S. standardised options called for by Rule 9b-1 under the United States Securities Exchange Act of 1934 ("Exchange Act")).

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<sup>1</sup> SEC Division of Trading and Markets, Class No-Action Letter (July 1, 2013), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2013/liffe-am-070113.pdf>.

## Conditions applicable to Eurex participants

### General

A Eurex participant shall not familiarise with Eligible Options any client located in the U.S. that is not an Eligible Broker-Dealer or Eligible Institution. A Eurex participant may familiarise with Eligible Options any client located in the U.S. that is an Eligible Broker-Dealer or Eligible Institution, subject to the requirements set forth in this Circular. Eligible Options comprise all Eurex Individual Equity Options on securities of non-U.S. issuers and all Eurex Index Options on indices that include no securities of U.S. issuers. Eligible Options are listed on the Eurex website [www.eurexchange.com](http://www.eurexchange.com) under the following link:

### **Products > Eurex derivatives in the U.S. > Eligible options under SEC class no-action relief**

Eurex participants are advised that, under U.S. law, members of a foreign options market (i.e. Eurex, in this instance) that are not registered with the SEC as broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S registered broker-dealers, as provided in Rule 15a-6.

### **Representation from the Eligible Broker-Dealer or Eligible Institution**

Before entering into transactions with or on behalf of their Eligible Broker-Dealer or Eligible Institution client, Eurex participants must obtain and maintain a record of representations from such client. The representations must be signed by an appropriate officer of the Eligible Broker-Dealer or Eligible Institution. Eurex participants must obtain the following representations from Eligible Broker-Dealers or Eligible Institutions as prescribed in the Class No-Action Relief:

- (i) It is an Eligible Broker-Dealer/Eligible Institution, and as such it:
  - (a) owns and invests on a discretionary basis a specified amount of eligible securities sufficient for it to be a qualified institutional buyer under Rule 144A under the Securities Act (and if a bank, savings and loan association, or other thrift institution, has a net worth meeting the requirements of Rule 144A under the Securities Act); and
  - (b) has had prior actual experience in the U.S. standardised options markets and as a result thereof has received the options disclosure document entitled "Characteristics and Risks of Standardized Options" (the "Options Disclosure Document" or "ODD") that is prepared by the Options Clearing Corporation and the U.S. options exchanges;
- (ii) Its transactions in Eligible Options will be for its own account or for the account of another Eligible Broker-Dealer/Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act;
- (iii) It will not transfer any interest or participation in an Eligible Option it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer/Eligible Institution;
- (iv) It will cause any disposition of an Eligible Option it has purchased or written to be effected only on Eurex and settled on Eurex, and it understands that any required payments for premium, settlement, exercise, or closing of any Eligible Option with respect to which it has a contract with the Eurex participant must be made in the designated currency;
- (v) It understands that if it has a contract as a writer of an Eligible Option with a Eurex participant, margin must be provided to that Eurex participant in such form and amount as determined by that Eurex participant, and such Eurex participant, if a Non-Clearing Member of Eurex Clearing AG, must provide margin to its Clearing Member; and if a Clearing Member of Eurex Clearing AG, must

maintain, measure, and deposit margin on such Eligible Option with Eurex Clearing AG in such form and amount as determined by Eurex Clearing AG;

- (vi) If it is an Eligible Broker-Dealer/Eligible Institution acting on behalf of another Eligible Broker-Dealer/Eligible Institution that is not a managed account, it has obtained from the other Eligible Broker-Dealer/Eligible Institution a written representation to the same effect as the foregoing and will provide it to the Eurex participant upon demand; and
- (vii) It will notify the Eurex participant of any change in the foregoing representations prior to placing any future order and the foregoing representations will be deemed to be made with respect to each order it gives to the Eurex participant.

A template for obtaining these representations is provided as attachment to this circular.

#### **Compliance with the Terms of the Class No-Action Relief**

As provided in Eurex circular 186/15, effective 1 December 2015, Eurex has amended the General Terms and Conditions of the Connection Agreement Eurex Frankfurt AG to add the following term and condition to the “§ 2 Utilization of the Exchange-EDP” section:

“If the trading participant takes advantage of the U.S. Securities and Exchange Commission’s July 1, 2013 Class No-Action Relief (“Class No-Action Relief”) to familiarise Eligible Broker-Dealers or Eligible Institutions (as defined in the Class No-Action Relief) in the United States with specified equity options or equity index options, it shall comply with all terms and conditions set forth in the Class No-Action Relief, including obtaining and maintaining a record of the representations set forth in the Class No-Action Relief.”

#### **Additional SEC Requirements**

The Class No-Action Relief requires Eurex to comply with and assure compliance with each of the representations and conditions contained in the Class No-Action Relief. Furthermore, the Class No-Action Relief requires that the Exchange is able and willing to provide relevant Eurex participant information to the SEC on request.

Please ensure that the appropriate members of staff within your organisation and customers are advised of the content of this circular.

1 December 2015