



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

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Mr. Kyung Sik Lee
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Re: Request for No-Action Position with respect to Section 2(a)(1)(C)(ii) and (iv) of the Commodity Exchange Act and CFTC Regulation 30.13

Dear Mr. Lee:

The Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) is issuing this letter in response to a request dated December 9, 2024 from the Korea Exchange (“KRX”) pursuant to Commission Regulation 140.99(a)(2).¹

KRX requested assurance that the Division will not recommend that the Commission commence an enforcement action against KRX with respect to the offer or sale to, or trading by, U.S. persons that are qualified institutional buyers (“QIBs”)² of the Korea Composite Stock Price Index (“KOSPI”) 200 Futures contract or Mini KOSPI 200 Futures contract (collectively, the “Contracts”) in contract months newly listed on KRX on and/or from February 6, 2025 and in contract months without open interest that were listed prior to February 6, 2025. KRX requested that this no-action position take effect on February 6, 2025 (Korea Standard Time) and continue until the earliest of: 1) the certification of the Contracts pursuant to Commission Regulation 30.13; 2) the Commission’s termination of its review or denial of certification of the Contracts pursuant to Commission Regulation 30.13; or 3) March 6, 2026 (Korea Standard Time).

I. Background

KRX is the sole securities and derivatives exchange operating in the Republic of Korea. It also serves as the central counterparty for the futures, options, and securities products KRX offers, as

¹ 17 C.F.R. § 140.99(a)(2) (governing requests for no-action letters).

² As defined in Rule 144A under the Securities Act of 1933.

well as certain swaps.³ The KRX Derivatives Market offers futures and options on several classes of assets across equities, currencies, interest rates, commodities, and exchange-traded funds, including the Contracts. The KOSPI 200 is a capitalization-weighted securities index of 200 Korean stocks trading on KRX's securities market.

II. Governing Law

Section 2(a)(1)(C)(iv) of the Commodity Exchange Act ("CEA" or the "Act") generally prohibits any person from offering or selling a futures contract based on a security index in the U.S., except as permitted under CEA section 2(a)(1)(C)(ii) or CEA section 2(a)(1)(D).⁴ CEA section 2(a)(1)(C)(ii) grants the CFTC "exclusive jurisdiction with respect to accounts, agreements . . . and transactions involving . . . [futures] contracts [on] a Group or index of securities (or any interest therein or based upon the value thereof) . . ." subject to three conditions. Specifically, Congress authorized the CFTC to regulate a futures contract based on a security index where:

- (1) the contract is cash-settled;
- (2) trading of the contract is not readily susceptible to manipulation; and
- (3) such group or index of securities does not constitute a narrow-based security index.⁵

Commission Regulation 41.1(c) defines a broad-based security index as any index of securities that does not meet the definition of a narrow-based security index.⁶ CEA section 1a(35)(A) defines a narrow-based security index as an index:

- That has 9 or fewer component securities;
- In which a component security comprises more than 30% of the index's weighting;
- In which the five highest weighted securities in aggregate comprise more than 60 percent of the index's weighting; or
- In which the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume

³ KRX is an exempt derivatives clearing organization for the purpose of clearing certain swap transactions. *See* In the Matter of the Petition of Korea Exchange, Inc., For Exemption from Registration as a Derivatives Clearing Organization, Order of Exemption From Registration (Oct. 26, 2015), *available at* <https://www.cftc.gov/PressRoom/PressReleases/7270-15>.

⁴ 7 U.S.C. § 2(a)(1)(C)(iv). By its terms, CEA section 2(a)(1)(C)(iv) applies to security index futures contracts traded on both domestic and foreign boards of trade. CEA section 2(a)(1)(D) governs the offer and sale of security futures products, which are defined by CEA section 1a(44) as based on a "single security or narrow-based security index," and is not applicable to the extent the Contracts involve a broad-based security index. 7 U.S.C. § 2(a)(1)(D); 7 U.S.C. § 1a(44).

⁵ 7 U.S.C. § 2(a)(1)(C)(ii).

⁶ 17 C.F.R. § 41.1(c) ("[b]road-based security index means a group or index of securities that does not constitute a narrow-based security index"); 17 C.F.R. § 41.1(e) ("[n]arrow-based security index has the same meaning as in section 1a(35) of the Commodity Exchange Act").

of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000).⁷

Upon request, the Commission may certify that a futures contract on a broad-based security index trading on a foreign board of trade conforms with CEA section 2(a)(1)(C)(ii).⁸ Commission Regulation 30.13 sets forth the process for seeking such certification.⁹ A submission seeking such certification must include data, information, facts, and statements confirming that the subject contract conforms with CEA section 2(a)(1)(C)(ii).¹⁰

Commission Regulation 30.13 places no time limit on the Commission's standard certification review procedure. Under certain circumstances, however, a contract may be eligible for expedited review pursuant to Commission Regulations 30.13(e)-(f).¹¹ The expedited review procedure takes place over 45 days unless the Commission elects to extend its review for an additional 45 days where the request raises novel or complex issues that require additional time for review.¹² The submitting foreign board of trade may also request an extension of the review period.¹³

Security indexes do not necessarily remain broad-based or narrow-based permanently – they may transition from narrow-based to broad-based, and vice versa. Pursuant to Commission Regulation 41.14(b), “an index that is a narrow-based security index that becomes a broad-based security index for more than 45 business days over 3 consecutive calendar months shall continue to be a narrow-based index for the following 3 calendar months,” providing market participants with time to adjust to applicable CFTC regulations.¹⁴ Following this 3-month transition period, the index becomes broad-based, and “a national securities exchange may continue to trade only in those months in the security futures product that had open interest on the date the transition period ended.”¹⁵ As noted above, pursuant to Commission Regulation 30.13, a futures contract on a broad-based security index trading on a foreign board of trade may receive Commission certification that the contract conforms with CEA section 2(a)(1)(C)(ii); the Commission withdraws such certification when the underlying index becomes narrow-based.¹⁶

⁷ 7 U.S.C. § 1a(35)(A). CEA section 1a(35)(B) sets forth several exclusions from the definition of narrow-based security index, none of which are relevant here. 7 U.S.C. § 1a(35)(B).

⁸ 17 C.F.R. § 30.13(a).

⁹ 17 C.F.R. § 30.13.

¹⁰ 17 C.F.R. § 30.13(a)(2).

¹¹ 17 C.F.R. § 30.13(e)-(f). Commission Regulation 30.13(m) also provides for an accelerated 15 business day review process in very limited circumstances not applicable here. 17 C.F.R. § 30.13(m).

¹² 17 C.F.R. § 30.13(g)-(h).

¹³ 17 C.F.R. § 30.13(h)(2).

¹⁴ 17 C.F.R. § 41.14(b); “Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index; Joint Final Rule,” 66 Fed.Reg. 44490, 44503 (August 23, 2001).

¹⁵ *Id.*

¹⁶ 17 C.F.R. § 30.13(a).

III. The KOSPI 200 Index

Commission staff granted KRX a no-action letter on November 26, 2008, with respect to the offer and sale of KOSPI 200 Futures contracts to persons within the United States.¹⁷ The Commission certified the Mini KOSPI 200 Futures contract under Commission Regulation 30.13(m) on August 1, 2017.¹⁸ At the time that staff issued such no-action letter, as well as at the time that the Commission made such certification, the KOSPI 200 was a broad-based security index.

The KOSPI 200 has transitioned between a narrow-based and broad-based security index on several occasions beginning in 2020.¹⁹ In each case, when the index was recharacterized as broad-based, the Division issued a no-action position effective during the time period between when the index was officially recharacterized as a broad-based security index and when the Contracts were certified pursuant to Commission Regulation 30.13.²⁰

Most recently, the KOSPI 200 was recharacterized as a narrow-based security index in February 2024. As a result, the Commission withdrew its existing certifications of the Contracts, and the Contracts became subject to joint regulation by the CFTC and the Securities and Exchange Commission (“SEC”) as foreign security futures products. Pursuant to an SEC Order²¹ and related CFTC Advisory,²² the only persons located within the United States permitted to trade the Contracts as foreign security futures products are QIBs.

KRX has represented to staff that the KOSPI 200 met the definition of a broad-based security index for greater than 45 days over three consecutive calendar months as of November 5, 2024, triggering a 3-month transition period pursuant to Commission Regulation 41.14(b) beginning on November 6, 2024.²³ The transition period ends on February 4, 2025, and the KOSPI 200 is set to become a broad-based security index pursuant to Commission Regulation 41.14(b) on February 6, 2025.

¹⁷ CFTC Staff Letter No. 08-20 (November 26, 2008), available at <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm>.

¹⁸ Prior to the adoption of Commission Regulation 30.13, Commission staff provided foreign boards of trade a staff no-action letter confirming that a contract complied with CEA section 2(a)(1)(C)(ii). The substantive review under Commission Regulation 30.13 is the same as the prior no-action process. Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures, 76 Fed.Reg. 59241, 59242 (September 26, 2011).

¹⁹ <https://www.cftc.gov/PressRoom/PressReleases/8464-21> (2021);

<https://www.cftc.gov/PressRoom/PressReleases/8610-22> (2022).

²⁰ *See Id.*

²¹ Order under section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Exchange Act Section 6(h)(1) for Certain Persons Effecting Transactions in Foreign Security Futures and under Exchange Act Section 15(a)(2) and Section 36 Granting Exemptions from Exchange Act Section 15(a)(1) and Certain Other Requirements, (Release No. 34-60194; International Series Release No. 1311) (June 30, 2009), available at <https://www.sec.gov/rules/exorders/2009/34-60194.pdf>.

²² Division of Clearing and Intermediary Oversight Advisory Concerning the Offer and Sale of Foreign Security Futures Products to Customers Located in the U.S. (June 8, 2010), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/ssproject/fsfpadvisory.pdf>.

²³ 17 C.F.R. § 41.14(b).

IV. Requested No-Action Position

KRX has noted that a lag may exist between expiration of the requisite transition period under Commission Regulation 41.14(b) and when KRX secures certification of the Contracts pursuant to Commission Regulation 30.13. KRX has submitted to the Division a request for a no-action position to cover the period beginning on February 6, 2025, when the KOSPI 200 is recharacterized as a broad-based security index, until the certification of the Contracts. KRX's request is consistent with its past requests for no-action positions.

KRX has requested a no-action position as follows:

- Effective February 6, 2025 (Korea Standard Time), all Contracts (regardless of contract month, (including all contract months listed before or after February 6, 2025) may be offered or sold to U.S. persons that are QIBs.²⁴
- The no-action position would expire upon the earlier of: (a) the Commission issuing a notice of certification of the Contracts as being based upon a non-narrow based index (which certification would allow the offer and sale of KOSPI 200 Futures contracts and Mini KOSPI 200 Futures contracts to all U.S. persons (not just QIBs)); (b) a determination by the Commission to terminate its review of or deny the request for certification of the Contracts pursuant to Commission Regulation 30.13; or (c) March 6, 2026 (Korea Standard Time).

As a condition of receiving the no-action position, KRX represents as follows:

- KRX will submit its request for expedited review and certification with respect to the Contracts to the CFTC pursuant to Commission Regulation 30.13(e) on or around February 6, 2025. KRX will promptly respond to Division or Commission requests for additional information regarding the Contracts.
- KRX will abide by all provisions of Commission Regulation 30.13 during the pendency of its request for certification, including, but not limited to, informing Division staff of any changes in the material facts and representations provided in the request for certification pursuant to Commission Regulation 30.13(l).

V. No-Action Position

Based on the representations presented by KRX to the Division as discussed above, the Division will not recommend that the Commission take enforcement action against KRX with respect to the offer or sale of the Contracts to persons located within the United States²⁵ while the Commission's review of KRX's forthcoming request for certification of the Contracts pursuant to Commission Regulation 30.13 is pending. This no-action position is subject to the following conditions:

²⁴ For avoidance of doubt, the Division understands this no-action position to include continued trading in contract months that had open interest before February 6, 2025.

²⁵ While KRX's request refers to "U.S. persons," the text of Commission Regulation 30.13 states that a contract that has been certified "may be offered or sold to persons located within the United States." 17 C.F.R. §§ 30.13(a), (d) and (g). This no-action position, therefore, applies to persons located within the United States. For avoidance of doubt, this no-action position is not limited to QIBs located within the United States.

- KRX must submit a materially complete request for certification under Commission Regulation 30.13 for the Contracts on February 6, 2025.²⁶
- KRX must promptly respond to Division or Commission requests for additional information regarding the Contracts.
- KRX will abide by all provisions of Commission Regulation 30.13 during the pendency of its request for certification, including, but not limited to, by informing Division staff of any changes in the material facts and representations provided in the request for certification pursuant to Commission Regulation 30.13(l).²⁷

This no-action position will become effective on February 6, 2025.

This no-action position will remain in effect with respect to the Contracts during the pendency of certification procedures under Commission Regulation 30.13, including any extensions of review under Commission Regulation 30.13(h), until the earliest of the following events:

- The Contracts are certified pursuant to Commission Regulation 30.13(d) or (g);
- The Commission terminates its review of the request for certification of the Contracts pursuant to Commission Regulation 30.13(b) or (i);
- The Commission denies the request for certification of the Contracts pursuant to Commission Regulation 30.13(j); or
- February 6, 2026 (Korea Standard Time).

VI. Conclusion

This letter, and the positions taken herein, represent only the views of the Division, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. This letter and the no-action positions taken herein are not binding on the Commission.²⁸ The positions provided in this letter do not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA, Commission regulations, or any other applicable laws (*i.e.*, securities laws). Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed, or omitted material facts or circumstances might render this letter void.

Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms provided herein, in its discretion.

²⁶ For avoidance of doubt, this no-action position is conditioned on KRX submitting its materially complete request for certification pursuant to Commission Regulation 30.13 on or before February 6, 2025, absent exigent circumstances communicated to Division staff prior to February 6, 2025.

²⁷ 17 C.F.R. § 30.13(l).

²⁸ See 17 C.F.R. § 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).

If you have any questions concerning this correspondence, please contact Grey Tanzi, Assistant Chief Counsel, Division of Market Oversight, at (312) 596-0635 or gtanzi@cftc.gov; or Nora Flood, Chief Counsel, Division of Market Oversight, at (202) 418-6059 or nflood@cftc.gov.

Sincerely,

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Acting Director
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