Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-147298-10

Date:
February 25, 2013

Legend:

The Exchange =

Entity A =

Entity B =

Entity C =

Entity D =

Country X =

Country Y =

Date A =

Date B =

Date C =

Date D =

Date E =

Article X =

Income Tax Treaty =

Exchange Rulebook =

Dear :

This is in reply to your letter dated October 25, 2010, and subsequent correspondence, requesting a ruling that the Exchange is a "qualified board or exchange" within the meaning of section 1256(g)(7)(C) of the Internal Revenue Code.

Facts:

The Exchange is an all-electronic futures and option exchange that is a Country X public-law institution. As a Country X public-law institution, the Exchange itself does not have an owner, but is operated by Entity A, the Exchange's administrative and operating institution. Entity A is owned by Entity B, a Country Y futures and option exchange.

All of the Exchange's transactions are cleared and settled through Entity C, a wholly-owned subsidiary of Entity A. Entity C is incorporated in Country X. Although Entity A is owned by a Country Y entity, the operations of the Exchange and of Entity C are not subject to Country Y law or regulation with respect to transactions conducted on the Exchange and cleared by Entity C. All transactions on the Exchange, and the clearing of such transactions, are governed by the law of Country X and the Exchange's rules and procedures.

The Exchange was originally named Entity D, but changed its name on Date A. In a letter dated Date B (hereafter referred to as "the CFTC Date B letter"), the CFTC granted no-action relief to Entity D, the Exchange's predecessor, allowing United States members to trade through the Exchange's electronic trading system, notwithstanding that the Exchange was not designated as a contract market pursuant to sections 5 and 5a of the Commodity Exchange Act. The CFTC Date B letter was later amended on Date C and Date D by CFTC no-action letters.

On November 2, 2006, the CFTC published in the Federal Register a Statement of Policy that affirmed the use of the no-action process to permit foreign boards of trade to provide direct access to their electronic trading systems to U.S. members or authorized participants without seeking designation under the Commodity Exchange Act as a contract market. In the policy statement, the CFTC endorsed the scope of the review under the no-action process, which in part, it described as follows:

> The scope of review that was established by Commission staff in the DTB no-action letter and refined in subsequent no-action letters

focuses on establishing the “bona fide” status of the foreign board of trade and finding that no public interest would be adversely affected by persons in the U.S. directly accessing the foreign board of trade.

In general, staff reviews information and representations provided by the applicant that relate to, among other things, the rules and structure of the applicant exchange (with an emphasis on the exchange’s financial integrity, market surveillance, trade practice and rule enforcement regime), various system integrity protections that govern the foreign board of trade’s electronic trading system (using as a template the *1990 Principles for the Oversight of Screen-Based Trading Systems*), the system’s related clearing and customer default protections, and information concerning the regulatory structure in the applicant’s jurisdiction, with a specific emphasis on market regulation. The staff also reviews the adequacy of information sharing with the Commission by the market and its regulator. Based upon its review of the documents and representations submitted by the applicant, and subject to compliance with various conditions (*e.g.*, representations governing access to books and records and the appointment of a U.S. agent for service of process), staff might conclude that granting no-action relief would not be contrary to the public interest.

Essentially, as it has evolved, the staff review seeks to determine that the applicant foreign board of trade is subject to governmental authorization, appropriate rules prohibiting abusive trading practices, and continuing oversight by a regulator that has powers to intervene in the market and share information with the Commission. This review generally reflects the internationally accepted approaches used by many developed market jurisdictions to govern access to foreign electronic exchanges. These approaches generally are based upon a review of, and ongoing reliance upon, the foreign market’s “home” regulatory regime, and are designed to maintain regulatory protections while avoiding the imposition of duplicative regulation.

The Commission finds that the staff review appropriately addresses the Commission’s concern that relief will only be granted with respect to *bona fide* foreign boards of trade. The Commission also finds that the staff’s review of foreign board of trade representations and the related information submitted with respect to system integrity, clearing procedures and default protections is appropriately focused and respects the prohibitions of section 4(b). Finally, the various terms and conditions that have been imposed in the no-action letters have been reasonably and appropriately tailored to the factual circumstances raised by the applications for no-action relief.

Boards of Trade Located Outside of the United States and No-Action Relief From the Requirement To Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 Fed. Reg. 64,443, 64,446-47 (Nov. 2, 2006) (footnotes omitted).

On February 20, 2012, the CFTC finalized rules regarding the registration of foreign boards of trade, including those with existing no-action letters, with the CFTC ("the CFTC FBOT registration system"). (See Registration of Foreign Boards of Trade, 76 Fed. Reg. 80674 (Dec. 23, 2011). The CFTC FBOT registration system will replace the no-action relief system.

The Exchange makes the following representations.

(1) The Exchange has satisfied, and continues to satisfy, all CFTC conditions necessary to retain its no-action relief from contract market designation, and has submitted an application for registration under the CFTC FBOT registration system.

(2) All Exchange contracts are subject to a system of marking to market whereby gains are credited to accounts and losses are subjected to margin calls on a daily basis.

(3) Under Article X of the Income Tax Treaty, the Internal Revenue Service (the Service) may gain access to information held by the Exchange with respect to U.S. taxpayers.

(4) The Exchange will maintain an agent for service within the United States, to receive and accept any request for information, summons, or subpoena from the Service or from any grand jury properly convened within the United States, which is related to the taxation of transactions in futures contracts traded on the Exchange by any person.

(5) The supplying by the Exchange of its records, as required herein, to a U.S. grand jury or to the Service will not be a violation of, or inconsistent with, the law of Country X.

(6) The Exchange will retain its records respecting derivatives trading on the Exchange for a minimum of five years.

(7) The Exchange will collect from all Exchange Members that either have or are required to have U.S. taxpayer identification numbers their U.S. taxpayer identification numbers and, upon request, will provide such information to the Service.

(8) The Exchange will identify a senior management contact of each Exchange Member and, on request, will make such information available to the Service. On request, the Exchange will ask Exchange Members to identify their other executive officers to the Service.

(9) The Exchange will provide such further information and assurances as may from time to time be requested by the Service in order to verify the Exchange's entitlement to the determination under section 1256(g)(7)(C) of the Code.

(10) The Exchange Rulebook has been amended, approved, and will be maintained to require the following:

a) Exchange Members who are subject to the reporting requirements of brokers under section 6045 of the Code and the Treasury Regulations thereunder shall comply with such requirements, as amended from time to time, with respect to transactions effected on, or otherwise subject to the Rules of, the Exchange in the manner prescribed by section 6045 of the Code, the regulations thereunder, and such other provisions of the Code and regulations that are pertinent thereto. The Exchange shall coordinate with Entity B to ensure that a failure of an Exchange Member to comply with this provision will result in immediate suspension of such Member's membership privileges on Entity B (and all privileges of any successor to such Member), which the Exchange and Entity shall ensure will not allow such Member to effect trade through the Exchange, until the Member complies with these reporting requirements in all respects. Such compliance includes the filing of all returns that were required to have been filed under section 6045 but were not filed or were filed improperly.

b) In addition to the requirements of the Exchange Rulebook, upon request by the Exchange, Exchange Members (with respect to transactions occurring on the Exchange) will supply to the Exchange or directly to the Service or any grand jury properly convened within the United States all books, papers, records, or other data as described in section 7602 of the Code and the Treasury Regulations thereunder. Such requests will be made by the Exchange whenever the Exchange receives a written request, summons, or subpoena to produce such records from the Service or from any grand jury. The Exchange shall coordinate with Entity B to ensure that a failure of an Exchange Member to comply with this provision will result in immediate suspension of such Member's membership privileges on Entity B (and all privileges of any successor to such Member), which the Exchange and Entity B shall ensure will not allow such Member to effect trade through the Exchange, until the Member complies with these reporting requirements in all respects.

Law and Analysis:

Section 1256(a) of the Code provides, in general, when gain or loss on section 1256 contracts will be recognized and how such gain or loss will be treated for federal income tax purposes.

Section 1256(b) of the Code provides, in part, that for purposes of this section, the term “section 1256 contract” means any regulated futures contract.

Section 1256(g)(1) of the Code provides that the term “regulated futures contract” means a contract (A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market and (B) which is traded on or subject to the rules of a qualified board or exchange.

Section 1256(g)(7) of the Code provides that the term “qualified board or exchange” means –

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

Based on the foregoing and the facts in the CFTC Date B letter, as subsequently amended, we determine that the Exchange has rules adequate to carry out the purposes of section 1256 and is thus a qualified board or exchange within the meaning of section 1256(g)(7)(C). This ruling is conditioned on the representations set forth above and compliance therewith.

The Exchange submitted an application for registration under the CFTC FBOT registration system on Date E. This ruling shall be effective for any period during which the Exchange is allowed to continue to operate pursuant to its existing no-action letter pending approval of its application by the CFTC. However, the continuing validity of this ruling is conditioned on the Exchange obtaining approval pursuant to the CFTC FBOT registration system.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal tax consequences relating to the facts discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Silber
David B. Silber
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)