

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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In the Matter of the Exemption of Electronic Trading  
Platforms Registered Within Japan from the  
Requirement to Register with the Commodity  
Futures Trading Commission as Swap Execution Facilities

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**ORDER OF EXEMPTION**

Commodity Exchange Act (“CEA”) section 5h(g) authorizes the Commodity Futures Trading Commission (“Commission”) to exempt, conditionally or unconditionally, a swap execution facility (“SEF”) from registration under CEA section 5h if the Commission finds that the facility is “subject to comparable, comprehensive supervision and regulation on a consolidated basis by ... the appropriate governmental authorities in the home country of the facility.”

Whereas, electronic trading platforms are derivatives trading venues under Japanese law;

Whereas, an “electronic trading platform” management service or “ETP” is defined in Article 1(4) of Japan’s Cabinet Office Order on Financial Instruments Business, etc. (Cabinet Office Order No. 52 of August 6, 2007) (“COOFIB”) as “services provided by a Financial Instruments Business Operator, etc. for Specified Over-the-Counter Derivatives Transactions or intermediary, brokerage (excluding Brokerage for Clearing of Securities, etc.) or agency services

therefore in the course of trade, using an electronic data processing system to be used for the business of Over-the-Counter Derivatives Transactions, etc.;"

Whereas, Japanese law requires any operator of an ETP in Japan to be registered by the Financial Services Agency, Government of Japan ("JFSA");

Whereas, legal acts of Japan, including in particular the Financial Instruments and Exchange Act (No. 25 of 1948) ("FIEA"); the COOFIB; the Cabinet Office Order on the Regulation of Over-the-Counter Derivatives Transactions (Cabinet Office Order No. 48 of July 11, 2012) ("COO-OTC Derivatives Transactions Order"); the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators (April 2018) ("Supervisory Guidelines"); and the Public Notice of JFSA No. 67 (public notice regarding over-the-counter derivatives transactions) (effective September 1, 2015) ("Public Notice No. 67"); and certain additional guidance issued by JFSA establish requirements with respect to ETPs;

Whereas, JFSA administers the FIEA and COOFIB and supervises trading facilities including ETPs;

Whereas, Commission staff has engaged in extensive and ongoing communications with JFSA staff to understand more fully both Japanese requirements that apply with respect to ETPs, as well as the mechanisms whereby implementation of such requirements will be supervised and enforced by JFSA;

Whereas, based on the information and representations provided by JFSA staff, regarding the Japanese requirements that apply with respect to ETPs, the Commission has determined that, when evaluated against the regulatory and supervisory regime that applies with respect to SEFs

under the CEA and the Commission's regulations, ETPs that are registered within Japan are subject to comparable, comprehensive supervision and regulation on a consolidated basis;

Therefore, the Commission has determined that the regulatory frameworks for ETPs satisfy the statutory standard set forth in CEA section 5h(g) for granting an exemption from the SEF registration requirement.

Whereas, JFSA staff has requested an exemption from the SEF registration requirement, pursuant to CEA section 5h(g), on behalf of the ETPs listed in Appendix A to this Order, and has represented that each such ETP will, as of July 4, 2019, be registered and in good standing in Japan;

Whereas, pursuant to the determination made in this Order that regulatory frameworks for ETPs satisfy the standard, set forth in CEA section 5h(g), for granting an exemption from the SEF registration requirement, JFSA staff may, in the future, request to amend the list in Appendix A to include additional ETPs that are registered and in good standing in Japan; and

Whereas, JFSA has represented to the Commission that the following conditions will apply to the ongoing maintenance of this Order:

- (1) JFSA will notify the Commission, within ten business days, when an ETP is no longer registered by JFSA;
- (2) JFSA will provide the Commission with notice, and copies in the English language of the text, of any material change to the FIEA, the COOFIB, the COO-OTC Derivatives Transactions Order, the Supervisory Guidelines, Public Notice No. 67, or any other Japanese regulatory requirement that is applicable to ETPs;

- (3) Each ETP operator subject to this Order will obtain a user agreement from each market participant, and such agreement shall provide that the market participant will (i) abide by the ETP operator's business rules; and (ii) produce to the ETP operator information and documents related to its trading on the ETP upon the ETP operator's request; and
- (4) Each ETP operator subject to this Order will preserve all order data, including all order modifications and cancellations, as part of its regulatory obligations to preserve transaction data for a period of ten years.

Accordingly, the Commission hereby exercises its discretion pursuant to CEA section 5h(g) and ORDERS that each of the ETPs listed in Appendix A to this Order, as such Appendix may be amended by the Commission from time to time, is exempt from the requirement to register as a SEF pursuant to CEA section 5h;

Therefore, transactions involving swaps that are subject to CEA section 2(h)(8) may be executed on an ETP listed in Appendix A to this Order, as such Appendix may be amended by the Commission from time to time; and

Therefore, transactions involving swaps that are not subject to CEA section 2(h)(8) also may be executed on an ETP listed in Appendix A to this order, as such Appendix may be amended by the Commission from time to time.

In the event of any changes in the material facts or circumstances pursuant to which this Order is issued, or for any reason in the Commission's discretion, and after appropriate notice to JFSA and the relevant ETP(s) listed in Appendix A to this Order (as such Appendix may be amended by the Commission from time to time), and opportunity for JFSA and such ETP(s) to

respond, the Commission may modify, condition, suspend, terminate or otherwise restrict the terms of this Order, as appropriate and permitted by law, on the Commission's own motion.

This Order does not affect any other requirements under the CEA or the Commission's regulations. The Commission particularly emphasizes that the following requirements continue to apply:

- (1) The reporting requirements set forth in Parts 43 and 45 of the Commission's regulations continue to apply to counterparties that are subject to such reporting requirements, in connection with swap transactions executed on an ETP that is exempt from SEF registration pursuant to this Order.
- (2) This Order will not affect the application of CEA section 2(e), under which it is unlawful for any U.S. person, other than an eligible contract participant as defined in CEA section 1a(18), to enter into a swap unless the swap is entered into on, or subject to the rules of, a designated contract market.
- (3) The following clearing-related requirements will continue to apply to swap transactions executed on an ETP that is exempt from SEF registration pursuant to this Order:
  - i. When a swap transaction executed by a U.S. person on such an ETP is a "customer" position subject to CEA section 4d, the transaction, if intended to be cleared, must be cleared through a Commission-registered futures commission merchant ("FCM") at a Commission-registered derivatives clearing organization ("DCO"), unless otherwise permitted by Commission rule or order;
  - ii. When a swap transaction executed by a U.S. person on such an ETP is a "proprietary" position under Commission Regulation 1.3, the transaction, if intended to be cleared, must be cleared either through a Commission-registered DCO or a clearing organization that has been exempted from DCO

registration by the Commission pursuant to CEA section 5b(h) (an “Exempt DCO”); and

- iii. When a swap transaction is subject to the Commission’s clearing requirement under Part 50 of the Commission’s regulations, and is entered into by a person that, pursuant to CEA section 2(h)(1), is subject to such clearing requirement, the transaction must be cleared either through a Commission-registered DCO or an Exempt DCO; provided that, consistent with (i) above, if the transaction is a “customer” position subject to CEA section 4d, it must be cleared through a Commission-registered FCM at a Commission-registered DCO, and cannot be cleared through an Exempt DCO, unless otherwise permitted by Commission rule or order.

If, as a result of the clearing arrangements that such an ETP has in place, some swap transactions executed on the ETP are cleared by a clearing organization that is not a Commission-registered DCO, the ETP must, as a condition of exemption from SEF registration pursuant to this Order, have a rule in its rulebook that requires the types of swap transactions described in clauses (i), (ii), and (iii) above, if intended to be cleared, to be cleared in a manner consistent with the requirements described in clauses (i), (ii) and (iii), respectively.

This Order shall become effective as of July 11, 2019.

Issued in Washington DC on this 11th day of July, 2019.

By the Commission,



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Robert N. Sidman  
Deputy Secretary of the Commission

## Appendix A

### **List of ETPs that are registered and in good standing within Japan that are subject to this Exemption Order**

#### Trading Venue Name

BGC Shoken Kaisha Limited (Tokyo branch)

Bloomberg Tradebook Japan Ltd.

Clear Markets Japan Inc.

Totan ICAP Co., Ltd.

Tradeweb Japan Ltd.

Tullet Prebon ETP Japan Ltd.

Ueda Tradition Securities Ltd.