

MEMO# 33923

November 24, 2021

CFTC Staff Issues No-Action Relief Regarding the Offer or Sale of KOSPI and Mini KOSPI 200 Futures Contracts

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TO: Derivatives Markets Advisory Committee

Global Regulated Funds Committee

Global Trading & Markets Committee RE: CFTC Staff Issues No-Action Relief Regarding the Offer or Sale of KOSPI and Mini KOSPI 200 Futures Contracts

The CFTC staff has issued a no-action letter to Korea Exchange, Inc. (KRX) with respect to the offer or sale of KOSPI 200 Futures Contracts and Mini KOSPI 200 Futures Contracts (together, "Contracts") to persons located within the United States.^[1] You may recall that we discussed this issue in April 2020, when the KOSPI 200 became a narrow-based security index.^[2] At that time, products based on the KOSPI 200 became subject to joint regulation by the CFTC and the Securities and Exchange Commission (SEC) as foreign security futures products.^[3] Pursuant to a 2009 SEC Order^[4] and related 2010 CFTC Advisory,^[5] the only persons located within the United States permitted to trade the Contracts as foreign security futures products are Qualified Institutional Buyers (QIBs). Now KRX has represented to the CFTC staff that the KOSPI 200 has become broad-based for more than 45 days and therefore, under CFTC regulations,^[6] the Contracts are now eligible to be considered for certification under CFTC Regulation 30.13.

KRX requested the relief because a time lag may exist between expiration of the transition period on December 1, 2021, when the KOSPI 200 index fully transitions to a broad-based security index, and when KRX secures certification of the Contracts pursuant to CFTC Regulation 30.13. The no-action relief, which takes effect December 1, permits KRX to offer and sell the Contracts to persons located within the United States who are QIBs while the CFTC's review of KRX's request for certification of the Contracts pursuant to CFTC Regulation 30.13 is pending.

The relief, which is subject to several conditions enumerated in the letter, will remain in effect until the earliest of (i) certification of the Contracts pursuant to CFTC Regulation 30.13(d) or (g); (ii) termination by the CFTC of its review of the request for certification of the Contracts pursuant to CFTC Regulation 30.13(b) or (i); (iii) the CFTC's denial of the request for certification of the Contracts pursuant to CFTC Regulation 30.13(j); or (iv)

December 31, 2022 (Korea time).

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endnotes

[1] The no-action letter is available [here](#) ("No-Action Letter").

[2] See ICI Memorandum No. 32357 (Apr. 6, 2020), available at <https://www.ici.org/memo32357>.

[3] No-Action Letter at 4.

[4] See Order under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Exchange Act Section 6(h)(1) for Certain Persons Effecting Transactions in Foreign Security Futures and under Exchange Act Section 15(a)(2) and Section 36 Granting Exemptions from Exchange Act Section 15(a)(1) and Certain Other Requirements, (Release No. 34-60194; International Series Release No. 1311) (June 30, 2009), available at <https://www.sec.gov/rules/exorders/2009/34-60194.pdf>.

[5] See Division of Clearing and Intermediary Oversight Advisory Concerning the Offer and Sale of Foreign Security Futures Products to Customers Located in the U.S. (June 8, 2010), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@internationalaffairs/documents/ssproject/fsfpadvisory.pdf>.

[6] See CFTC Regulation 41.14(b).