

1 April 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, DC 20581
United States of America

VIA EMAIL

Dear Ms. Jurgens,

Self-certification of Amendments to SGX-DC Clearing Rules

1 Introduction

- 1.1 Singapore Exchange Derivatives Clearing Limited ("**SGX-DC**"), a derivatives clearing organisation ("**DCO**") registered with the Commodity Futures Trading Commission (the "**Commission**"), hereby submits a self-certification for amendments to its Clearing Rules (the "**Amendments**") pursuant to Commission regulation 40.6(a).
- 1.2 The Submission Cover Sheet is attached as Appendix 1.

2 Intended Implementation Date

- 2.1 The Amendments are proposed to be implemented in April 2014, but will not be implemented prior to the Commission's 10 business day review period.

Singapore Exchange Derivatives Clearing Limited

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(A wholly-owned subsidiary of Singapore Exchange Limited)

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3 **Explanation and Analysis**

- 3.1 On 21 December 2012, the Commission granted no-action relief in respect of (a) SGX-DC from DCO registration requirements and (b) SGX-DC's Clearing Members from futures commission merchant ("**FCM**") registration requirements under U.S. law for the clearing of swaps contracts by U.S. persons (the "**Relief**"). The Relief was granted on the condition that Clearing Members issue to its U.S. customers a disclosure statement to, among other things, inform them that their swaps positions and associated collateral are not protected by U.S. laws (the "**Disclosure Statement**"). The Relief was time-limited and slated to expire on 31 December 2013.
- 3.2 On 20 December 2013, the Commission extended the Relief in respect of SGX-DC's Clearing Members from FCM registration requirements under U.S. law for the clearing of swaps contracts by U.S. persons until 31 March 2014.
- 3.3 On 28 March 2014, the Commission further extended the Relief until the earlier of (a) 31 April 2014 or (b) the date upon which all swaps contracts of U.S. persons or FCM customers have been either closed or transferred to an FCM Clearing Member of SGX-DC.
- 3.4 SGX-DC had previously issued Directive No. 1 to direct Clearing Members to issue a Disclosure Statement to its U.S. customers clearing swaps contracts in accordance with the conditions with the Relief. The Amendments are being proposed to align Directive No. 1 with the recent extension of the Relief as described in paragraph 3.3.
- 3.5 SGX-DC is registered as an approved clearing house under the Securities and Futures Act of Singapore and regulated by the Monetary Authority of Singapore ("**MAS**"). The Amendments are being separately reviewed by the MAS and are subject to the MAS' regulatory concurrence.

4 **Description of Amendments**

- 4.1 Directive No. 1 of the SGX-DC Clearing Rules would be amended as a result of the Amendments.
- 4.2 The text of the Amendments with the changes indicated is attached as [Appendix 2](#).

5 Certification of Compliance with Core Principles

- 5.1 The Amendments have been promulgated in respect of SGX-DC's compliance with Core Principle A on compliance and seek to ensure that the conditions of the Relief are abided by.
- 5.2 SGX-DC hereby certifies to the Commission that the Amendments comply with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

6 Public Notice of Pending Certification

- 6.1 SGX-DC has made publicly available a notice of the Amendments' pending certification with the Commission, together with a copy of this submission on its website at the following address: <http://www.sgx.com/wps/portal/sgxweb/home/regulation/howwereg>.

7 Opposing Views

- 7.1 There were no opposing views expressed to SGX-DC by its board or committee members, SGX-DC Clearing Members or market participants that were not incorporated into the Amendments. If any opposing views are received by SGX-DC during the Commission's review period, such views will be communicated to the Commission accordingly.

8 Contact Details

- 8.1 Please do not hesitate to contact the undersigned at eli.cohen@sgx.com or +65 6236 5104 should you require any clarification.

Yours sincerely,



Eli Cohen
Head, Legal (Regulation)

Appendix 1

Submission Cover Sheet

Appendix 2

Text of the Amendments

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 <u>31 December 2012</u>		Please contact Member Supervision: —
Effective Date 31 December 2012		Facsimile No : 6538 8273 E-Mail Address: membersup@sgx.com
Amended on 31 December 2013 and <u>1 April 2014</u>		

1 Background

- 1.1 Singapore Exchange Derivatives Clearing Limited ("**SGX-DC**") refers to certain provisions of the U.S. Commodity Exchange Act ("**CEA**"), introduced in accordance with the Dodd-Frank Act, which 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). SGX-DC is expected to be registered as a DCO by 31 December 2013.
- 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 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 from, among other things, CEA Section 4d(f)(1) in respect of SGX-DC Clearing Members clearing OTC Commodity Contracts (the "**Relief**"). A copy of SGX-DC's Request Letter is attached as Appendix 1.
- 2.2 The Relief was initially granted by the Commission on 21 December 2012. ~~A copy~~ On 20 December 2013, the Commission extended the Relief until 31 March 2014. Copies of the Commission's letter is ~~letters are~~ attached as Appendix 2 and Appendix 3.
- 2.3 ~~On 20 December 2013,~~ 28 March 2014, the Commission further extended the Relief until the earlier of: (a) 31 March ~~30 April~~ April 2014; or (b) the date upon which all OTC Commodity

Contracts positions of Affected U.S. Persons¹ and FCM customers have either been closed or transferred to an FCM Clearing Member. After such date, SGX-DC may not clear for Affected U.S. Persons or other U.S. customers unless such customers clear through an FCM Clearing Member. A copy of the Commission's further extension letter is attached as Appendix 3.4.

- 2.4 The Relief permits non-FCM Clearing Members to continue carrying existing positions in OTC Commodity Contracts for Affected U.S. Persons or on behalf of FCM customers clearing through an FCM omnibus customer account until the expiration of the Relief.
- 2.5 With respect to new positions in OTC Commodity Contracts, only positions entered into for the purpose of offsetting existing positions of Affected U.S. Persons or on behalf of FCM customers clearing through an FCM omnibus customer account may be cleared. It is noted that such offsetting transactions shall be cleared by SGX-DC in accordance with the straight-through processing requirements under the Commission's regulations².
- 2.6 The Relief has been granted on the condition that Clearing Members issue to Affected U.S. Persons a disclosure statement as specified in section 3 below (the "**Disclosure Statement**").

3 Disclosure Statement Requirement

- 3.1 SGX-DC hereby directs Clearing Members who clear OTC Commodity Contracts for Affected U.S. Persons or FCM customers to issue a Disclosure Statement to such customers or to the FCM, as the case may be, 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;
 - (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; and
 - (d) the positions cleared by the Clearing Members on behalf of such customers are subject to the terms of the Relief, which is available for reference on SGX-DC's website as Appendix 3.4 to Directive No. 1 in SGX-DC's Clearing Rules.

¹ "**Affected U.S. Persons**" refers to U.S. customers of Clearing Members, who hold open positions in OTC Commodity Contracts as at 20 December 2013.

² Commission regulation 39.12(b)(7), read with the terms of the Relief, provides that SGX-DC shall accept or reject for clearing such offsetting transactions as quickly after submission as would be technologically practicable if fully automated systems were used.

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 27 January 2014.