



Section 5b(a) of the Commodity Exchange Act
and 17 C.F.R. §39.6

Tzu-Hsin Wu

Chairman

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April 14, 2022

Clark Hutchison, Director
Division of Clearing and Risk
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

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

Dear Director Hutchison:

The Taiwan Futures Exchange Corporation (“TAIFEX”)¹ respectfully requests that the Commodity Futures Trading Commission (“CFTC” or “Commission”) Division of Clearing and Risk (“Division”) confirm that it will not recommend that the Commission take enforcement action against TAIFEX for failure to register as a Derivatives Clearing Organization (“DCO”) under Section 5b(a) of the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* (the “Act”), or to operate pursuant to an exemption under Commission Rule 39.6, 17 C.F.R. §39.6, thereunder.

TAIFEX seeks this relief under the same conditions applicable to its pending Petition for Exemption from registration as a DCO under Rule 39.6 to provide clearing services to U.S.-headquartered banks and other U.S. Persons active in the Taiwan marketplace in various “swaps,” as defined in 17 C.F.R. 1.3, and for the period during which its petition remains pending.

I. Background

A. The Requestor

TAIFEX is organized under the laws of the Republic of China (Taiwan) and is subject to oversight by the Securities and Futures Commission, Ministry of Finance (now the Securities and Futures Bureau, Financial Supervisory Commission, R.O.C. (Taiwan) (the “FSC”).

¹ Taiwan Futures Exchange Corporation (TAIFEX), is a futures exchange and clearing house. It is located at 14F, No. 100, Sec. 2, Roosevelt Rd., Zhongzheng Dist., Taipei City 100404, Taiwan (R.O.C.) and its telephone number is: +886-2-2369-5678.

Since December 1, 1997, TAIFEX has been licensed by the FSC to operate as a futures exchange and clearing organization.

B. Republic of China (Taiwan) Regulatory Framework

TAIFEX, specifically its clearing organization, is organized under the laws of the Republic of China (Taiwan) and is subject to oversight by FSC, which applies, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with and in adherence to the Principles for Financial Market Infrastructures (“PFMI”) published by the Bank for International Settlements and the International Organization of Securities Commissions.²

On January 14, 2020, the Banking Bureau of the FSC published a definition of the term “Qualifying Central Counterparty” or “QCCP.” The FSC’s definition of QCCP includes a requirement that the CCP should be based and prudentially supervised in a jurisdiction where the relevant regulator with oversight over the CCP has established and publicly indicated that it applies to the CCP, on an ongoing basis, domestic rules and regulations that are consistent with the PFMI. On November 25, 2020, the Banking Bureau of the FSC recognized TAIFEX as a QCCP, thereby effectively acknowledging that TAIFEX, on an ongoing basis, is subject to rules and regulations consistent with the PFMI. TAIFEX identifies with specificity the relevant aspects of the PFMI within which it operates and its adherence to these requirements. TAIFEX’s most recent PFMI disclosure can be found on TAIFEX’s website at:

https://www.taifex.com.tw/file/taifex/eng/eng9/TAIFEX_PFMI_Disclosure_Report.pdf.

On January 16, 2019, the President of the Republic of China (Taiwan) promulgated the amendment of Article 3 of the Futures Trading Act (the “FTA”) to include swap contracts and other types of contracts into the scope of futures and to empower the FSC to mandate central clearing of futures by a designated clearing house. Five months later, on June 24, 2019, the FSC designated TAIFEX as the over-the-counter (“OTC”) derivatives clearing house pursuant to Article 3(2) of the FTA, which makes TAIFEX the sole authorized clearing house to clear swaps in Taiwan. 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. Any new products that TAIFEX proposes to include in its clearing services are subject to the FSC’s approval, and the Central Bank of the Republic of China’s approval if the product involves foreign exchange.

C. The Swaps Market in the Republic of China (Taiwan)

The annual trading volume of TWD-denominated plain vanilla IRS and USD/TWD NDF in terms of the notional amount from May 1, 2020, to April 30, 2021, was TWD 2.99 trillion (US\$106.75 billion) and TWD 15.71 trillion (US\$561.05 billion), respectively. The average outstanding notional amount of TWD-denominated plain vanilla IRS and USD/TWD NDF in the same period was TWD 10.02 trillion (US\$357.75 billion) and TWD 3.40 trillion (US\$121.53 billion), respectively.

² The PFMI are available at: [Principles for Financial Market Infrastructures \(PFMI\) \(bis.org\)](https://www.bis.org/principles/).

The recent amendment to Article 3 of the FTA laid the foundation for TAIFEX to act as the sole authorized central counterparty (“CCP”) in Taiwan to clear OTC derivatives. TAIFEX plans to launch clearing services for OTC derivatives as a complement to its existing successful exchange-traded derivatives clearing services in mid-2022.

The products that TAIFEX initially plans to clear are stipulated in Article 24 of Taiwan Futures Exchange OTC Derivative Clearing Operating Rules. They include IRS and NDF. TAIFEX will launch its clearing services for different products and clients in phases. In the first phase, which is scheduled in mid-2022, TAIFEX will introduce TWD-denominated IRS clearing for dealer-to-dealer transactions. In the second phase, which is scheduled in mid-2023, client clearing will be allowed for TWD-denominated IRS, and TAIFEX will further introduce the clearing service for USD/TWD NDF. Other products, such as IRS contracts denominated in different currencies and NDF contracts in other currency pairs, will be introduced based on market demand.

D. The CFTC Regulatory Framework

Section 5b(a) of the Act provides that a clearing organization may not clear swaps unless it is registered with the Commission as a DCO. However, the Act authorizes the Commission to exempt a clearing organization from DCO registration for the clearing of swaps if the Commission determines that the clearing organization is subject to “comparable, comprehensive supervision and regulation” by its home country regulator.

The Commission, beginning in 2015, exempted several non-U.S. clearing organizations from registration in connection with their clearing of proprietary swap positions of U.S. persons and futures commission merchants (FCMs), but not customer, swap positions. The Commission in August 2018 proposed to codify, and in January 2021 codified as Rule 39.6, policies and procedures to issue exemptions based upon a determination that the non-U.S. clearing organization is subject to comparable, comprehensive supervision and regulation by a home country regulator.

Commission Rule 39.6 requires that the clearing organization demonstrate that: “(i) it is organized in a jurisdiction in which a home country regulator applies to the clearing organization, on an ongoing basis statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the PFMI; (ii) it observes the PFMI in all material respects; (iii) and it is in good regulatory standing in its home country.” In addition, to be eligible for an exemption from registration, a Memorandum of Understanding (“MOU”) “satisfactory to the Commission must be in effect between the Commission and the clearing organization’s home country regulator, pursuant to which, among other things, the home country regulator agrees to provide to the Commission any information that the Commission deems necessary to evaluate the clearing organization’s initial and continued eligibility for exemption or to review compliance with any conditions of such exemption.”³

³ Id. at 954-954.

II. Reason for the Requested Relief

Currently, 22 financial institutions have expressed their interest in becoming clearing members of TAIFEX. After amending certain of its rules to comply with the requirements of Rule 39.6,⁴ TAIFEX, on December 27, 2021, petitioned the Commission for exemptive relief. The Petition requested that its exemption from DCO registration apply to all instruments that fall within the definition of “swaps” in 17 C.F.R. 1.3 for which TAIFEX may offer clearing presently or in the future. The Petition demonstrated that TAIFEX generally meets the eligibility criteria for the exemption. In this regard, TAIFEX has consented to the jurisdiction of the United States with respect to the clearing activities within the scope of the requested relief.

The Commission has entered into an individual memorandum of understanding with the FSC.⁵ Additionally, the FSC is a signatory to the OICV-IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.⁶ However, TAIFEX understands that the Commission deems it necessary that certain enhancements to the existing MOU between the Commission and the Republic of China (Taiwan) be made prior to consideration of its granting TAIFEX’s Petition. TAIFEX understands that discussions are underway between the Commission and the FSC to this end.

TAIFEX believes that the information that it has provided to the Commission in its pending Petition demonstrates that it is comparably and comprehensively regulated in its home jurisdiction and that, but for the enhancements to be made to the MOU, TAIFEX would be eligible for exemption under the procedures and policies of Rule 39.6. TAIFEX requests that No-action relief be granted to it and to U.S. Persons and futures commission merchants, including but not limited to Taiwan branches of U.S. banks and/or their affiliates, that are clearing members in connection with their own proprietary swap positions, under the same conditions applicable to the available exemption under Commission Rule 39.6 while the TAIFEX Petition is pending with the Commission.

Such relief is in the public interest by making the benefits of clearing swaps available to U.S. Persons who are members of TAIFEX or their affiliates during the period necessary for the Commission and the FSC to enter into the required enhancements to their MOU. The requested relief is consistent with past relief granted by the Division.⁷

⁴ Among other changes, TAIFEX amended its OTC Derivative Clearing Enforcement Rules (the “Enforcement Rules”), to accommodate the requirements of Rule 39.6(b)(1), including defining “U.S. Person,” “U.S. Futures Commission Merchant,” and “proprietary account” and amended Section 4.2.4 of the Enforcement Rules, to limit the scope of clearing services to specified classes of persons in accordance with the regulations of foreign competent authorities, such as the Commission.

⁵ [Memorandum of Understanding between the CFTC and the Taiwan Securities & Exchange Commission \(now the Securities & Futures Commission\) through, respectively, the American Institute in Taiwan and the Coordination Council for North American Affairs \(now the Taipei Economic and Cultural Representative Office in the United States\)](#), January 11, 1993.

⁶ <https://www.iosco.org/about/?subSection=mmou&subSection1=signatories> (listed as Chinese Taipei).

⁷ See CFTC Letter Number 16-56.

III. Conclusion

For the foregoing reasons, because the expected timing of the Commission and the FSC finalizing enhancements to the MOU is indeterminate, and because TAIFEX otherwise meets the regulation's requirements for exemptive relief, clearing of swaps is in the public interest, and the requested relief is only for an interim period while the Petition remains pending, TAIFEX respectfully requests that the Division confirm that it will not recommend that the Commission bring an enforcement action against TAIFEX's clearing organization, or members or participants of TAIFEX's clearing organization who are U.S. Persons that clear proprietary positions through TAIFEX for failure of TAIFEX to register as a derivatives clearing organization under Section 5b(a) of the Commodity Exchange Act, 7 U.S.C. §1 et seq., or to operate pursuant to an exemption under Commission Rule 39.6, 17 C.F.R. §39.6.

* * * * *

Please direct any questions or correspondence regarding this Petition to our outside counsel, Paul M. Architzel of WilmerHale, at (202) 663-6240 or by email at paul.architzel@wilmerhale.com or to Joseph Juan of TAIFEX's Clearing Department by phone at +886-2-2366-3254 or by email at joseph@taifex.com.tw.

Respectfully submitted,



Tzu-Hsin Wu, Chairman
Taiwan Futures Exchange

cc: Eileen Donovan, Deputy Director, Division of Clearing and Risk

CERTIFICATION AND UNDERTAKING
PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the attached letter, dated April 14, 2022, are true and complete to the best of my knowledge. Pursuant to Commodity Futures Trading Commission Regulation 140.99(c)(3)(ii), Taiwan Futures Exchange Corporation hereby undertakes that, if at any time prior to issuance of such no action letter, any material representation made in this letter ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By: Wu Tzu-Hsin

Dated: April 14, 2022

Name: Tzu-Hsin Wu

Title: Chairman

For Taiwan Futures Exchange Corporation