



日本証券クリアリング機構
JAPAN SECURITIES CLEARING CORPORATION



November 15, 2019

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC SUBMISSION

Re: Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations (RIN 3038-AE87)

Dear Mr. Kirkpatrick:

ASX Clear (Futures) Pty Limited ("**ASX**")¹, Japan Securities Clearing Corporation ("**JSCC**")², Korea Exchange, Inc. ("**KRX**")³ and OTC Clearing Hong Kong Limited ("**OTC Clear**")⁴ appreciate the opportunity to provide the Commodity Futures Trading Commission ("**Commission**" or "**CFTC**") with comments on its notice of proposed rulemaking ("**NPR**") regarding registration with alternative compliance for non-U.S. derivatives clearing organizations.⁵ While we support

¹ ASX is exempted from the registration as a derivatives clearing organization. The current order from the CFTC on the exemption is available at the following CFTC website:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorder/coexemption.pdf>

² JSCC is exempted from the registration as a derivatives clearing organization. The current order from the CFTC on the exemption is available at the following CFTC website:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/jscdcoexemptamorder5-15-17.pdf>

³ KRX is exempted from the registration as a derivatives clearing organization. The current order from the CFTC on the exemption is available at the following CFTC website:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/krxcoexemptorder10-26-15.pdf>

⁴ OTC Clear is exempted from the registration as a derivatives clearing organization. The current order from the CFTC on the exemption is available at the following CFTC website:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/otcclearcoexemptorder12-21-15.pdf>

⁵ Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, 84 Fed. Reg. 34819 (Jul. 19, 2019).



the CFTC's efforts to codify a regulatory and supervisory approach based on the recognition of, and the deference to, the home country regulators of non-U.S. clearinghouses, we do not believe the NPR will address the current challenges many U.S. customers face in accessing non-U.S. swap markets.

Notwithstanding that the swap markets are global in nature, the NPR does not address the fundamental issues that limit U.S. customers accessing swap clearing. This is because the NPR still only permits U.S. customers to access swap clearing through CFTC-registered FCMs and DCOs, without recognizing the appropriate customer segregation implemented in non-U.S. jurisdictions under the Principles for Financial Market Infrastructure ("PFMIs"). Under the NPR, non-U.S. clearinghouses must comply with the customer segregation requirements under the CFTC's regulatory framework, including the treatment of U.S. customer collateral under the U.S. Bankruptcy Code, without any regulatory deference by the CFTC to the regulators in non-U.S. jurisdictions. Moreover, clearing members of non-U.S. clearinghouses must not clear for U.S. customers, unless they are registered with the CFTC as FCMs. These regulatory constraints to U.S. customers accessing swap clearing in non-U.S. jurisdictions should be of particular concern in the current environment where there has been an increase in U.S. customers seeking to clear swaps and a decrease in the overall number of FCMs, limiting the choice of available swap markets.

In addition to the risk management and ability to hedge risks through clearing of swaps denominated in foreign currencies, U.S. customers may seek to clear swaps because of 1) expanding mandatory clearing requirements for OTC derivatives, 2) the expansion of the scope of entities subject to initial margin requirements for uncleared swaps, 3) reduced capital requirements for central counterparty exposures under the Basel III framework, and 4) the benefits of netting available in cleared markets vis-à-vis uncleared markets. These factors have shifted swap market liquidity into central clearing, as evidenced in recent research⁶.

As a result of a decrease in the overall number of FCMs⁷, U.S. customers are being forced to

⁶ See "Incentives to centrally clear over-the-counter (OTC) derivatives, A post-implementation evaluation of the effects of the G20 financial regulatory reforms" (19 November 2018), Part A Executive summary:
<https://www.fsb.org/wp-content/uploads/R191118-1-1.pdf>.

⁷ See "Incentives to centrally clear over-the-counter (OTC) derivatives, A post-implementation evaluation of the effects of the G20 financial regulatory reforms" (Nov. 19, 2018), Figure C.10 Historical



日本証券クリアリング機構
JAPAN SECURITIES CLEARING CORPORATION



concentrate their clearing in a limited number of DCOs and FCM clearing members. The situation is further exacerbated for those U.S. customers who must clear swaps denominated in foreign currencies subject to the CFTC's clearing mandate⁸, as they cannot access the liquidity of swap markets in the home country of the relevant currency.

Currently no FCM is a clearing member of an exempt DCO, as there are potential legal and regulatory constraints and conflicts, in addition to the cost associated with FCM registration for non-U.S. clearing members of exempt DCOs. Where an FCM already has non-U.S. affiliated clearing members at an exempt DCO, the cost of onboarding an additional FCM-affiliate as a clearing member, solely to provide swaps clearing services to U.S. customers in an exempt DCO, may be prohibitively expensive. Moreover, to support client portability for U.S. customers in the event of an FCM clearing member default at a non-U.S. clearinghouse, multiple FCM clearing members would be needed. This would be challenging for a non-U.S. clearinghouse seeking exemption from DCO registration as they generally have smaller swaps clearing businesses.

It is imperative that the CFTC recognize the broad comparability of standards and the regulatory deference to the authorities in non-U.S. jurisdictions, based on internationally agreed standards, such as the PFMI, that have been incorporated into the legal and regulatory framework of other jurisdictions (as validated by regulatory assessments, clearing member assessments, legal and regulatory opinions, etc.), while also ensuring the stability of the wider financial system. This stability would be safeguarded by the CFTC's discretion available under the supplemental notice of proposed rulemaking regarding exemptions from DCO registration ("**SNPR**"), which was proposed previously and further supplemented to provide further discussion on customer protections and mandatory disclosure and transparency standards. We believe the CFTC should finalize the SNPR as the most urgent priority, regardless of any action taken with respect to the NPR. However, concurrently, or following the implementation of the SNPR, we support the introduction of a

count of Futures Commission Merchants (FCMs), available at:
<https://www.fsb.org/wp-content/uploads/R191118-1-1.pdf>.

⁸ The CFTC's clearing mandate includes interest rate swaps denominated in Australian Dollar, Canadian Dollar, Euro, Hong Kong Dollar, Mexican Peso, Norwegian Krone, Polish Zloty, Singapore Dollar, Swedish Krona, Swiss Franc, Sterling, U.S. Dollar, and Japanese Yen. A list of the classes of swaps subject to the CFTC's clearing mandate is available at:
<https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/clearingrequirementcharts9-16.pdf>.



part-30 type regime for swaps. Doing so would align with the access model used by U.S. customers to access non-U.S. futures markets under the part-30 regime, and facilitate the availability of cost-saving mechanisms for U.S. customers such as cross-product margin offsets available at some exempt DCOs. Due to the constraints detailed, including the lack of any regulatory deference by the CFTC to the regulators in each of our jurisdictions in relation to the customer segregation requirements and the challenges of providing clearing services to FCMs as clearing members, none of the CCPs that are signatories to this letter plan to utilize the proposed Registration With Alternative Compliance framework.

Therefore, finalizing the NPR without finalizing the SNPR would leave swap markets as fragmented for U.S. customers as they are today, because U.S. customers would still be required to access non-U.S. swap markets only through registered FCMs, thereby limiting the available clearinghouse options.

We welcome the opportunity for a discussion with the Commission on our views.

Sincerely,

/s/ Helen Lofthouse

Ms. Helen Lofthouse
Executive General Manager,
Derivatives & OTC Markets,
ASX Clear (Futures) Pty Limited

/s/ Hironaga Miyama

Mr. Hironaga Miyama
President & CEO,
Japan Securities Clearing Corporation

/s/ Ketan Patel

Mr. Ketan Patel
Head of FIC and OTC Clearing Risk
Management
OTC Clearing Hong Kong Limited

/s/ Sukho Jung

Mr. Sukho Jung
CCP Chief Risk Officer
Derivatives Market Division
Korea Exchange, Inc.

CC: The Honorable Heath P. Tarbert, Chairman
Ms. Jaime Klima, Chief of Staff for Chairman Tarbert
Mr. Malcolm Clark Hutchison III, Director, Division of Clearing and Risk
Mr. Suyash Paliwal, Director of the Office of International Affairs