



The Honorable Rostin Behnam  
Chairman  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, D.C. 20581

December 19, 2024

Dear Chairman Behnam:

**The Japan Securities Clearing Corporation's Exemptive Order from Registration as a Derivatives Clearing Organization**

The undersigned associations (the "Associations")<sup>1</sup> are writing in regard to the Japan Securities Clearing Corporation ("JSCC") and its current inability to provide clearing services to U.S. customers of clearing members of JSCC for Japanese Yen ("JPY") denominated interest rate swaps ("JPY-IRS") through those clearing members. The Associations believe that the Commission should amend JSCC's current Exemptive Order from Registration as a Derivatives Clearing Organization ("DCO") (the "Exemptive Order") to permit U.S. person market participants, who are Eligible Contract Participants ("ECPs"), to clear JPY-IRS at JSCC through non-U.S. clearing members of JSCC.

Many of the Associations' U.S. person members<sup>2</sup> are currently not permitted to clear JPY-IRS at JSCC due only to an issue in relation to the application of the U.S. Bankruptcy Code to JSCC's Japanese operations. In short, even though almost all of the major U.S. banking groups have already established local subsidiaries in Japan that are clearing members of JSCC, these subsidiaries cannot register as futures commission merchants ("FCMs") due to the concurrent application of U.S. and Japanese bankruptcy laws, which also results in JSCC itself being unable to register as a DCO.<sup>3</sup>

Commission staff has told JSCC that if FCMs are involved in customer clearing at exempt DCOs (like JSCC), then either the U.S. Bankruptcy Code or the BOJ's policy would need to be changed to remove any ambiguity in relation to the treatment of U.S. customer collateral.<sup>4</sup> Therefore, under the Exemptive Order, JSCC is only permitted by the CFTC to clear swaps for U.S. clearing members and

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<sup>1</sup> See Appendix for description of Associations.

<sup>2</sup> All of whom qualify as ECPs.

<sup>3</sup> Registered DCOs are required to segregate customer property at all times, which ensures the application of the U.S. Bankruptcy Code to FCMs' customer funds at all times. We understand that, while JSCC has established a Japanese trust arrangement for the custody of customer funds in a manner remote from JSCC's own bankruptcy to ensure that title of customer funds be transferred to JSCC, the CFTC views this arrangement as not satisfactory due to the temporary time gap during which these funds are held in the Bank of Japan ("BOJ") settlement account and not trusted. We also understand these gaps are inevitable as a result of Japanese laws applied to the BOJ.

<sup>4</sup> Neither of these outcomes provides a practical, likely solution to the status quo.

their affiliates but not for the U.S. customers of JSCC's clearing members. U.S. customers are therefore unable to access the most liquid, cleared JPY-IRS market, creating an unlevel playing field vis-à-vis swap dealers and non-U.S. customers.

Under the status quo, the Associations' U.S. person members are unable to access the full, cleared JPY-IRS market, depriving them of the opportunity to fully access the competitive pricing and liquidity available to non-U.S. person market participants permitted to clear through JSCC. JSCC has cleared approximately 60% of JPY-IRS globally in 2024 (from January through October) based on notional amount. JSCC's JPY-IRS clearing volume reached a notional amount of JPY 456 trillion in October 2024, which was a record high. The average clearing volume per month in 2024 (from January through October) was JPY 322 trillion based on notional amount, about double the monthly average in 2023.

Furthermore, this lack of access for U.S. market participants has come during a period of time when market conditions exacerbate the need for U.S. market participants to hedge JPY interest rate risk. This has left some U.S. customers with no choice but to trade uncleared swaps, including swaptions, to trade at JSCC's market price. Driving behavior in this manner not only raises costs for U.S. customers but, while permitted under the CFTC rules, is also at odds with 2009 G20 commitments to promote central clearing of OTC derivatives. The Associations understand that the Japanese regulatory regime for DCOs has been assessed by many foreign authorities, such as the Ontario Securities Commission, ESMA and FINMA, and they have determined it to be comparable to their own; therefore, JSCC is permitted to clear JPY-IRS for customers from these jurisdictions.

While the current Exemptive Order aims to address the above-referenced issues regarding U.S. and Japanese bankruptcy laws, it inadvertently imposes significant risk on U.S. persons. These risks – including reduced market access, higher costs and inefficient risk management – far outweigh the limited benefits of the existing restrictions, particularly given JSCC's robust clearing framework recognized by other jurisdictions.

To resolve the current impediments for U.S. customer access to JPY-IRS swaps cleared at JSCC, the Commission has the authority to, and should, make the common-sense decision to grant the requested amendments to the Exemptive Order to permit U.S. market participants, like the Associations' members, to access JSCC for the clearing of JPY-IRS.

First, the Commission should amend the Exemptive Order to permit non-U.S. clearing members of JSCC to clear – on behalf of a U.S. customer that is an ECP – JPY-IRS, subject to the condition that the non-U.S. clearing members of JSCC have an affiliated entity that is incorporated in the U.S. As stated above, many U.S. bank groups have Japanese subsidiaries that are clearing members of JSCC, so that framework is already in place.

Second, the Commission should grant a public interest exemption, provided in Section 4(c)(1) of the Commodity Exchange Act, that would be limited only to non-U.S. clearing members of JSCC that have an affiliated entity that is an FCM that is incorporated in the U.S. for the clearing of JPY-IRS at JSCC, on behalf of U.S. ECPs. Again, as stated above, many U.S. banking groups have Japanese subsidiaries that are clearing members of JSCC, and these banking groups also already have an affiliated entity that is an FCM incorporated in the U.S. Requiring a U.S.-based FCM ensures a direct link to the U.S. regulatory framework. Furthermore, limiting the relief to ECPs adds an additional layer of safety by ensuring that

only sophisticated market participants, who are well-equipped to understand and manage the risks associated with these transactions, are eligible.

An expedited resolution to this issue will enhance and maintain our members' and U.S. customers' competitiveness and provide greater tools for effective risk management, while reducing counterparty credit risk of U.S. persons.

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We would be happy to elaborate further on any of the points raised in this letter. For further information, please contact Daniel Austin, Head of U.S. Markets Policy and Regulation, at [daustin@aima.org](mailto:daustin@aima.org).

Yours sincerely,



**/s/ Jennifer W. Han**

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The Honorable Christy Goldsmith Romero, Commissioner  
The Honorable Summer K. Mersinger, Commissioner  
The Honorable Caroline D. Pham, Commissioner  
Clark Hutchison, Director, Division of Clearing and Risk  
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## APPENDIX

The Alternative Investment Management Association (“AIMA”) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA’s fund manager members collectively manage just over \$4 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (“ACC”) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over \$2 trillion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over \$3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.