The Clearing Corporation of India Ltd.

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

18 November 2019

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

Dear Mr. Kirkpatrick,

At the outset, The Clearing Corporation of India Ltd. (CCIL) would like to place on record its sincere thanks to CFTC for giving this opportunity to comment on the proposed Rulemaking on Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organisations. CCIL offers the services of central clearing in the Government Securities, Forex and Interest Rate Rupee Derivatives markets in India in the OTC space and is regulated by the Reserve Bank of India. It is also certified as a qualified CCP by the Reserve Bank of India on the basis of its adherance to the Principles for Financial Market Infrastructures (PFMI). CCIL has also been designated by the Reserve Bank of India as a critical financial market infrastructure (FMI). CCIL has gone through the proposed Rulemaking on Registration with Alternative Compliance for Non-U.S.Derivatives Clearing organisations and is broadly in agreement with the proposed approach adopted by the Commission for determination of whether a non-U.S.Clearing Organisation poses any 'substantial risk' to the U.S. financial system. While CCIL agrees with the approach to assess the twin test proposed for determination of 'substantial risk' to the U.S. financial system, it requests the Commission to consider whether the detailed application procedure prescribed under the proposed rule making for alternative compliance for non-U.S.Derivative Clearing Organisation can be altered to state that such non-U.S.DCOs that are assessed by its Home country regulator against the principles of PFMI would be sufficient requirement under the proposed registration regime. The Commission very rightly recognizes the need for the proposed rulemaking on registration with alternative compliance. It would advance territorial, risk-based approach to the regulation of a Clearing organization that demonstrates appropriate deference to non-U.S. regulation achieving a similar result as the DCO Core Principles where the non-U.S. regulator itself has a substantial regulatory interest in the

DCOs located in its jurisdiction. This would allow the home country regulator to assess such DCOs on its adherence to PFMI as also in terms of the prescriptions of its regulatory and legal requirements. Such an approach would harmonise the efforts of the respective regulators in addressing the systemic risks posed by the non-US DCO in both the jurisdictions.

As the focus of this rulemaking process is to ensure that the interest of the U.S.customers are protected, the Commission could also consider a further relaxation from the detailed requirements of making applications proposed for alternative compliance registration in respect of non-U.S.DCO who may be clearing for U.S.clients. In such a case, the Commission could permit such entities to render clearing services to U.S. Clearing members on the basis **of** satisfactory demonstration by those **non- US** DCOs that they adhere to the PFMI requirements duly certified by their home country regulators. Even otherwise, it may be a burdensome exercise under the proposed registration for alternative compliance of non-U.S. DCOs to undertake the following prescribed tasks:

1. Demonstrating to the Commission on the extent to which compliance with the applicable legal requirements in its home country would constitute with core principles set forth in Sec.5b(c)(2).
2. To satisfy this requirement, the applicant shall provide the citation and full text of each applicable legal requirement in its home country that corresponds with each core principle and explanation of how the applicant satisfies those requirements.
   Instead, the Commission may consider the satisfactory assessment by the home country regulator of the non US-DCO against PFMI standards as sufficient requirement under the proposed alternative compliance registration.

   Against the above background of its observations on the proposed alternative compliance scheme for non-US DCO, CCIL submits the following responses to the specific questions sought by the Commission:

Specific Questions

1. The Commission believes that the proposed definition of "good regulatory standing", as it relates to DCOs subject to alternative compliance, establishes a basis for providing the Commission with a high degree of assurance as to the DCO's compliance with the relevant legal requirements in its home country, while only seeking from the home

country regulator a reasonable representation. Although the Commission proposes to limit this to instances of "material" non-observance of relevant home country legal requirements, the Commission requests comment as to whether it should instead require all instances of non-observance.

CCIL: It is felt that the commission should assess only on the basis of "material" non-observances of legal requirements by home country regulator and not all cases of non-observances as the granular details of non-materiality may not have any bearing on the assessment of the "good regulatory standing" by the Commission.

2. The Commission believes that the review of any new or amended rule unrelated to the Commission's customer protection regime would be more appropriately handled by the DCO's home country regulator. The Commission requests comment as to whether it should require, as part of the application process for alternative compliance, that there is a rule review or approval process under the home country regime.

CCIL: A representation from the DCO's home country regulator as to the "good regulatory standing" of the DCO would provide the Commission enough ground to satisfy itself on **the DCO's compliance with the relevant legal requirements in its home country** and hence there may not be any requirement for review or approval process.

3. Proposed § 39.51(c)(2)(iii) would require a DCO to provide prompt notice to the Commission regarding any change in its home country regulatory regime. The Commission requests comment on whether the Commission should require a DCO subject to alternative compliance to provide prompt notice of any material change in its home country regulatory regime. If so, should the Commission attempt to define "material" (and, if so, how)?

CCIL: Since this will be a subject matter that would be suitably addressed through Memorandum of Understanding between the regulators, the same need not be provided by the DCO.

The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

CCIL: No comment.

A. Consultation Questions

In addition to the specific requests for comment noted elsewhere, the Commission generally requests comments on all aspects of the proposed rules. The Commission also requests comments on the following specific issues:

1. Does the proposed alternative compliance regime, including both the application process and the ongoing requirements, strike the right balance between the Commission's regulatory interests and the regulatory interests of non-U.S. DCOs' home country regulators?

CCIL: The proposed alternative compliance framework most certainly provides for a better alternative as compared to the existing structure.

The introduction of definitions such as "good regulatory standing" and "substantial risk" and the marked changes under the Alternative Compliance framework, rightly endorses the primacy of home country regulator and the compliance under home country requirements.

However, the following aspects in the proposed rules may be kindly reconsidered which may strike an imbalance between the Commission's regulatory interests and the regulatory interests of non-U.S. DCOs' home country regulators:

1. PFMI

The current proposal does not require that the non-U.S. DCO observe the Principles for Financial Market Infrastructure. Yet, it requires that the clearing organization's compliance with its home country regulatory regime should match/satisfy the DCO Core Principles.

The home country regulator has a responsibility to ensure smooth functioning of CCPs in terms of their country specific legal and regulatory requirements as also against the PFMI standards. Periodic assessments conducted by the World Bank authorities for the Financial Sector Assessment Programmes (FSAP) also use the methodology contained in PFMI standards. All these assessments based on PFMI provide uniformity and sufficient levels of comfort to the stakeholders. Furthermore, introduction of similar

models such as DCO Core Principles or alike by various regulatory bodies could create a complex web of regulations imposing a huge compliance burden on such CCPs. It may also lead to a situation of conflicting body of regulations giving rise to confusion in understanding and application of such rules.

2. Inspection

Proposed § 39.51(b)(5) would require a DCO to make all documents, books, records, reports, and other information related to its operation as a DCO (hereinafter, "books and records") open to inspection and copying by any Commission representative, and to promptly make its books and records available and provide them directly to Commission representatives, upon the request of a Commission representative.

The proposed approach may also have the effect of creating a parallel structure of regulatory bodies. Further, it may also undermine and be in conflict with the principles of international comity and the Home Country laws and regulations of the DCO.

Inspection Reports

Proposed § 39.51(c)(2)(iv) would require a DCO to provide to the Commission, to the extent that it is available to the DCO, any examination report or examination findings by a home country regulator. Given the MOU with the home country regulator, such information may be accessed with the consonance of the latter and may not be a requirement on the DCO.

Therefore, compliance under home country regulatory requirements and under PFMI will bring about the much needed consensus to strike the right balance between the Commission's regulatory interests and the regulatory interests of non-U.S. DCOs' home country regulators.

2. Are there additional regulatory requirements under the CEA or Commission regulations that should not apply to non-U.S. DCOs with alternative compliance in the interest of deference and allowing such DCOs to satisfy the DCO Core Principles through compliance with their home country regulatory regimes while still protecting the Commission's regulatory interests?

CCIL: The Commission may be satisfied with the adherence by non-US DCO to PFMI standards as certified by its home country regulator.

3. Should the Commission take into account regulations in Part 39, in addition to the DCO Core Principles, in determining whether alternative compliance is appropriate for a non-U.S. clearing organization?

CCIL: The Commission may be satisfied with the adherence by non-US DCO to PFMI standards as certified by its home country regulator.

4. Should the Commission require additional, or less, information from an applicant for alternative compliance as part of its application under proposed § 39.3(a)(3)?

CCIL: The Commission may require all such information as are required to be disclosed by Non US DCO as part of its quantitative and qualitative disclosure requirements under the PFMI standards.

5. Is the proposed test for ''substantial risk to the U.S. financial system'' the best measure of such risk? If not, please explain why, and if there is a better measure/metric that the Commission should use, please provide a rationale and supporting data, if available.

CCIL: We agree with the proposed test for substantial risk to the U.S. financial system based on the joint application of the thresholds. However, the discretion vesting with the Commission to determine whether the DCO poses substantial risk based on one or both of the thresholds may be avoided, as the provision has the effect of undoing the proposed test.

6. What is the frequency with which the Commission should reassess a DCO's ''risk to the U.S. financial system'' for purposes of the test, and across what time period, after it is registered under the alternative compliance regime?

CCIL: Once in two years would be appropriate frequency.

7. Does the proposed exemption from self-certification of rules in § 39.4(c) meet the standards for exemptive relief set out in section 4(c) of the CEA? a. In addition to rules that relate to the DCO's compliance with the requirements of section 4d(f) of the CEA, parts 1, 22, or 45 of the Commission's regulations, or § 39.15, should the Commission require other rules to be filed pursuant to section 5c(c) of the CEA? If so, should the Commission retain discretion in determining which other rules must be filed based on, for example, the particular facts and circumstances? Or should the Commission enumerate the types of rules that must be filed (e.g., rules related to certain products cleared by the DCO)?

CCIL: The Commission may be satisfied with the adherence by non-US DCO to PFMI standards as certified by its home country regulator.

8. Should non-U.S. DCOs with alternative compliance be excused from reporting any particular data streams in order to limit duplicative reporting obligations in the cross-border context without jeopardizing U.S. customer protections, particularly given the existence of an MOU between the Commission and the DCO's home country regulator as a requirement for eligibility for alternative compliance?

CCIL: Yes. Non-US DCOs with alternative compliance may avoid reporting duplicative reporting obligations in the cross border context in view of the existence of an MoU between the regulators.

Yours Sincerely,

O N Ravi

Executive Vice President,

The Clearing Corporation of India Ltd.