



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Clearing and Risk

March 28, 2014

Mr. Muthukrishnan Ramaswami  
President  
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 20, 2013 (the "2013 No-Action Letter"),<sup>1</sup> the Division of Clearing and Risk ("Division") of the Commodity Futures Trading Commission ("Commission") extended no-action relief that had been granted in 2012<sup>2</sup> to Clearing Members of Singapore Exchange Derivatives Clearing Limited ("SGX-DC") and to SGX-DC, stating that the Division would not recommend that the Commission take enforcement action against (i) Clearing Members of SGX-DC for failing to comply with the futures commission merchant ("FCM") registration requirements of Section 4d(f) of the Commodity Exchange Act ("CEA")<sup>3</sup> in carrying existing positions and accepting for clearing offsetting positions in OTC Commodity Contracts<sup>4</sup> on behalf of Affected U.S. Persons,<sup>5</sup> and (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 certain conditions.

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<sup>1</sup> CFTC No-Action Letter 13-74 (Dec. 20, 2013).

<sup>2</sup> See CFTC No-Action Letter 12-63 (Dec. 21, 2012).

<sup>3</sup> 7 U.S.C. § 6d(f)(1). 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."

<sup>4</sup> The OTC Commodity Contracts included certain bulk commodity swaps (consisting of iron ore and coal swaps), freight swaps, oil swaps, and freight and iron ore options, and were the same contracts that were the subject of CFTC No-Action Letter 12-63.

<sup>5</sup> The term "Affected U.S. Persons," as used therein, referred to U.S. customers of Clearing Members, who held open positions in OTC Commodity Contracts as of December 20, 2013. See also CFTC No-Action Letter 12-63 at 1 n.4.

The relief granted in the 2013 No-Action Letter expires at 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 transferred to a Clearing Member that is registered as an FCM (“FCM Clearing Member”).

By letter dated March 27, 2014, you have requested that the Division extend the relief granted in the 2013 No-Action Letter until the earlier of (i) December 31, 2014; or (ii) the date upon which all OTC Commodity Contract positions of Affected U.S. Persons have been either closed out or transferred to an FCM Clearing Member of SGX-DC. In support of this request, you have stated that since SGX-DC’s registration as a DCO, and in the course of its DCO application process, SGX-DC has adopted rules and procedures to facilitate the acceptance of eligible FCMs as Clearing Members, and that SGX-DC has also approached potential Clearing Member applicants and taken steps in furtherance of its bid to accept FCM Clearing Members.<sup>6</sup> You have further stated that, notwithstanding its best efforts, as of March 27, 2014, SGX-DC had not been able to accept any FCMs as Clearing Members.

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. Similarly, the Division notes that an FCM may not continue to maintain an omnibus customer account with an SGX-DC Clearing Member because, under Section 4d(f)(1) of the CEA, the non-FCM Clearing Member is not permitted to hold the FCM’s customer funds. This is the case whether the FCM’s customers are U.S. or non-U.S. persons.

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 and customers of FCMs that are not Clearing Members, the Division has determined that it will extend the no-action relief granted under the 2013 No-Action Letter, with a modification to explicitly include positions held in FCM omnibus customer accounts, until April 30, 2014. After that date, SGX-DC may not clear for Affected U.S. Persons or FCM customers unless they clear through an FCM Clearing Member.

The Division will not recommend that the Commission take enforcement action against (i) Clearing Members for failing to comply with the Section 4d(f)(1) registration requirements in carrying existing positions and accepting for clearing offsetting positions in OTC Commodity Contracts on behalf of Affected U.S. Persons or on behalf of FCM customers clearing through an FCM omnibus customer account, or (ii) SGX-DC for engaging in activities related to its Clearing Members carrying existing positions and accepting for

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<sup>6</sup> See SGX-DC March 27, 2014 letter at 3; see also CFTC No-Action Letter 13-74 at 2 (acknowledging SGX-DC’s efforts to accept FCM Clearing Members).

clearing offsetting positions in OTC Commodity Contracts on behalf of Affected U.S. Persons or on behalf of FCM customers clearing through an FCM omnibus customer account, 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 clearing positions in OTC Commodity Contracts for (i) Affected U.S. Persons or (ii) FCM customers clearing through an FCM omnibus customer account, as of the date of this relief. With respect to *existing positions* in OTC Commodity Contracts, 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 Commodity Contracts, 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 or FCM customers.
- (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 and to any FCM that maintains an FCM omnibus customer account with a Clearing Member (to facilitate the FCM's distribution of the disclosure to its customers), 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) April 30, 2014, or (ii) the date upon which all OTC Commodity Contract positions of Affected U.S. Persons and FCM customers have been either closed or transferred to an FCM Clearing Member.

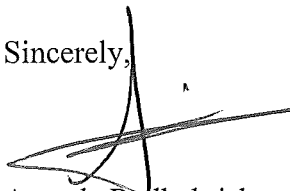
The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other 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 requests dated December 21, 2012 and March 27, 2014, 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

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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,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line that extends to the right and then loops back under the 'A'.

Ananda Radhakrishnan  
Director