



By Electronic Mail

June 18, 2015

Ms. Phyllis Dietz  
Acting Director, Division of Clearing and Risk  
Commodity Futures Trading Commission  
Three Lafayette Centre  
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(Filed via e-mail to [Secretary@cftc.gov](mailto:Secretary@cftc.gov))

Re: Petition for Exemption from Registration as a Derivatives Clearing Organization Under Section 5b(a) of the Commodity Exchange Act

Dear Ms. Dietz:

In accordance with your letter of 26 November 2014 (“**November 2014 Letter**”), OTC Clearing Hong Kong Limited (“**OTC Clear**”) hereby petitions the Commodity Futures Trading Commission (the “**Commission**”) for an order of exemption from the derivatives clearing organization (“**DCO**”) registration requirement under Section 5b(a) of the Commodity Exchange Act, as amended (the “**Act**”).<sup>1</sup> In addition to setting forth procedures and requirements for petitioning the Commission for an exemption from DCO registration, the November 2014 Letter extended the time period for relief provided to OTC Clear pursuant to a letter dated May 7, 2014 (“**May 2014 Letter**”).<sup>2</sup> In the May 2014 Letter, the Commission’s Division of Clearing and Risk (the “**Division**”) granted no-action relief that permits OTC Clear to clear certain interest rate swaps (“**IRS**”) and non-deliverable forwards (“**NDF**”) for proprietary trades of U.S. clearing members. OTC Clear understands that, as an exempt DCO, it would be authorized to clear only proprietary swaps positions for U.S. persons.

I. Background

OTC Clear, a subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEx**”),<sup>3</sup> was established on 6 May 2012 for the purpose of providing clearing services for over-the-counter

<sup>1</sup> 7 U.S.C. § 7a-1(a).

<sup>2</sup> CFTC Letter 14-68 (May 7, 2014).

<sup>3</sup> HKEx was established as part of a market reform spearheaded by the Hong Kong Government in 1999 to integrate Hong Kong’s securities and derivatives markets and for the purpose of acting as the holding company of two exchanges (The Stock Exchange of Hong Kong Limited and Hong Kong Futures Exchange Limited), and three clearing houses (Hong Kong Securities Clearing Company Limited, SEHK Options Clearing House Limited, and HKFE Clearing Corporation Limited). In 2012, HKEx acquired The London Metal Exchange and in 2014, LME Clear was launched. The HKEx group now operates three exchanges and five clearing houses.

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("OTC") derivatives as a central counterparty. On 25 October 2013, OTC Clear was recognized as a clearing house by the Securities and Futures Commission (the "SFC"), Hong Kong's statutory regulator for the securities and futures markets, under section 37 of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the "SFO"). As part of the approval process, OTC Clear was required to demonstrate, to the SFC's satisfaction, its ability to observe, on an ongoing basis, the Principles for Financial Market Infrastructures issued by the Bank for International Settlements' Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions in April 2012.

OTC Clear commenced its business on 25 November 2013. As a recognised clearing house ("RCH"), OTC Clear is regulated by the SFC under Part III of Division 3 of the SFO. OTC Clear has a statutory duty to ensure, so far as reasonably practicable, that there are orderly, fair and expeditious clearing and settlement arrangements for transactions cleared or settled through its facilities, and that risks associated with its business and operations are managed prudently. OTC Clear must, at all times, provide and maintain adequate capacity facilities to meet contingencies or emergencies, security arrangements and technical support for the conduct of its business. In discharging its statutory duties, OTC Clear is under an obligation to act in the interests of the public, having particular regard to the interests of the investing public. Where there is a conflict between the public interest and OTC Clear's own interest, OTC Clear is required to ensure that the interests of the public prevail.

HKEx, a publicly listed company in Hong Kong, is OTC Clear's parent company. As such, and as a recognized exchange controller under the SFO, HKEx has a statutory duty to ensure that any RCH controlled by it (including OTC Clear) performs its duties properly. Accordingly, HKEx takes an active role in overseeing and ensuring the proper functioning of OTC Clear. Arrangements are in place such that HKEx exercises appropriate control and oversight of the performance of OTC Clear's functions and overall operation, financial arrangement, and strategic, risk management and business direction.

## II. OTC Clear's Plans for Providing Clearing Services as an Exempt DCO

As an exempt DCO, OTC Clear would accept certain U.S. persons, including but not limited to Hong Kong branches of U.S. banks and/or their affiliates, as clearing members in connection with their own proprietary clearing business.<sup>4</sup> OTC Clear would not clear any swaps on behalf of U.S. customers.<sup>5</sup> OTC Clear plans to accept client clearing business for non-U.S. clients only.

OTC Clear currently offers clearing services for IRS denominated in four currencies: Chinese Renminbi ("RMB"), Hong Kong Dollars, U.S. Dollars, and Euros. OTC Clear also offers clearing services for NDFs referencing RMB, Taiwan Dollars, Korean Won and Indian Rupee.

<sup>4</sup> As used in this petition, the term "proprietary" has the meaning ascribed to the term "proprietary account" in Commission Regulation 1.3(y), 17 C.F.R. §1.3(y), and may include, without limitation, a business affiliate of a U.S. Clearing Member that clears IRS or NDF through its affiliated U.S. Clearing Member.

<sup>5</sup> As used in this petition, the term "customer" has the meaning ascribed to it in Commission regulation 1.3(k), 17 C.F.R. §1.3(k), which defines "customer" to include "any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest."

Further details of the products currently accepted for clearing and products which OTC Clear proposes to clear in the near future are set out in **Appendix 1**.

The Commission's regulatory definition of the term "swap" includes IRS and foreign exchange NDFs.<sup>6</sup> The Commission has adopted regulations to establish a mandatory clearing requirement under Section 2(h)(1)(A) of the Act in respect of, *inter alia*, certain classes of IRS (the "**Clearing Determination**").<sup>7</sup> The Clearing Determination applies to four currencies: U.S. Dollar, Euros, British Pound Sterling, and Japanese Yen. The Commission has not yet adopted regulations to establish mandatory clearing requirements for NDFs. The SFC and the Hong Kong Monetary Authority have not yet adopted rules for mandatory clearing of OTC derivatives.

### III. Conditions and Requirements for Exemption from DCO Registration

The November 2014 Letter sets forth various reporting and record keeping requirements and other conditions for an exemption from DCO registration. OTC Clear agrees to comply with all such requirements and conditions described in the November 2014 Letter and to be reflected in the requested order of exemption. The conditions identified in the November 2014 Letter specify, *inter alia*, that OTC Clear must maintain certain rules with respect to its clearing services. Proposed amendments to OTC Clear's rules designed to comply with these conditions are set out in **Appendix 2**.

Additionally, this petition is accompanied by: (a) a cover sheet containing informational items 1-16 listed in the November 2014 Letter; and (b) documents that comprise (or otherwise reference) required Exhibits A through E, as described in the November 2014 Letter. As certain of these materials evidence, OTC Clear satisfies the eligibility criteria for an exemption from DCO registration.

Members of the Division may contact me by phone at +852 2211 6162 or by email at [CalvinTai@hkex.com.hk](mailto:CalvinTai@hkex.com.hk), or OTC Clear's outside counsel, Lisa Dunsky of Sidley Austin LLP, by phone at (312) 853-4098 or by email at [ldunsky@sidley.com](mailto:ldunsky@sidley.com), with any questions or requests for additional information relating to this petition or the materials submitted herewith.

Sincerely,



Calvin Tai  
Chief Executive  
OTC CLEARING HONG KONG LIMITED

Attachments

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<sup>6</sup> 17 C.F.R. § 1.3(y)(xxx).

<sup>7</sup> 17 C.F.R. § 50.4.

cc: Ms. Parisa Abadi, Commodity Futures Trading Commission (by e-mail, with attachments)  
Ms. Eileen Donovan, Commodity Futures Trading Commission (by e-mail, with attachments)  
Mr. Keith Lui, Securities and Futures Commission (by e-mail, with attachments)