



ADM Investor  
Services, Inc.

2100A Board of Trade Building  
141 W. Jackson Boulevard  
Chicago, Illinois 60604  
312-242-7000  
NFA ID: 0000360

March 6, 2023

*Sent via email to dsioletters@cftc.gov*

Ms. Amanda L. Olear  
Director, Market Participants Division  
Commodity Futures Trading Commission  
1155 21st Street, NW  
Washington, D.C. 20581

Re: Request for No-Action Relief from Section 4d of the Commodity Exchange Act and from Commission Regulations 1.17, 1.20 for Depositing and Holding Customer Funds in Taiwan

Dear Ms. Olear:

ADM Investor Services, Inc. (“ADMIS”) respectfully requests that the Commodity Futures Trading Commission (the “Commission”) Market Participants Division (“MPD”) confirm that it will not recommend an enforcement action to the Commission if ADMIS receives and holds funds deposited by Taiwan-based customers to margin, guarantee, or secure futures and options on futures contracts listed on CFTC-designated contract markets and cleared by ADMIS in a manner that does not comply with Section 4d(a)(2) of the Commodity Exchange Act (“CEA”) and certain Commission regulations.

#### **I. Background**

ADMIS is a registered independent (non-bank) futures commission merchant (“FCM”) domiciled and primarily doing business in the United States. ADMIS began in 1966 as a small Midwestern firm specializing in agricultural hedging and steadily grew over more than five decades into the diversified, global FCM it is today. ADMIS now operates (offices and affiliates) in Chicago, New York, London, Hong Kong, Taiwan, and Singapore.

For over 25 years, ADMIS has operated an unincorporated branch of its US-registered FCM (“ADMIS US”) as a futures commission merchant registered with the Taiwan Securities and Futures Bureau in Taiwan (“ADMISTB”) to support Taiwan-based US-regulated futures trading cleared through ADMIS US for its customers, which are principally [REDACTED]. These customers participate in [REDACTED] [REDACTED] contracts. In Taiwan, ADMISTB customer property is held in Taiwanese banks [REDACTED] and [REDACTED] under Taiwanese customer protection regulations, which each have more than \$1 billion in regulatory capital and are subject to home country regulation as depository institutions.



ADM Investor  
Services, Inc.

Due to regulatory restrictions under Taiwan law and the regulations of the Taiwan Financial Supervisory Commission, which are further explained below, ADMIS' Taiwan customer bank accounts cannot qualify as customer segregated bank accounts under CEA section 4d and Commission Rules 1.17 and 1.20. For more than 25 years, ADMIS has addressed US margin obligations related to customer property in the Taiwanese segregated accounts by depositing proprietary funds in its CEA section 4d and Commission Rule 1.20 qualified customer segregated bank accounts in an amount equal to the funds held in the Taiwanese customer accounts.

ADMIS generally transfers funds from each Taiwan customer's margin account held at a Taiwan bank to an ADMIS CEA section 4d and Commission Rule 1.20 qualified customer segregated bank account with a U.S. bank in an amount equal to or in excess of the margin required by the applicable Commission-registered derivatives clearing organization clearing the futures contracts. Currently, ADMISTB's practice is to initiate a transfer of funds from an ADMISTB customer margin account at a Taiwan bank to an ADMIS CEA section 4d and Commission Rule 1.20 qualified customer segregated bank account whenever [REDACTED]

[REDACTED]<sup>1</sup> On the last business day of each month, ADMISTB's current practice is to transfer all funds [REDACTED] in an ADMISTB customer account in a Taiwan bank to a CEA section 4d and Commission Rule 1.20 qualified customer segregated bank account.

The ADMISTB balance of customer segregated funds in Taiwan bank accounts averaged approximately [REDACTED] in 2022. ADMIS maintains these limited residual funds to facilitate same-day customer withdrawal requests. ADMIS maintains an amount of proprietary funds in an ADMIS CEA section 4d and Commission Rule 1.20 qualified customer segregated bank account in an amount in excess of the amount of Taiwanese customer funds held by Taiwan banks. Finally, ADMIS takes a 100 percent capital charge for the full balances of any funds held in an ADMISTB customer account in a Taiwan bank in computing its adjusted net capital under Commission Rule 1.17 to reflect that the Taiwan bank deposits are held for the exclusive use of Taiwanese customers and are not available for use by ADMIS.

ADMISTB and ADMIS facilitate these transfers pursuant to written internal policies and procedures that govern this process.

ADMISTB retains a portion of the Taiwanese customer's excess margin funds in ADMISTB's customer segregated accounts with Taiwan banks for the purpose of withdrawing funds meeting the Taiwanese customer's request to withdraw excess funds from its trading account on a same-day basis. For purposes of CFTC Form 1-FR, ADMIS's practice is to treat the balances in the ADMISTB customer segregated

---

<sup>1</sup> For example, if the Taiwan segregated customers' excess margin bank balance is [REDACTED] ADMIS will transfer [REDACTED] from ADMISTB's Taiwan bank account to ADMIS's Section 4d(a)(2) segregated account with a U.S. bank. If the Taiwan segregated customers' excess margin balance held at a Taiwan bank is [REDACTED] ADMIS will not transfer any excess margin funds to a Section 4d(a)(2) segregated bank account at a U.S. bank.



ADM Investor  
Services, Inc.

accounts as noncurrent assets. ADMIS includes the amount of funds held in ADMISTB customer accounts in a Taiwan bank in the calculation of the total amount of funds required to be held in ADMIS CEA section 4d and Commission Rule 1.20 qualified customer segregated bank accounts. ADMIS presently has a US customer segregated funds target of \$120 million.

As of December 31, 2022, ADMIS held approximately [REDACTED] of customer funds in Taiwan banks, which represents [REDACTED] of the approximately \$8.6 billion of customer funds held in Section 4d(a)(2) segregation and approximately [REDACTED] of ADMIS's residual interest of approximately \$332 million. Further, the [REDACTED] of customer funds in Taiwan banks represented approximately [REDACTED] of ADMIS's adjusted net capital of approximately \$512 million and [REDACTED] of ADMIS's excess net capital of approximately \$134 million as of December 31, 2022.

## II. No-Action Relief Requested

In order to more easily facilitate cross-border operations in a manner that ensures application of local customer protection rules, ADMIS requests formal no-action relief that would provide that MPD would not recommend enforcement action against ADMIS for engaging in the above-described activities so long as the following conditions are met:

- (1) Taiwan customer property is kept in customer segregated accounts with Taiwanese banks subject to Taiwan's Financial Supervisory Commission's regulation and having net regulatory capital in excess of \$1 billion;
- (2) ADMISTB complies with the customer segregation requirements of Taiwan's Financial Supervisory Commission's rules (including, for



example, Article 42 of the Regulations Governing Futures Commission Merchants<sup>2</sup> and Articles 70<sup>3</sup> and 71<sup>4</sup> of the Futures Trading Act);

- (3) ADMIS accounts for ADMISTB daily customer fund movements in its daily residual interest computation and deposits proprietary funds in its CEA section 4d and Commission Rule 1.20 qualified customer segregated accounts in an amount equal to the funds held in the Taiwanese customer accounts;
- (4) ADMISTB's executed customer account agreements with its Taiwanese customers grant ADMIS standing authority, in its sole and absolute discretion, to transfer funds in the Taiwanese segregated

---

<sup>2</sup> See *Regulations Governing Futures Commission Merchants*, LAWS & REGULATIONS DATABASE OF THE REPUBLIC OF CHINA (Aug. 2, 2016), <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400106>. Article 42 states:

When a futures commission merchant opens a customer margin account with the institution designated by the FSC pursuant to Article 70, paragraph 1 of the Act, such account shall be designated as a customer margin account.

The name of the institution where a customer margin account is opened, and the number of the account, shall be posted publicly by the futures commission merchant in a prominent location at its place of business; the same requirement also applies to amendment or cancellation of the account. Where a futures commission merchant concurrently engages in brokerage of domestic and foreign futures, it shall open separate customer margin accounts.

The designated institutions referred to in paragraph 1 are limited to the following:

1. Banks that have been approved for foreign exchange or deposit operations by the FSC, and which meet the conditions prescribed by the FSC.
2. Central securities depository
3. Clearing banks that have been engaged by the Central Bank to carry out registration for book-entry central government bonds, and that meet the conditions prescribed by the FSC.

Financial institutions concurrently engaged in futures business may not open their customer margin accounts at financial institutions under their operation.

<sup>3</sup> See *Futures Trading Act*, LAWS & REGULATIONS DATABASE OF THE REPUBLIC OF CHINA (Jan. 16, 2019), <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400100>. Article 70 states:

A futures commission merchant shall open an exclusive customer margin/premium account in a banking institution designated by the Competent Authority, and shall deposit its futures customers' margins or premiums into such an exclusive account. The said account shall be segregated from the account of the futures commission merchant's own assets.

The creditors of futures commission merchants or designated institutions referred to in the preceding Paragraph shall not file an attachment suit or claim any rights on the said segregated customer margin/premium accounts unless otherwise provided for in this Act.

<sup>4</sup> See *Futures Trading Act*, LAWS & REGULATIONS DATABASE OF THE REPUBLIC OF CHINA (Jan. 16, 2019), <https://law.moi.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400100>. Article 71 states:

A futures commission merchant shall not withdraw any fund from the segregated customer margin/premium account, unless one of the following situations occurs:

1. instruction from the futures trader to deliver the excess margins/premiums;
2. payment for the futures trader of the margins/premiums due and/or settlement balance;
3. payment for the futures trader of brokerage commissions, interests, or other transactional fees payable to the futures broker; or
4. other items being approved by the Competent Authority.



ADM Investor  
Services, Inc.

accounts to US segregated accounts to support margin requirements for futures and options on futures on designated contract markets (“DCMs”); and

- (5) ADMIS will include ADMISTB customer segregated bank balances in its residual interest target setting.

The specific CEA and Commission Rules encompassed by the requested no-action relief are CEA section 4d and Commission Rules 1.17 (Risk-based Capital Requirements), 1.20(a) (Customer Funds Segregation “Identifies” Requirement), 1.20(c) (“Outside the US in Accordance with 1.49” Requirement), and 1.20(d) (Acknowledgement Letter Requirement, and Direct, Read-Only Electronic Access Requirement).

### **III. Basis for Relief**

Article 70 of Taiwan’s Futures Trading Act and Article 42 of the Regulations Governing Futures Commission Merchants generally require Taiwan customer property to be held in segregated customer accounts in Taiwanese banks, except, as relevant here, to support margin requirements on DCM futures and options positions. Those banks are not Money Center Banks within the scope of Commission Rule 1.49(c), and, therefore, their accounts do not qualify as CEA section 4d and Commission Rule 1.20 qualified customer segregated accounts.

However, MPD (formerly the Commission’s Division of Trading & Markets (“Division”)) has previously acknowledged that the Securities and Exchange Commission’s (“SEC”) Division of Trading & Markets (then called the Division of Market Regulation (“DMR”)) recognizes Taiwan as a “major money market” for purposes of the SEC’s analogous customer protection rules for broker-dealers.<sup>5</sup> Further, Futures Trading Act Article 71 generally allows ADMISTB to transfer customer property to ADMIS’ qualified US segregation account in only three specific instances, and any other scenario must be approved by the Financial Supervisory Commission. Finally, those provisions do not require the Taiwanese banks to comply with the acknowledgement letter and MPD direct, read-only electronic access requirements of Commission Rules 1.20(d) and 1.49(d).

Given these restrictions, with the knowledge of the respective staff of the Commission and ADMIS’ designated self-regulatory organization, which is CME Group, ADMIS through its branch ADMISTB for many years has acted pragmatically to meet the regulatory objectives of the CEA and Commission Rules while complying with Taiwan law by depositing proprietary funds into its CEA section 4d and Commission Rule 1.20 qualified customer segregated accounts in an amount equal to the funds held in the Taiwanese customer accounts. As the percentages set forth above show, those amounts are not material to ADMIS’ net capital or excess segregation deposits and do not present a material risk to the firm’s financial

---

<sup>5</sup> See CFTC Letter No. 96-34 (April 11, 1996) at 4 (referencing letter from Michael A. Macchiaroli, DMR, to Division Director Andrea M. Corcoran dated March 6, 1996).



ADM Investor  
Services, Inc.

standing. In addition, ADMIS has standing authority from its Taiwanese customers to transfer customer property to ADMIS' US customer segregated account to support and meet margin requirements for DCM-listed products, which effectively protects against under-margined positions and default.

ADMIS has considered alternative approaches to addressing the segregation issues, determining that alternative approaches are not commercially feasible with Taiwanese customers or would be cost prohibitive to establish and maintain. Although ADMIS could establish a separate incorporated subsidiary in Taiwan, such an approach would not meet the business needs and expectations of the Taiwanese customers who want to maintain accounts directly with ADMIS through a Taiwan branch in order to have the full capital and operational support of ADMIS for their trading as opposed to a separately capitalized and operated subsidiary. Further, the costs of establishing and maintaining a separate subsidiary in Taiwan is not supportable given the relatively limited customer business from Taiwan. Based on our assessment, currently, absent relief, ADMIS may have to close the accounts or the Taiwan branch, which would reduce the offerings of one of the few remaining US nonbank FCMs doing business in these markets around the globe.

Finally, the granting of this relief would be consistent with the Commission's general approach to cross-border issues and its commitment to recognizing the authority and discretion of non-U.S. regulators. In a recent adopting release, the Commission indicated that it "tried to allow for greater deference to foreign jurisdictions so as to reduce overlapping supervision and regulatory inefficiencies, which retaining direct oversight."<sup>6</sup> While that passage relates to oversight of a non-U.S. derivatives clearing organization, we respectfully submit that the Commission's philosophy should also apply to the situation presented in this request.

\* \* \*

---

<sup>6</sup> See Press Release, CFTC Finalizes Rules to Improve Swap Data Reporting, Approves Other Measures at September 17 Open Meeting, CFTC (Sep. 17, 2020), available at <https://cftc.gov/PressRoom/PressReleases/8247-20> (linking to final rule on "Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations").



ADM Investor  
Services, Inc.

For the foregoing reasons, ADMIS respectfully requests that MPD grant the above no-action relief request related to certain customer segregated accounts held in Taiwanese banks. ADMIS appreciates MPD's consideration of this request and would be pleased to discuss this request in further detail.

Sincerely,

*Thomas J. Anderson*

Thomas J. Anderson  
Senior Vice President  
ADM Investor Services, Inc.

cc: Thomas Smith, Deputy Director, MPD  
Larry Eckert, Special Counsel, MPD



ADM Investor  
Services, Inc.

**Certification Pursuant to Commission Rule 140.99(c)(3)(i)**

The undersigned hereby certifies that the material facts set forth in the attached letter, dated March 6, 2023, are true and complete to the best of my knowledge.

Pursuant to Commission Rule 140.99(c)(3)(ii), ADM Investor Services, Inc. hereby undertakes that, if at any time prior to the 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 material change in facts and circumstances.

ADM Investor Services, Inc.

Dated: March 6, 2023

By: Thomas J. Anderson

Name: Thomas J. Anderson

Title: Senior Vice President