

**July 11, 2019**

**The CFTC and the Japan Financial Services Agency Issued a Joint Statement Regarding the Comparability of Certain Derivatives Trading Venues in the U.S. and Japan**

**Washington DC, Tokyo** – The Commodity Futures Trading Commission (CFTC or Commission) today announced the issuance of an order exempting certain derivatives trading facilities (ETPs) regulated by the Japan Financial Services Agency (JFSA) from the requirement to register with the CFTC as swap execution facilities (SEFs).

JFSA also announced that it would facilitate the authorization process of Authorized Electronic Over-the-Counter Derivatives Transactions, etc. Business Operators (Foreign ETP Operators) for CFTC authorized derivative platforms which seek to be Foreign ETP Operators on the premise that such entities are subject to the regulation and supervision of the CFTC.

JFSA Commissioner Toshihide Endo stated, “I am pleased to welcome CFTC’s announcement of the Order of Exemption against JFSA registered ETPs. I thank Chairman Giancarlo and the staff of CFTC for the partnership that led to today’s positive outcome. In response to this, JFSA shows its intention to facilitate the authorization process of Foreign ETP Operators on the premise that the requesting platform is subject to the comparable regulation and supervision of the CFTC. Last month, G20 Leaders declared in Osaka that they welcomed the work on market fragmentation, and would address its unintended, negative effects, including through regulatory and supervisory cooperation. We will continue to strengthen our regulatory and supervisory cooperation with overseas authorities.”

CFTC Chairman J. Christopher Giancarlo stated, “I am grateful to JFSA Commissioner Toshihide Endo and JFSA staff for achieving this positive determination. The order issued today follows an outcomes-based approach, meaning the regulatory framework evaluated was found to achieve comparable regulatory outcomes. Deference arrangements like these not only support the

cross-border activities of participants in the financial markets, but also help avoid market fragmentation, protectionism, and regulatory arbitrage. The global nature of today's markets requires that regulators work cooperatively across borders to promote growth and innovation while supporting financial stability.”

The Commodity Exchange Act (CEA) section 5h(g) empowers the CFTC to grant an exemption from the SEF registration requirement when it determines that a facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility. ETPs that have been granted an exemption from SEF registration under section 5h(g), as listed in the order, may be used by swap counterparties to comply with the trade execution requirement under CEA section 2(h)(8), and may also be used to trade swaps that are not subject to the trade execution requirement. Prior to this announcement, the CFTC used its CEA section 5h(g) authority on two other occasions -- to exempt certain European Union and Singapore-based derivatives platforms from the SEF registration requirement.

Article 60-14 of the Financial Instruments and Exchange Act (No. 25 of 1948) (FIEA) empowers JFSA to permit certain foreign derivatives platforms to qualify as Foreign ETP Operators. Under the Japanese regulatory framework, Foreign ETP Operators shall not be examined on the specific ways they operate as long as their business is operated at levels deemed virtually equal to those required in Japan, given that they are essentially under the supervision of overseas authorities. JFSA will facilitate the authorization process for CFTC authorized derivatives platforms which seek to be Foreign ETP Operators on the premise that they are subject to the regulation and supervision of the CFTC. SEFs that have been authorized as Foreign ETP Operators may be used by specified persons under Japanese law to execute derivatives transactions subject to Article 40-7 of the FIEA (i.e., the Japanese trading obligation). They may also be used to trade swaps that are not subject to the Japanese trading obligation and subject to the relevant FIEA requirements.

CFTC staff and JFSA staff actively collaborated with each other to gather and analyze information about JFSA-regulated ETPs to determine this platform category met the comparability standards under the CFTC's laws and regulations.

The comparability analysis conducted by CFTC staff followed an outcomes-based approach such that the regulatory framework being evaluated need not be identical to each other's requirements to be found comparable, provided that the frameworks achieve comparable regulatory outcomes. JFSA will also facilitate the authorization process of Foreign ETP Operators on the premise that such entities are subject to the regulation and supervision of the CFTC. Such approaches are consistent with the CFTC's and JFSA's long histories of cross-border regulatory deference in the area of trading venues and ensures that market participants can rely on comprehensive rules and regulations of one jurisdiction without fear that another jurisdiction will seek to selectively impose an additional layer of regulatory obligations on them.

The order announced today, granting exempt SEF status to JFSA-registered ETPs, does not affect other requirements under the CEA and the CFTC's regulations. The CFTC has particularly highlighted certain of these continuing requirements in the order, which interested parties should consult for further details as to the precise parameters of the CFTC's exemption. Similarly, the Foreign ETP Operator authorization for CFTC-registered SEFs does not affect the other requirements under the FIEA and other relevant Japanese regulations.