

Directive No. 1 —

REQUIREMENT FOR CLEARING MEMBERS CLEARING OTC COMMODITY CONTRACTS FOR U.S. PERSONS TO ISSUE DISCLOSURE STATEMENT

Dates	Cross Reference	Enquiries
Issue Date 28 December 2012		Please contact Member Supervision:—
Effective Date 28 December 2012		Facsimile No : 6538 8273 E-Mail Address: membersup@sgx.com

1 Background

- 1.1 Singapore Exchange Derivatives Clearing Limited ("**SGX-DC**") refers to SGX-DC's communications to Clearing Members dated 5 October 2012 and 19 October 2012.
- 1.2 Certain provisions of the U.S. Commodity Exchange Act ("**CEA**"), introduced in accordance with the Dodd-Frank Act, came into effect on 12 October 2012 ("**New U.S. Laws**"). This included the definition of the term "swap".
- 1.3 Section 5b(a) of the CEA makes it unlawful for any clearing organisation to clear swaps for a U.S. person if it is not registered (or otherwise exempt) as a derivatives clearing organisation ("**DCO**"). As a result of this, SGX-DC is required to comply with the DCO registration requirements under CEA Section 5b(a).
- 1.4 Further, Clearing Members clearing through SGX-DC on behalf of U.S. persons would be required to comply with futures commission merchant ("**FCM**") registration requirements under CEA Section 4d(f)(1). CEA Section 4d(f)(1) provides that it is unlawful for any person to accept margins on behalf of a U.S. swaps customer to secure a swap cleared through a DCO unless that person is registered with the Commodity Futures Trading Commission (the "**Commission**") as an FCM.
- 1.5 SGX-DC is in the process of applying to be registered as a DCO. SGX-DC currently clears OTC commodity contracts through its Clearing Members and for U.S. persons, some of which fall within the swap definition under the New U.S. Laws ("**OTC Commodity Contracts**").

2 No-Action Relief

- 2.1 On 21 December 2012, SGX-DC submitted a letter of request ("**Request Letter**") to the Commission for no-action relief ("**Relief**") from CEA Section 5b(a), in respect of SGX-DC, and CEA Section 4d(f)(1), in respect of its Clearing Members clearing the OTC Commodity Contracts identified in Appendix A of SGX-DC's Request Letter. A copy of SGX-DC's Request Letter is attached as [Appendix 1](#).
- 2.2 The Relief was granted by the Commission on 21 December 2012. A copy of the Commission's letter is attached as [Appendix 2](#).

- 2.3 The Relief applies to SGX-DC and its Clearing Members whose customers include U.S. persons as at 21 December 2012 (“**Affected U.S. Persons**”). The Relief permits such Clearing Members to accept, clear, and carry new positions in OTC Commodity Contracts for Affected U.S. Persons on the condition that Clearing Members issue to such customers a disclosure statement (the “**Disclosure Statement**”) to, *inter alia*, inform all Affected U.S. Persons that these positions and related margin are not protected by U.S. Laws.
- 2.4 Details of the Disclosure Statement are set out in Section 3 below.
- 2.5 The Relief granted will expire at the earlier of: (a) 31 December 2013; or (b) the date upon which SGX-DC registers as a DCO. At such date, the positions and related margin of Affected U.S. Persons shall be held only by Clearing Members that are registered FCMs.

3 Disclosure Statement Requirement

- 3.1 SGX-DC hereby directs Clearing Members who clear OTC Commodity Contracts for Affected U.S. Persons to issue a Disclosure Statement to such customers that prominently states the following statements:
- (a) accounts holding customer positions in OTC Commodity Contracts and related customer property are not subject to Section 4d(f) of the CEA;
 - (b) such positions and related property will not be subject to, and therefore will not receive the protections of, Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code and Part 190 of the Commission’s regulations; and
 - (c) the treatment of the customer positions and related property in the event of an insolvency proceeding of SGX-DC or any of its Clearing Members will be subject to Singapore’s laws.
- 3.2 SGX-DC directs all Clearing Members clearing OTC Commodity Contracts for Affected U.S. Persons to issue the Disclosure Statement to the Affected U.S. Persons as soon as practicable, but in any event, no later than 25 January 2013.