



Commodity Futures Trading Commission

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Fact Sheet – Notice of Proposed Rulemaking on Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

The Commodity Futures Trading Commission (“Commission”) is proposing amendments to its regulations to permit derivatives clearing organizations (“DCOs”) organized outside of the United States (“non-U.S. DCOs”) that do not pose substantial risk to the U.S. financial system to register with the Commission yet comply with the core principles applicable to DCOs set forth in the Commodity Exchange Act (“CEA”) (“DCO Core Principles”) through compliance with their home country regulatory regime, subject to certain conditions and limitations. The proposal will be published in the Federal Register and open for a 60-day public comment period.

Eligibility for Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

Under the proposal, the Commission may register, subject to any terms and conditions as the Commission determines to be appropriate, a clearing organization for the clearing of swaps for U.S. persons if: (1) the Commission determines that compliance with the clearing organization’s home country regulatory regime constitutes compliance with the DCO Core Principles; (2) the clearing organization is in good regulatory standing in its home country; (3) the Commission determines that the clearing organization does not pose substantial risk to the U.S. financial system, as discussed below; and (4) a memorandum of understanding or similar arrangement is in effect between the Commission and the clearing organization’s home country regulator. To the extent that the clearing organization’s home country regulatory regime lacks legal requirements that correspond to those DCO Core Principles less related to risk, the Commission may, in its discretion, grant registration subject to conditions that would address the relevant DCO Core Principles.

“Substantial risk to the U.S. financial system”

As noted above, only those non-U.S. DCOs that do not pose substantial risk to the U.S. financial system would be eligible for registration with alternative compliance. The Commission is proposing a test to determine whether a non-U.S. DCO poses substantial risk to the U.S. financial system. The two-part test focuses on the amount of initial margin (“IM”) required at the DCO.

The first part of the proposed test is whether required IM from U.S. clearing members at the DCO constitutes 20 percent or more of the required IM for U.S. clearing members at all registered and exempt DCOs. This part of the test focuses on the DCO’s share of the total global required IM from U.S. clearing members.

The second part of the proposed test is whether 20 percent or more of the required IM at the DCO is attributable to U.S. clearing members. This part of the test focuses on the percentage of the required IM at the DCO that comes from U.S. clearing members.

Where one or both of these thresholds are close to 20 percent, the Commission may exercise discretion in determining whether the DCO poses substantial risk to the U.S. financial system. In these cases, in making its determination, the Commission may look at other factors that may reduce or mitigate the DCO’s risk to the U.S. financial system or provide a better indication of the DCO’s risk to the U.S. financial system.

Conditions of Alternative Compliance

Under the proposal, a DCO subject to alternative compliance would be permitted to comply with the DCO Core Principles by complying with the corresponding requirements in its home jurisdiction, except with respect to certain Commission

regulations, including critical customer protection safeguards and swap data reporting requirements. This would include section 4d(f) of the CEA, parts 1 and 22 of the Commission's regulations, and Commission regulation 39.15 (regarding treatment of funds), which set forth the Commission's customer protection requirements, subpart A of part 39, and the swap data reporting requirements under part 45 of the Commission's regulations.

In addition, a DCO subject to alternative compliance would be required to provide to the Commission certain daily, quarterly, and event-specific reporting. Such information would be used by the Commission, among other things, to evaluate the continued eligibility of the DCO for alternative compliance, review the DCO's compliance with any conditions of its registration, or conduct oversight of U.S. clearing activity. However, these reporting requirements are more limited than those required for traditionally-registered DCOs. Additionally, a DCO subject to alternative compliance would not be required to self-certify new or amended rules, unless those rules relate to the DCO's compliance with customer protection or swap data reporting requirements.

Application Procedures for Registration with Alternative Compliance

Under the proposal, an applicant for alternative compliance would be required to submit to the Commission only certain exhibits of Form DCO, which is the traditional application for DCO registration provided in Appendix A to part 39. As part of the application, the applicant would be required to demonstrate to the Commission the extent to which compliance with the applicable legal requirements in its home country would constitute compliance with the DCO Core Principles. To satisfy this requirement, the applicant would be required to provide a regulatory compliance chart that includes the citation and text of each applicable legal requirement in its home country that corresponds with each DCO Core Principle and an explanation of how the applicant satisfies those requirements.