



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

CFTC Letter No. 14-151
No-Action
December 18, 2014
Division of Clearing and Risk

Mr. Calvin Tai
Chief Executive
OTC Clearing Hong Kong Limited
One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Re: Extension of No-Action Relief with Regard to Section 5b(a) of the Commodity Exchange Act and Commission Regulations Thereunder

Dear Mr. Tai:

This is in response to your undated letter received on December 5, 2014 (“Letter”) to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division extend the no-action relief granted to OTC Clearing Hong Kong Limited (“OTC Clear”) by letter dated May 7, 2014,¹ from the derivatives clearing organization (“DCO”) registration requirement under Section 5b(a) of the Commodity Exchange Act (“CEA”).

Pursuant to the no-action relief, OTC Clear is permitted to clear interest rate swaps (“IRS”) denominated in four currencies – Chinese Renminbi (“RMB”), Hong Kong Dollar, U.S. Dollar, and Euro – and non-deliverable forwards (“NDFs”) denominated in four currencies – RMB, Taiwan Dollar, Korean Won, and Indian Rupee – for proprietary trades of U.S. clearing members. The relief is set to expire at the earlier of: (i) December 31, 2014; or (ii) the date on which the Commission either registers OTC Clear as a DCO under Section 5b(a) of the CEA, or the Commission exempts OTC Clear from registration pursuant to Section 5b(h) of the CEA.

By letter dated November 26, 2014, the Division informed OTC Clear that it was amenable to extending the no-action relief until December 31, 2015, subject to OTC Clear notifying the Division, no later than December 15, 2014, that it will file by June 30, 2015: (i) a materially complete Form DCO application for registration as a DCO; or (ii) a petition for

¹ CFTC Letter 14-68 (May 7, 2014).

an exemption from registration. The Division's letter also set forth the standards and procedures applicable to a petition for an exemption from registration.

In the Letter, you represent that OTC Clear will file, by June 30, 2015, a petition for an exemption from DCO registration.² Based on this representation, and in order to allow OTC Clear the necessary time to prepare and file its petition, the Division will extend the no-action relief now in effect and will not recommend that the Commission take enforcement action against OTC Clear for failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA, subject to the following conditions:

(1) Product Scope. This relief is limited to the following contracts accepted for clearing by OTC Clear: IRS denominated in RMB, Hong Kong Dollar, U.S. Dollar, and Euro; and NDFs denominated in RMB, Taiwan Dollar, Korean Won, and Indian Rupee;

(2) Participant Scope. The relief applies to OTC Clear's clearing of proprietary trades³ of U.S. Clearing Members;

(3) Reporting. If a clearing member clears through OTC Clear a swap (referred to as the "alpha" swap) that has been reported to a Commission-registered swap data repository ("SDR") pursuant to Part 45 of the Commission's regulations,⁴ then OTC Clear must report to an SDR, pursuant to Part 45, data regarding the two swaps resulting from the novation of the alpha swap that had been submitted to OTC Clear for clearing (referred to as "beta" and "gamma" swaps);⁵ and

² Pursuant to an exemption, OTC Clear would be authorized to clear only proprietary swaps positions for U.S. persons. In order to clear both proprietary and customer swaps positions for U.S. persons, OTC Clear would have to register with the Commission as a DCO.

³ See 17 C.F.R. § 1.3(y) (definition of "proprietary account").

⁴ See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012) (adopting Part 45).

⁵ Pursuant to Regulation 39.12(b)(6), 17 C.F.R. § 39.12(b)(6), during the clearing process, a swap submitted for clearing to a registered DCO (the alpha swap) is extinguished or terminated, and two new swaps (the beta and gamma swaps) are created. The registered DCO must then report the beta and gamma swaps to an SDR under Part 45 and associate the unique swap identifier of the alpha swap with the beta and gamma swaps in order for the Commission to confirm that such alpha swap was cleared. See Statement of the Commission concerning CME Rule 1001 (March 6, 2013), page 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>; see also 17 C.F.R. § 45.4(a) ("[R]eporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap."); 77 Fed. Reg. at 2153 ("[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.").

(4) Limited Duration. The no-action relief shall expire at the earlier of: (i) December 31, 2015 or (ii) the date upon which the Commission exempts OTC Clear from registration as a DCO under Section 5b(h) of the CEA.

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact Eileen Donovan, Acting Deputy Director, at (202) 418-5096, edonovan@cftc.gov; or Parisa Abadi, Attorney-Advisor, at (202) 418-6620, pabadi@cftc.gov.

Sincerely,

Phyllis Dietz
Acting Director

In order to avoid duplicative reporting for such transactions, OTC Clear should have rules that prohibit the Part 45 reporting of the beta and gamma swaps by the original counterparties to the alpha swap. These rules should make it clear to market participants that OTC Clear is reporting the beta and gamma swaps as if it were a registered DCO under the Part 45 rules.