



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Clearing and Risk

December 20, 2013

Mr. Muthukrishnan Ramaswami  
Director  
Singapore Exchange Derivatives Clearing Limited  
2 Shenton Way, #19-00 SGX Centre 1  
Singapore 068804

Re: Extension of No-Action Relief with Regard to Section 4d(f) of the Commodity  
Exchange Act

Dear Mr. Ramaswami:

By letter dated December 21, 2012 (the "2012 No-Action Letter"),<sup>1</sup> the Division of Clearing and Risk ("Division") of the Commodity Futures Trading Commission ("Commission") granted no-action relief to (1) Singapore Exchange Derivatives Clearing Limited ("SGX-DC") for failing to register as a derivatives clearing organization ("DCO") under section 5b(a) of the Commodity Exchange Act ("CEA")<sup>2</sup> and (2) SGX-DC's clearing members ("Clearing Members") for failing to register as futures commission merchants ("FCMs") under section 4d(f)(1) of the CEA,<sup>3</sup> in relation to the clearing and carrying of existing or new positions in certain swaps ("OTC Commodity Contracts")<sup>4</sup> entered into by certain U.S. customers ("Affected U.S. Persons").<sup>5</sup> The relief was time-limited, expiring at the earlier of: (i) December 31, 2013, or (ii) the date upon which SGX-DC registered as a DCO, such date by which the positions of Affected U.S. Persons were to be held only by Clearing Members that are registered FCMs ("FCM Clearing Members").

Since the issuance of the 2012 No-Action Letter, SGX-DC has adopted rules and procedures to facilitate its acceptance of eligible FCMs as Clearing Members, and it has taken steps in furtherance of accepting FCM Clearing Members. However, as of December 20, 2013, SGX-DC has not accepted any FCM Clearing Members and it has represented that it does not

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<sup>1</sup> CFTC No-Action Letter 12-63.

<sup>2</sup> 7 U.S.C. § 7a-1(a).

<sup>3</sup> 7 U.S.C. § 6d(f)(1).

<sup>4</sup> The OTC Commodity Contracts include certain bulk commodity swaps (consisting of iron ore and coal swaps), freight swaps, oil swaps, and freight and iron ore options, and are the same contracts that were the subject of the 2012 No-Action Letter.

<sup>5</sup> The term "Affected U.S. Persons," as used herein, refers to U.S. customers of Clearing Members, who hold open positions in OTC Commodity Contracts as of December 20, 2013. This is consistent with the meaning of that term as used in the 2012 No-Action Letter. See 2012 No-Action Letter at 1 n.4.

expect to have accepted any FCM Clearing Members as of December 31, 2013, or such earlier date upon which the Commission may register SGX-DC as a DCO. As a result, the positions of Affected U.S. Persons will not be transferred to an FCM Clearing Member in accordance with Section 4d(f)(1) of the CEA and the Commission's regulations thereunder (the "Section 4d(f) registration requirements") by the expiration of the relief granted in the 2012 No-Action Letter.<sup>6</sup>

The present circumstances require that Affected U.S. Persons close out existing positions in OTC Commodity Contracts, and that SGX-DC and Clearing Members that carry such positions on behalf of Affected U.S. Persons cease to accept for clearing new positions other than those entered into for the purpose of offsetting existing positions.

Based on SGX-DC's good faith efforts to accept FCM Clearing Members, and with the objective of providing for orderly disposition of positions in OTC Commodity Contracts held by Affected U.S. Persons, the Division has determined that it will extend the no-action relief granted with respect to Section 4d(f)(1) of the CEA under the 2012 No-Action Letter, until March 31, 2014.<sup>7</sup> After that date, SGX-DC may not clear for Affected U.S. Persons or other U.S. customers unless such customers clear through an FCM Clearing Member, subject to SGX-DC becoming registered as a DCO.

The Division will not recommend that the Commission take enforcement action against (i) Clearing Members for failing to comply with the Section 4d(f) registration requirements in carrying existing positions and accepting for clearing offsetting positions in OTC Commodity Contracts on behalf of Affected U.S. Persons, or (ii) SGX-DC for engaging in activities related to its Clearing Members carrying existing positions and accepting for clearing offsetting positions in OTC Commodity Contracts on behalf of Affected U.S. Persons, subject to the following conditions:

- (1) Product Scope. The no-action relief is limited to OTC Commodity Contracts.
- (2) Participant and Transaction Scope. The no-action relief applies to SGX-DC and Clearing Members whose customers include Affected U.S. Persons as of the date of this relief. With respect to *existing positions* in OTC Commodity Contracts held by Affected U.S. Persons, the relief granted herein permits SGX-DC and Clearing Members to continue to carry such positions until the expiration of the no-action relief granted herein. With respect to *new positions* in OTC

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<sup>6</sup> Section 4d(f)(1) of the CEA states "It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this chapter with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked." 7 U.S.C. § 6d(f)(1).

<sup>7</sup> The no-action relief granted in the 2012 No-Action Letter with respect to SGX-DC's failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA remains in effect, expiring at the earlier of: (i) December 31, 2013 or (ii) the date upon which SGX-DC is registered as a DCO.



Commodity Contracts for Affected U.S. Persons, SGX-DC and Clearing Members may accept for clearing and clear only positions entered into for the purpose of offsetting existing positions of Affected U.S. Persons. Such offsetting transactions shall be cleared in accordance with the straight-through-processing requirements of Commission Regulation 39.12(b)(7).

(3) Disclosure Requirement. SGX-DC shall (i) notify Clearing Members of the terms of the no-action relief provided herein, and (ii) provide Clearing Members a standard form of disclosure and require distribution of this disclosure statement by Clearing Members to Affected U.S. Persons, notifying them of the terms of the no-action relief provided herein. SGX-DC shall comply with this condition within a reasonable period of time following receipt of this letter, and shall demonstrate compliance by providing the Division with a copy of the disclosure statement and written instructions to Clearing Members regarding mandatory distribution of the disclosure statement.

(4) Limited Duration. The no-action relief granted herein shall expire on the earlier of: (i) March 31, 2014, or (ii) the date upon which all OTC Commodity Contract positions of Affected U.S. Persons have been either closed or, subject to SGX-DC becoming registered as a DCO, transferred to an FCM Clearing Member.

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations made by SGX-DC to the Division, including the representations contained in SGX-DC's DCO application and in its no-action request dated December 21, 2012, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact me at (202) 418-5188 or Phyllis Dietz, Deputy Director, at (202) 418-5449.

Sincerely,



Ananda Radhakrishnan  
Director