

FEDERAL RESERVE SYSTEM

Deutsche Bank AG
Frankfurt, Germany

Taunus Corporation
New York, New York

Order Approving Notice to Engage in Activities Complementary to a Financial Activity

Deutsche Bank AG (“Deutsche Bank”), a foreign bank that is a financial holding company (“FHC”) for purposes of the Bank Holding Company Act (“BHC Act”), and its wholly owned U.S. subsidiary Taunus Corporation (“Taunus,” and collectively with Deutsche Bank, “Notificants”), also an FHC, have requested the Board’s approval under section 4 of the BHC Act¹ and the Board’s Regulation Y² to engage in physical commodity trading in the United States. Deutsche Bank currently conducts physical commodity trading outside the United States.³

Regulation Y authorizes bank holding companies (“BHCs”) to engage as principal in derivative contracts based on financial and nonfinancial assets (“Commodity Derivatives”). Under Regulation Y, a BHC may conduct Commodity Derivatives activities subject to certain restrictions that are designed to limit the BHC’s activity to trading and investing in financial instruments rather

¹ 12 U.S.C. § 1843.

² 12 CFR Part 225.

³ Deutsche Bank will enter into physical commodity trades in the United States either directly or indirectly through Notificants’ nonbanking subsidiary, DB Energy Trading, LLC, New York, New York.

than dealing directly in physical nonfinancial commodities.⁴ Under these restrictions, a BHC generally is not allowed to take or make delivery of nonfinancial commodities underlying Commodity Derivatives. In addition, BHCs generally are not permitted to purchase or sell nonfinancial commodities in the spot market.

The BHC Act, as amended by the Gramm-Leach-Bliley Act (“GLB Act”), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999.⁵ The BHC Act permits an FHC to engage in a broad range of activities that are defined in the statute to be financial in nature.⁶ Moreover, the BHC Act allows FHCs to engage in any activity that the Board determines, in consultation with the Secretary of the Treasury, to be financial in nature or incidental to a financial activity.⁷

In addition, the BHC Act permits FHCs to engage in any activity that the Board (in its sole discretion) determines is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.⁸ This authority is

⁴ Commodity Derivatives permissible for BHCs under Regulation Y are hereinafter referred to as “BHC-permissible Commodity Derivatives.”

⁵ 12 U.S.C. § 1843(c)(8).

⁶ The Board determined by regulation before November 12, 1999, that engaging as principal in Commodity Derivatives, subject to certain restrictions, was closely related to banking. Accordingly, engaging as principal in BHC-permissible Commodity Derivatives is a financial activity for purposes of the BHC Act. See 12 U.S.C. § 1843(k)(4)(F).

⁷ 12 U.S.C. § 1843(k)(1)(A).

⁸ 12 U.S.C. § 1843(k)(1)(B).

intended to allow the Board to permit FHCs to engage, on a limited basis, in an activity that appears to be commercial rather than financial in nature but that is meaningfully connected to a financial activity in a manner that complements the financial activity.⁹ The BHC Act provides that any FHC seeking to engage in a complementary activity must obtain the Board's prior approval under section 4(j) of the BHC Act.¹⁰

Notificants regularly engage as principals in BHC-permissible Commodity Derivatives based on a variety of commodities and plan to expand those activities to include physical commodity transactions in the United States. Notificants have, therefore, requested that the Board permit them to engage in physical commodity trading activities in the United States involving commodities such as natural gas, crude oil, and emissions allowances,¹¹ and to take and make delivery of physical commodities to settle BHC-permissible Commodity Derivatives in which they currently engage ("Commodity Trading Activities").

⁹ See 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999) (Statement of Chairman Leach) ("It is expected that complementary activities would not be significant relative to the overall financial activities of the organization.").

¹⁰ 12 U.S.C. § 1843(j).

¹¹ An emission allowance is an intangible right to emit certain pollutants during a given year or any year thereafter that is granted by the U.S. Environmental Protection Agency or comparable foreign regulatory authority to an entity, such as a power plant or other industrial concern, affected by environmental regulation aimed at reducing emission of pollutants. An allowance can be bought, sold, or exchanged by individuals, brokers, corporations, or government entities that establish an account at the relevant governmental authority. Emissions allowances are stored and tracked on the records of the relevant government authority. Accordingly, there are no transportation, environmental, storage, or insurance risks associated with ownership of emissions allowances.

The Board previously has determined that Commodity Trading Activities involving a particular commodity complement the financial activity of engaging regularly as principal in BHC-permissible Commodity Derivatives based on that commodity.¹² In light of the foregoing and all other facts of record, the Board believes that Commodity Trading Activities are complementary to the Commodity Derivatives activities of Notificants.

To authorize Notificants to engage in Commodity Trading Activities as a complementary activity under the GLB Act, the Board also must determine that the activities do not pose a substantial risk to the safety or soundness of depository institutions or the U.S. financial system generally.¹³ In addition, the Board must determine that the performance of Commodity Trading Activities by Notificants “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”¹⁴

Approval of the proposal would likely benefit Notificants’ customers by enhancing Notificants’ ability to provide efficiently a full range of commodity-related services. Approving Commodity Trading Activities for

¹² JPMorgan Chase & Co., 91 Federal Reserve Bulletin ____ (2005) (Order dated November 18, 2005); Barclays Bank PLC, 90 Federal Reserve Bulletin 511 (2004); UBS AG, 90 Federal Reserve Bulletin 215 (2004); and Citigroup Inc., 89 Federal Reserve Bulletin 508 (2003). For example, Commodity Trading Activities involving all types of crude oil would be complementary to engaging regularly as principal in BHC-permissible Commodity Derivatives based on Brent crude oil.

¹³ 12 U.S.C. § 1843(k)(1)(B).

¹⁴ 12 U.S.C. § 1843(j)(2)(A).

Notificants also would enable them to improve their understanding of physical commodity and commodity derivatives markets and their ability to serve as an effective competitor in those markets.

The Board has evaluated the financial resources of the Notificants and their subsidiaries. Deutsche Bank's capital levels exceed the minimum levels that would be required under the Basel Capital Accord and are considered equivalent to the capital levels that would be required of a U.S. banking organization.

The Board also has evaluated the managerial resources of Notificants and their subsidiaries, including their management expertise, internal controls, and risk-management systems. The Board notes that on October 12, 2005, Deutsche Bank's subsidiary bank, Deutsche Bank Trust Company Americas ("DBTCA"), New York, New York, a state member bank, entered into a written agreement (the "Written Agreement") with the Board and the New York State Banking Department pursuant to section 8 of the Federal Deposit Insurance Act¹⁵ to address deficiencies in its anti-money laundering programs.¹⁶ In reviewing this proposal, the Board has considered the enhancements DBTCA has already made and is currently making to its systems and programs to ensure compliance with anti-money laundering laws and the Written Agreement. The Board will continue to monitor DBTCA's ongoing actions to develop, implement, and maintain effective compliance systems and programs and to meet the requirements of the Written Agreement. Furthermore, the proposed Commodity Trading Activities

¹⁵ 12 U.S.C. § 1818.

¹⁶ See Written Agreements Approved by the Federal Reserve Banks, 91 Federal Reserve Bulletin ____ (2005).

will not be conducted by DBTCA or its management and commencement of the proposed activities should not impede Deutsche Bank's efforts to address the weaknesses at DBTCA.

In reviewing Notificants' managerial expertise and internal control framework with respect to the proposed Commodity Trading Activities, the Board notes that Notificants have established and maintained policies for monitoring, measuring, and controlling the credit, market, settlement, reputational, legal, and operational risks involved in their Commodity Trading Activities. These policies address key areas, such as counterparty-credit risk, value-at-risk methodology, and internal limits with respect to commodity trading, new business and new product approvals, and identification of transactions that require higher levels of internal approval. The policies also describe critical internal control elements, such as reporting lines, and the frequency and scope of internal audits of Commodity Trading Activities. Notificants have integrated the risk management of Commodity Trading Activities into their overall risk-management framework. Based on the above and all the facts of record, the Board believes that Notificants have the managerial expertise and internal control framework to manage adequately the risks of taking and making delivery of physical commodities as proposed.

As a condition of this order, to limit the potential safety and soundness risks of Commodity Trading Activities, the market value of commodities held by Notificants as a result of Commodity Trading Activities must not exceed 5 percent of Deutsche Bank's consolidated tier 1 capital (as calculated under its home country standard).¹⁷ Notificants also must notify

¹⁷ Notificants would be required to include in this 5 percent limit the market value of any commodities they hold as a result of a failure of reasonable efforts

the Federal Reserve Bank of New York if the market value of commodities held by Notificants as a result of their Commodity Trading Activities exceeds 4 percent of Deutsche Bank's tier 1 capital.

In addition, Notificants may take and make delivery only of physical commodities for which derivative contracts have been authorized for trading on a U.S. futures exchange by the Commodity Futures Trading Commission ("CFTC") (unless specifically excluded by the Board) or that have been specifically approved by the Board.¹⁸ This requirement is designed to prevent Notificants from becoming involved in dealing in finished goods and other items, such as real estate, that lack the fungibility and liquidity of exchange-traded commodities.

To minimize the exposure of Notificants to additional risks, including storage, transportation, legal, and environmental risks, Notificants would not be authorized (i) to own, operate, or invest in facilities for the extraction, transportation, storage, or distribution of commodities; or (ii) to process, refine, store, or otherwise alter commodities in the United States. In conducting their

to avoid taking delivery under section 225.28(b)(8)(ii)(B) of Regulation Y. 12 CFR 225.28(b)(8)(ii)(B).

¹⁸ The particular commodity derivative contract that Notificants take to physical settlement need not be exchange traded, but (in the absence of specific Board approval) futures or options on futures on the commodity underlying the derivative contract must have been authorized for exchange trading by the CFTC.

The CFTC publishes annually a list of the CFTC-authorized commodity contracts. See Commodity Futures Trading Commission, FY 2004 Annual Report to Congress 109. With respect to granularity, the Board intends this requirement to permit Commodity Trading Activities involving all types of a listed commodity. For example, Commodity Trading Activities involving any type of coal or coal derivative contract would be permitted, even though the CFTC has authorized only Central Appalachian coal.

Commodity Trading Activities, Notificants have committed to use appropriate storage and transportation facilities owned and operated by third parties.¹⁹

Notificants and their Commodity Trading Activities also remain subject to the general securities, commodities, and energy laws and the rules and regulations (including the antifraud and antimanipulation rules and regulations) of the Securities and Exchange Commission, the CFTC, and the Federal Energy Regulatory Commission.

Permitting Notificants to engage in the limited amount and types of Commodity Trading Activities described above, on the terms described in this order, would not appear to pose a substantial risk to Notificants, depository institutions, or the U.S. financial system generally. Through their existing authority to engage in Commodity Derivatives, Notificants already may incur the price risk associated with commodities. Permitting Notificants to buy and sell commodities in the spot market or physically settle Commodity Derivatives would not appear to increase significantly their potential exposure to commodity-price risk.

For these reasons, and based on Notificants' policies and procedures for monitoring and controlling the risks of Commodity Trading Activities, the Board concludes that consummation of the proposal does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

¹⁹ Approving Commodity Trading Activities as a complementary activity, subject to limits and conditions, would not in any way restrict the existing authority of Notificants to deal in foreign exchange, precious metals, or any other bank-eligible commodity.

Based on all the facts of record, including the representations and commitments made to the Board by Notificants in connection with the notice, and subject to the terms and conditions set forth in this order, the Board has determined that the notice should be, and hereby is, approved. The Board's determination is subject to all the conditions set forth in Regulation Y, including those in section 225.7,²⁰ and to the Board's authority to require modification or termination of the activities of a BHC or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder. The Board's decision is specifically conditioned on compliance with all the commitments made to the Board in connection with the notice, including the commitments and conditions discussed in this order. The commitments and conditions relied on in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors,²¹ effective December 19, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²⁰ 12 CFR 225.7.

²¹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.