U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of Clearing and Risk

CFTC Letter 17-26
No-Action
May 16, 2017
Division of Clearing and Risk

Mr. Karl Chen
Chief Financial Officer
Shanghai Clearing House
No. 2 East Beijing Road
Huangpu District
Shanghai, People's Republic of China

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

Dear Mr. Chen:

This is in regard to CFTC Letter No. 16-56,[1] which expires on May 31, 2017. In the letter, the Division of Clearing and Risk ("Division") of the Commodity Futures Trading Commission ("Commission") stated that it will not recommend that the Commission take enforcement action against Shanghai Clearing House ("SHCH") for failure to register as a derivatives clearing organization ("DCO") pursuant to the requirements of Section 5b(a) of the Commodity Exchange Act (the "CEA") and Commission regulations thereunder, subject to certain conditions described in the letter.

Under the terms of the letter, SHCH is permitted to clear certain swaps subject to mandatory clearing in the People's Republic of China ("PRC") for the proprietary trades of SHCH clearing members that are U.S. persons or affiliates of U.S. persons. Since the issuance of the letter, SHCH has submitted a petition[2] to the Commission requesting an order of exemption from registration as a DCO pursuant to Section 5b(h) of the CEA.

The Division is reviewing SHCH's petition and has not yet made a recommendation to the Commission as to whether or not SHCH should be granted an exemption. If the Commission were to issue an order of exemption, the order would require SHCH to, among other things, comply with certain reporting requirements. The Division is still seeking assurances that the existing regulatory and oversight regime in the PRC permits SHCH to provide to the Commission the full scope of information required under an exemption order.

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[1] CFTC Letter No. 16-56 (May 31, 2016).
[2] Petition received November 22, 2016.

In addition, the Division is seeking a better understanding of the effect of the forthcoming Cybersecurity Law of the People's Republic of China (the "Cybersecurity Law"). The Cybersecurity Law will not become effective until June 1, 2017, and the Division understands that necessary implementing regulations have not yet been published. The Division further understands that the PRC government or certain of its agencies may make decisions or determinations as part of their administration of the Cybersecurity Law. The Division has been advised that the Cybersecurity Law may ultimately prevent SHCH from fully complying with some or all of the reporting requirements that would be included in an order of exemption.

If the Commission were to issue an order of exemption to SHCH, and SHCH subsequently failed to comply with one or more conditions of the order, the Commission could consider revoking the order. The Division is mindful that the Commission's granting and subsequent revocation of an exemptive order would be disruptive to SHCH, any clearing members clearing through SHCH pursuant to the exemption, and industry participants more broadly. Therefore, the Division believes it is appropriate to defer recommending final action on SHCH's petition for exemption until there is greater clarity regarding SHCH's existing regulatory and oversight regime and the ultimate impact of the Cybersecurity Law, if any, on SHCH's ability to comply with the conditions of a potential order of exemption.

To allow more time to assess these issues, yet avoid disrupting the market, the Division is extending the relief provided in CFTC Letter No. 16-56 to November 30, 2017. In addition to providing more time for the Division to receive the necessary assurances about SHCH's regulatory and oversight regime and for the Cybersecurity Law to be implemented and its impact to be assessed, the Division believes that, should the Commission ultimately conclude that it cannot issue an order of exemption, this extension should provide adequate time for any clearing member of SHCH that is clearing pursuant to the relief to unwind its positions.

<u>Extension of No-Action Relief</u>

Based on the facts presented and the representations SHCH has made, the Division will not recommend that the Commission take enforcement action against SHCH for failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA, subject to the conditions specified in CFTC Letter No. 16-56. The no-action relief shall expire at the earlier of: (i) November 30, 2017, or (ii) the date on which the Commission exempts SHCH 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 on the representations contained in SHCH's original request letter, 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 questions regarding this matter, please contact Brian Baum, Special Counsel (bbaum@cftc.gov, 202-418-5654), or Eileen Donovan, Deputy Director (edonovan@cftc.gov, 202-418-5096).

Very truly yours,

John C. Lawton
Acting Director