

June 19, 2023

17 C.F.R. §39.6

Mr. 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: Petition for Exemption Under Rule 39.6 from Derivatives Clearing Organization
Registration**

Dear Mr. Hutchison,

The Taiwan Futures Exchange Corporation (“TAIFEX”), pursuant to 17 C.F.R. § 39.6, hereby petitions the U.S. Commodity Futures Trading Commission (“CFTC” or the “Commission”) for an order of exemption from the derivatives clearing organization (“DCO”) registration requirement under Section 5b(a) of the Commodity Exchange Act, 7 U.S.C. §1 *et seq.* (the “Act”).

TAIFEX seeks an exemption from registration as a DCO to provide clearing services in Taiwan dollar (“TWD”)-denominated interest rate swaps (“IRS”), U.S. dollar (“USD”)/TWD non-deliverable forwards (“NDF”) and other “swaps,” as defined in 17 C.F.R. 1.3, in response to client demand, to U.S.-headquartered banks active in the Taiwan marketplace.

This Petition is accompanied by Appendices A through H (in English translation, where applicable) in support of the Petition.

A. EXEMPTION ELIGIBILITY CRITERIA

As demonstrated below, TAIFEX meets the eligibility criteria for the exemption from registration as a DCO for the clearing of swaps for U.S. persons as provided under Rule 39.6(a).

(1) The derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by a home country regulator as demonstrated by the following:

(i) The derivatives clearing organization is organized in a jurisdiction in which a home country regulator applies to the derivatives clearing organization, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures.

TAIFEX is organized under the laws of the Republic of China (Taiwan) and is subject to the 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” or the “Competent Authority”). As addressed in Section III below, the Competent Authority applies to TAIFEX, on an ongoing basis, statutes, rules, regulations, policies, or a combination thereof that, taken together, are consistent with the Principles for Financial Market Infrastructures (“PFMI”).

(ii) The derivatives clearing organization observes the Principles for Financial Market Infrastructures in all material respects; and

TAIFEX observes the PFMI in all material respects, as addressed further in Section V below.

(iii) The derivatives clearing organization is in good regulatory standing in its home country.

TAIFEX is in good regulatory standing in its home country of Taiwan, as addressed further in Section IV below.

(2) A memorandum of understanding or similar arrangement satisfactory to the Commission is in effect between the Commission and the derivatives 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 initial and continued eligibility of the derivatives clearing organization for exemption from registration or to review its compliance with any conditions of such exemption.

The Commission has entered into an individual memorandum of understanding with the Competent Authority.¹ Additionally, the Competent Authority is a signatory to the OICV-IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.²

B. CONDITIONS FOR EXEMPTION

As described below, TAIFEX meets each of the conditions under Rule 39.6(b) for the exemption from registration as a DCO for the clearing of swaps for U.S. persons.

(1) Clearing by or for U.S. persons and futures commission merchants

¹ [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.

² <https://www.iosco.org/about/?subSection=mmou&subSection1=signatories> (listed as Chinese Taipei).

TAIFEX has amended its OTC Derivative Clearing Enforcement Rules (the “Enforcement Rules”), which were approved by the FSC on February 25, 2022, to accommodate the requirements of Rule 39.6(b)(1), as excerpted below and in Appendix A. These include a definition of “U.S. Person,” “U.S. Futures Commission Merchant,” and “proprietary account.” Section 4.2.4 of the Enforcement Rules, as amended, permits TAIFEX 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.

(2) Open Access

TAIFEX has amended its Enforcement Rules, which were approved by the FSC on February 25, 2022, to accommodate the requirements of Rule 39.6(b)(2). Specifically, the rules under §8.2 provide that economically equivalent swaps shall be offset. Section 4.1.1 provides for non-discrimination of clearing as between bi-laterally traded swaps or those traded on a trading platform. Please see Section VII for the text of these rules.

(3) Consent to jurisdiction; designation of agent for service of process

TAIFEX consents to the jurisdiction of the United States with respect to the activities within the scope of the Commission’s Exemptive Order, as provided in Section VIII below. TAIFEX has also designated an agent for service of process, also as addressed in Section VIII below.

(4) Compliance

As addressed in Section VI below, TAIFEX represents that it will comply with each of the requirements and conditions of the DCO exemption set forth in paragraphs (b), (c), and (d) of Rule 39.6 and the terms and conditions of its order of exemption as issued by the Commission.

(5) Inspection of Books and Records

TAIFEX represents that it will make all documents, books, records, reports, and other information related to its operation as an exempt DCO open to inspection and copying by any representative of the Commission; and upon request make the requested books and records available and provide them directly to Commission representatives.

(6) Observance of the PFMI

As addressed in Sections III and IV below, the Competent Authority applies the PFMI in respect of its oversight and regulation of TAIFEX, and TAIFEX adheres to the PFMI standards.

(7) Representation of good regulatory standing

Please see Section IV below.

(8) Other conditions

TAIFEX stands ready to comply with any other conditions that the Commission provides in an Order of Exemption.

C. REPORTING REQUIREMENTS

Rule 39.6(c) specifies certain information that an exempt DCO must provide to the Commission. This includes specified periodic reports as well as “any other information that the Commission deems necessary, including, but not limited to, information for the purpose of the Commission evaluating the continued eligibility,” assessing compliance with the exemption’s conditions, and oversight of U.S. persons and their affiliates that are cleared by an exempt DCO.

Daily reports include information on and variation margin in respect of each U.S. person clearing within the scope of the exemption. Quarterly reports include aggregated clearing volume and open interest of U.S. persons in swaps, a list of U.S. persons and futures commission merchants that are clearing members or affiliates of TAIFEX clearing members.

In addition, an exempt DCO is required to report promptly on changes in home country law material to observance of the PFMI and any assessment of PFMI observance on the part of TAIFEX or its Competent Authority. An exempt DCO must report on examinations, disciplinary actions or enforcement actions to which it is subject, any change with respect to the exempt DCO’s authorization, information related to any event of default by a U.S. person clearing swaps, and notice of any action taken against a U.S. person or futures commission merchant clearing swaps by an exempt DCO, no later than two business days after the exempt DCO takes such action against a U.S. person or futures commission merchant.

Finally, if an exempt DCO accepts for clearing a swap that has been reported to a swap data repository pursuant to part 45 of the Commission’s rules, it is required to report to the swap data repository to which the original swap was reported the DCO’s novation and termination of the original swap.

TAIFEX is aware of these information reporting requirements and is able, and stands ready, to comply with these reporting obligations as provided under the terms of an Order of Exemption that the Commission issues.

D. EXEMPTION APPLICATION REQUIREMENTS

As provided in Rule 39.6(e), TAIFEX provides the following information.

I. Background

(A) Exact name of applicant as specified in its charter, and the name under which business will be conducted (including acronyms)

Taiwan Futures Exchange Corporation (TAIFEX)

(B) Address of applicant's principal office

14F, No. 100, Sec. 2, Roosevelt Rd., Zhongzheng Dist., Taipei City 100404, Taiwan (R.O.C.)

(C) List of principal office(s) and address(es) where clearing activities are/will be conducted

14F, No. 100, Sec. 2, Roosevelt Rd., Zhongzheng Dist., Taipei City 100404, Taiwan (R.O.C.)

(D) A list of all regulatory licenses or registrations of the applicant (or exemptions from any licensing requirement) and the regulator granting such license or registration

Upon its establishment on December 1, 1997, TAIFEX has been granted two business licenses by the Competent Authority: one for TAIFEX's business as a futures exchange, another for TAIFEX's business as a clearing organization.

(E) Date of the applicant's fiscal year end

The fiscal year of TAIFEX matches the calendar year and runs from January 1 to December 31.

II. TAIFEX's Business Plan

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 entitle the Competent Authority to mandate central clearing of futures by a designated clearing house. Five months later, on June 24, 2019, the Competent Authority 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 Competent Authority has not yet issued a clearing mandate for swaps in Taiwan but has a plan to announce the mandatory central clearing of TWD-denominated IRS in January 2024 and implement it in January 2025.

These legislative developments laid the foundation for TAIFEX to act as the sole authorized central counterparty ("CCP") in Taiwan to clear OTC derivatives. Intending to provide safe and efficient clearing services for OTC derivatives products and to fulfill market demand, TAIFEX launched clearing services for OTC derivatives as a complement to its existing successful exchange-traded derivatives clearing services in July 2022.

TAIFEX's product offerings are stipulated in Article 24 of Taiwan Futures Exchange OTC Derivative Clearing Operating Rules, including IRS and NDF. TAIFEX plans to launch its clearing services for different products and clients in phases. In the first phase, TAIFEX introduced TWD-denominated IRS clearing for dealer-to-dealer transactions in July 2022. In the second phase, which is scheduled in July 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. As the CCP is a highly regulated business in Taiwan, any new products that TAIFEX proposes to include in its clearing services are subject to the Competent Authority's approval, and the Central Bank of the Republic of China's approval in case it involves foreign exchange. TAIFEX is requesting that its exemption from the DCO registration applies 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. Further details of the products TAIFEX currently clears or proposes to clear are set out in Appendix B.

For the first phase, there are 11 domestic financial institutions on board as OTC clearing members. For the second phase, 5 domestic financial institutions and 7 foreign financial institutions have expressed their interest in becoming clearing members. The trading volume of TWD-denominated plain vanilla IRS cleared by TAIFEX from July 25, 2022 to May 30, 2023, was NT\$108.79 billion (US\$3.55 billion). The average outstanding notional amount of TWD-denominated plain vanilla IRS cleared by TAIFEX was NT\$108.19 billion (US\$3.53 billion) on May 30, 2023.

As an exempt DCO, TAIFEX would accept certain U.S. persons and futures commission merchants, including but not limited to Taiwan branches of U.S. banks and/or their affiliates, as clearing members in connection with their own proprietary swap positions, but not customer positions. TAIFEX will engage in swap clearing business for U.S. persons as permitted under the exemption only after such time as the Commission grants TAIFEX an exemption from DCO registration.

III. Application of PFMI

TAIFEX is organized under the laws of the Republic of China (Taiwan) and subject to the oversight of the Competent Authority, 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 PFMI. Although the Competent Authority has not explicitly stated in regulation that its supervision of TAIFEX is in adherence to the PFMI, it has implicitly recognized that it adheres to the PFMI in respect of its regulation and oversight of TAIFEX.

On January 13, 2020, the Banking Bureau of the Competent Authority published a definition of the term “Qualifying Central Counterparty” or “QCCP,” as set out in Appendix C. The Competent Authority’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. The Banking Bureau of the Competent Authority recognized TAIFEX as a QCCP in the exchange-traded derivatives market on November 25, 2020, and recognized TAIFEX as a QCCP in the over-the-counter derivatives market on June 9, 2022, as set forth in Appendix D. In recognizing TAIFEX as a QCCP, the Competent Authority effectively acknowledged that TAIFEX, on an ongoing basis, is subject to rules and regulations consistent with the PFMI.

TAIFEX identifies with specificity aspects of the PFMI within which it operates and is regulated consistent with the PFMI in its PFMI disclosure report and PFMI self-assessment report as set forth in Appendix E and Appendix F, respectively.

IV. Representation of Good Standing

A written representation from the Competent Authority, which is TAIFEX’s home country regulator, that TAIFEX is in good regulatory standing is set out in Appendix G.

V. PFMI Disclosures

A copy of TAIFEX’s most recent disclosure necessary to observe the PFMI is set out in Appendix E.

VI. Representation of Compliance

TAIFEX represents that it will comply with each of the requirements and conditions of the DCO exemption set forth in paragraphs (b), (c), and (d) of Rule 39.6 and the terms and conditions of its order of exemption as issued by the Commission.

VII. Copy of TAIFEX Rules

TAIFEX's rules designed to comply with the conditions set forth in paragraphs (b)(2) and (d) of Rule 39.6 are excerpted below in relevant part and provided in Appendix A. To satisfy these requirements, TAIFEX has revised the Enforcement Rules, which obtained the Competent Authority's approval on February 25, 2022. Notably, several articles were recently amended to encompass TAIFEX's second phase clearing service for USD/TWD NDF and client clearing, which the FSC approved on April 7, 2023.

17 C.F.R. § 39.6(b)(2)

§8.2.1 of the Enforcement Rules – Netting Methods

TAIFEX adopts the following netting methods:

- A. Basic Netting: means that the cleared transaction in a netting application must, except for notional amount and trade direction which may vary, have identical designated terms of transaction as announced by TAIFEX.
- B. Blending Netting: means that the cleared transaction in a netting application must, except for notional amount, trade direction, and fixed interest rate or FX forward rate which may vary, have identical designated terms of transaction as announced by TAIFEX.

§8.2.2 of the Enforcement Rules – Netting Application

The netting application procedure for clearing members is as follows:

- A. Application shall be submitted between 9:00 and 17:00 on TAIFEX business days.
- B. Clearing members shall submit applications to TAIFEX for netting of products in the same categories, and the application methods are as follows:
 - (1) Specify each of the positions to be netted as well as the netting method.
 - (2) Apply for netting for eligible positions in clearing account, whereby TAIFEX will perform netting procedures for the positions in that clearing account on each business day.

- C. The netting application date and the following business day must not be a payment date for the cleared transactions.
- D. If a position transfer or compression is effected for the clearing account provided in a netting application on the netting application date, the netting application will be invalid.

§8.2.3 of the Enforcement Rules – Procedure for Effecting Netting

TAIFEX executes netting between 17:00 and daily closing on the day when clearing member making the application.

Once cleared transactions are netted, the rights and obligations between the clearing member and TAIFEX regarding the cleared transactions will be extinguished immediately and the cleared transactions terminated. Where a net cash flow remains after netting, the clearing member will create a new cleared transaction for the cash flow with TAIFEX at the same time.

If the old cleared transaction in the preceding paragraph is a client cleared transaction, the rights and obligations between the clearing member and the client regarding the client cleared transaction will be extinguished immediately and the cleared transaction terminated. Where a net cash flow remains after netting, the clearing member will create a new client cleared transaction for the cash flow with the client at the same time.

The new cleared transaction created under Paragraph 2 and Paragraph 3 must, except for notional amount, trade direction, and fixed interest rate or FX forward rate which may differ from the netted old cleared transactions, have identical designated terms of transaction as announced by TAIFEX.

§4.1.1 of the Enforcement Rules – Approved Trade Affirmation Platforms

The counterparties in each transaction shall submit the transaction for clearing through an approved trade affirmation platform announced by TAIFEX and complete the affirmation procedure before submitting the transaction for clearing.

The counterparties may appoint a third party to submit the transaction for clearing through an approved trade affirmation platform on their behalf.

TAIFEX shall not discriminate against the submission of an eligible transaction

executed bilaterally or on or subject to the rules of an unaffiliated electronic matching platform or trade execution facility without rational reasons during the clearing operation.

17 C.F.R. § 39.6(d)

§4.2.4 of the Enforcement Rules – Submission Related to the Foreign Competent Authority

[...]

When a clearing member requests TAIFEX for clearing eligible transaction that was reported to the Swap Data Repository (SDR), TAIFEX shall report to the relevant SDR the information on the cleared transactions established as a result of the novation. In such cases, the clearing member does not make the duplicative report for the cleared transactions that have been reported to the SDR by TAIFEX.

The foreign natural person or foreign juridical person submitting a contract to TAIFEX for centralized settlement shall comply with the regulations of the foreign competent authority. The company may announce relevant matters separately when it deems it necessary.

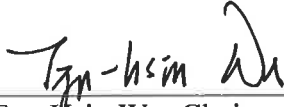
VIII. Consent to Jurisdiction; Designation of Agent for Service of Process

TAIFEX hereby consents to the jurisdiction in the United States with respect to the activities contemplated by this Petition.

TAIFEX has designated Cogency Global as its agent in the United States for the purpose of accepting any notice or service of process, pleadings, or other documents issued by or on behalf of the Commission or the United States Department of Justice to TAIFEX regarding its business as an exempt DCO. Information about Cogency Global and TAIFEX's agent appointment letter is set out in Appendix H.

Please direct any questions or correspondence regarding this Petition to our outside counsel, Matthew Kulkin of WilmerHale, at (202) 663-6075 or by email at Matthew.Kulkin@wilmerhale.com or to Suyi Chung of TAIFEX's Clearing Department by phone at +886-2-2366-3214 or by email at suyichung@taifex.com.tw.

Respectfully submitted,



Tzu-Hsin Wu, Chairman
Taiwan Futures Exchange

List of appendices:

- Appendix A: TAIFEX Rules as Required in 17 C.F.R. 39.6(b), (c) and (d)
- Appendix B: Classes of OTC Derivatives Contracts to be Cleared
- Appendix C: Competent Authority QCCP Definition
- Appendix D: Competent Authority's Designation of TAIFEX as a QCCP
- Appendix E: TAIFEX PFMI Disclosure Report
- Appendix F: TAIFEX PFMI Self-Assessment Report
- Appendix G: Competent Authority's Written Representation of Good Standing
- Appendix H: Local Agent's Information and Appointment Letter