



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Mr. Tzu-Hsin Wu
Chairman
Taiwan Futures Exchange Corporation
14F, No. 100, Sec. 2, Roosevelt Rd.
Zhongzheng Dist., Taipei City 100404
Taiwan

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

Dear Mr. Wu:

This is in response to your letter dated April 14, 2022 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against Taiwan Futures Exchange Corporation (“TAIFEX”) for failing to register as a derivatives clearing organization (“DCO”) pursuant to Section 5b(a) of the Commodity Exchange Act (“CEA”)¹ and Commission regulations thereunder.

Under the requested relief, TAIFEX would be permitted temporarily to clear certain swaps for the proprietary trades of TAIFEX clearing members that are U.S. persons or affiliates of U.S. persons while its application for exemption from DCO registration is pending.

TAIFEX has submitted to the Commission an application for exemption from the requirement to register as a DCO, pursuant to Commission regulation 39.6.² TAIFEX represents in its application that it meets the requirements of the Principles for Financial Market Infrastructures (“PFMIs”).³

¹ 7 U.S.C. § 7a-1(a).

² 17 C.F.R. § 39.6.

³ See Committee on Payments and Market Infrastructures (“CPMI”) (formerly Committee on Payment and Settlement Systems) and the International Organization of Securities Commissions (“IOSCO”), Principles for financial market infrastructures (Apr. 2012), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf>.

Statement of Facts

Based on the representations made in the Letter and the application for exemption, we understand the relevant facts to be as follows:

TAIFEX is organized under the laws of Taiwan and is subject to oversight by the Securities and Futures Bureau of the Taiwan Financial Supervisory Commission (the “FSC”). Since December 1, 1997, TAIFEX has been licensed by the FSC to operate as a futures exchange and clearing organization. In January 2019, Article 3 of the Futures Trading Act (the “FTA”) was amended to include other types of contracts, including swaps, within the scope of futures and to empower the FSC to mandate central clearing of futures by a designated clearing organization. On June 24, 2019, the FSC designated TAIFEX as the over-the-counter (“OTC”) clearing organization pursuant to Article 3(2) of the FTA, which makes TAIFEX the sole clearing organization authorized to clear swaps in Taiwan. TAIFEX is subject to oversight by the FSC, which applies, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof, that, taken together, are consistent with the PFMI.

TAIFEX intends to launch swap clearing services in mid-2022, to include Taiwan dollar (“TWD”)-denominated interest rate swaps (“IRS”) for dealer-to-dealer transactions. The FSC has not yet issued a clearing mandate for swaps in Taiwan but plans to mandate the central clearing of TWD-denominated IRS in mid-2023.

Discussion of Request for No-Action Relief and Applicable Legal Requirements

TAIFEX has represented that the swaps that it seeks to clear for proprietary trades of U.S. clearing members are swaps under the CEA and Commission regulations, and the Division accepts TAIFEX’s representation without independent analysis.⁴ Section 5b(a) of the CEA provides that a clearing organization may not perform the functions of a DCO with respect to swaps unless it is registered with the Commission.⁵ However, Section 5b(h) of the CEA⁶ states that

⁴ The CEA’s statutory definition of “swap” includes IRS. *See* Section 1a(47)(A) of the CEA, 7 U.S.C. § 1a(47)(A) (“[T]he term ‘swap’ means any agreement, contract, or transaction – . . . (iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates . . . including any agreement, contract, or transaction commonly known as – (I) an interest rate swap . . .”).

⁵ Section 5b(a) of the CEA, 7 U.S.C. § 7a-1(a), states: “Except as provided in paragraph (2), it shall be unlawful for a [DCO], directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a [DCO] with respect to – . . . (B) a swap. (2) EXCEPTION. – Paragraph (1) shall not apply to a [DCO] that is registered with the Commission.”

⁶ 7 U.S.C. § 7a-1(h).

The Commission may exempt, conditionally or unconditionally, a [DCO] from registration under this section for the clearing of swaps if the Commission determines that the [DCO] is subject to comparable, comprehensive supervision and regulation by...the appropriate government authorities in the home country of the organization.

In accordance with Section 5b(h) of the CEA, the Commission has exempted several non-U.S. clearing organizations from the DCO registration requirement to allow them to clear swaps for their U.S. clearing members on a proprietary basis.⁷ The Commission determined that each of these clearing organizations satisfies the “comparable, comprehensive supervision and regulation” requirement of Section 5b(h) of the CEA through its respective home country regulator requiring compliance with the PFMI.⁸

The Division has granted no-action relief to these and other non-U.S. clearing organizations to permit them to clear certain swaps for U.S. persons prior to being exempted from registration.⁹ TAIFEX’s request for relief is generally consistent with the requests that prompted such relief. Granting the relief requested by TAIFEX pending consideration of its application for an exemption pursuant to Section 5b(h) of the CEA and Commission regulation 39.6 is appropriate in order to facilitate access for U.S. persons to clearing of swaps in Taiwan. The Division notes that TAIFEX, which has represented that it meets the PFMI and provided certification from the FSC that it is in good regulatory standing, has submitted to the Commission an application for exemption from the DCO registration requirement. Before the

⁷ The exempted clearing organizations include ASX Clear (Futures) Pty Limited (*see* <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf>), Japan Securities Clearing Corporation (*see* <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptorder10-26-15.pdf>), Korea Exchange, Inc. (*see* <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/krxdcexemptorder10-26-15.pdf>), and OTC Clearing Hong Kong Limited (*see* <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/otccleardcoexemptorder12-21-15.pdf>).

⁸ The Commission subsequently codified requirements for exemption from DCO registration in Commission regulation 39.6. *See* Exemption From Derivatives Clearing Organization Registration, 86 Fed. Reg. 949 (Jan. 7, 2021).

⁹ *See* CFTC No-Action Letter No. 14-107 (Aug. 18, 2014) (granting no-action relief to the Clearing Corporation of India Ltd.); CFTC No-Action Letter No. 14-87 (June 26, 2014) (granting no-action relief to Korea Exchange, Inc.); CFTC No-Action Letter No. 14-68 (May 7, 2014) (granting no-action relief to OTC Clearing Hong Kong Limited); CFTC No-Action Letter No. 14-07 (Feb. 6, 2014) (granting no-action relief to ASX Clear (Futures) Pty Limited); CFTC No-Action Letter No. 12-56 (Dec. 17, 2012) (granting no-action relief to Japan Securities Clearing Corporation and certain of its clearing members); and CFTC No-Action Letter 16-56 (May 13, 2016) (granting no-action relief to Shanghai Clearing House).

Commission grants an exemption from DCO registration, the requirements and conditions in Commission regulation 39.6(a)-(b) must be satisfied.

Accordingly, the Division believes that it is in the public interest to grant no-action relief on a temporary basis, while allowing the Commission to thoroughly review and assess TAIFEX's application. This relief is limited to clearing by U.S. persons who are TAIFEX clearing members only for themselves (or their affiliates). It does not cover customer clearing. In addition, the Division's grant of no-action relief herein should not be interpreted to mean that the Commission will exempt TAIFEX from registration as a DCO.

Grant of No-Action Relief

Based on the facts presented and the representations TAIFEX has made, the Division will not recommend that the Commission take enforcement action against TAIFEX 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. The relief is limited to the clearing of swaps accepted for clearing by TAIFEX.
- (2) Participant Scope. The relief applies to TAIFEX's clearing of proprietary trades¹⁰ of U.S. clearing members.
- (3) Reporting. If a clearing member clears through TAIFEX a swap that has been reported to a Commission-registered swap data repository ("SDR") pursuant to Part 45 of the Commission's regulations,¹¹ then TAIFEX must report to an SDR, pursuant to Part 45, data regarding the two swaps resulting from the novation of the original swap that had been submitted to TAIFEX for clearing. TAIFEX must also report the termination of the swap accepted for clearing by TAIFEX to the SDR to which the swap was originally reported.

In order to avoid duplicative reporting for such transactions, TAIFEX shall have rules that prohibit the reporting, pursuant to part 45 of the Commission's regulations, of the two new swaps by the counterparties to the original swap.¹²

- (4) Limited Duration. The no-action relief shall expire at the earlier of: (i) September 15, 2023, or (ii) the date on which the Commission exempts TAIFEX from registration as a DCO under Section 5b(h) of the CEA and § 39.6 of the Commission's regulations.

¹⁰ See definition of "proprietary account" in 17 C.F.R. § 1.3.

¹¹ See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012) (adopting Part 45); and 85 Fed. Reg. 75503 (Nov. 25, 2020) (amending Part 45).

¹² These rules should make it clear to market participants that TAIFEX is reporting the two new swaps as if it were a registered DCO under the Part 45 regulations.

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 the 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 Eileen Chotiner, Senior Compliance Analyst (echotiner@cftc.gov, 202-418-5647), or Eileen Donovan, Deputy Director (edonovan@cftc.gov, 202-418-5096).

Sincerely,

M. Clark Hutchison
Director