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Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

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Date:

September 25, 2024

LEGEND

Exchange 1 =

Exchange 2 =

Country =

City =

Foreign Jurisdiction A =

Foreign Jurisdiction B =

Entity A =

Entity B =

Entity C =

Foreign Commission =

Foreign Act =

Political Subdivision =

Date 1 =

Date 2 =
Year 1 =
Year 2 =
Article X =
Income Tax Treaty =
Exchange Rulebook =

Dear :

This is in reply to your letter dated September 10, 2021, and subsequent correspondence, requesting a ruling that Exchange 1 is a “qualified board or exchange” within the meaning of section 1256(g)(7)(C) of the Internal Revenue Code.

FACTS

Exchange 1 is an all-electronic derivatives exchange that is a corporation incorporated under the laws of Foreign Jurisdiction A. Exchange 1 is a wholly-owned subsidiary of Entity A. Entity A is the parent of a group of companies and operates cash and derivative markets for multiple asset classes through its subsidiaries, including Exchange 1. Entity A is a corporation incorporated under the laws of Foreign Jurisdiction B. Exchange 1 does not conduct any activities directly in the United States. Neither Exchange 1 nor Entity A files a United States federal income tax return or has a United States taxpayer identification number.

On April 18, 1985, the Internal Revenue Service (the Service) issued PLR 8528072 to Exchange 2. PLR 8528072 ruled that Exchange 2 was a qualified board or exchange within the meaning of section 1256(g)(7)(C). Exchange 2 was an exchange associated with Exchange 1 that has ceased operations and is now dormant.

Exchange 1 provides electronic trading for various classes of financial instruments, including futures and options on futures. Trading on Exchange 1 may only be effected through Exchange 1’s proprietary trading system that Exchange 1 developed and maintains. Entity B, a wholly owned subsidiary of Exchange 1, is regulated as a clearing house and clearing agency in Country. Entity B provides central counterparty clearing for all derivative contracts traded on Exchange 1. Entity B facilitates the settlement and clearing, and issues and guarantees, all derivative contracts traded on Exchange 1. All transactions on Exchange 1, and the clearing of

such transactions, are governed by the law of Foreign Jurisdiction A and Exchange 1's rules and procedures. Each Exchange 1 participant is subject to approval by Exchange 1 ("Exchange Participant").

Exchange 1 is subject to regulation by Foreign Commission. In Year 1, Foreign Commission recognized Exchange 1 as a self-regulatory organization. In Year 2, following the merger of Exchange 1 and Entity C, Foreign Commission re-recognized Exchange 1 as an exchange and as a self-regulatory organization.

In a letter dated Date 1, the Commodity Futures Trading Commission ("CFTC") granted no-action relief to Exchange 1 permitting it to make its electronic trading and matching system available in the United States to Exchange Participants, notwithstanding that Exchange 1 was not designated as a contract market or registered as a derivatives transaction execution facility pursuant to sections 5 or 5a of the Commodity Exchange Act ("CEA"). Subsequently, the CFTC finalized rules that require registration of foreign boards of trade ("FBOTs") that wish to provide U.S. participants direct access to the FBOT's electronic trading system, including those with existing no-action letters. Registration of Foreign Boards of Trade, 76 Fed. Reg. 80674 (Dec. 23, 2011).

On Date 2, the CFTC granted an Order of Registration to Exchange 1 as an FBOT permitting Exchange 1 to provide identified members and other participants located in the United States to enter trades directly into Exchange 1's order entry and trade matching system.

Section 48.2(b) of the final CFTC rules regarding FBOTs provides, in part, that an FBOT must possess the attributes of an established, organized exchange; adhere to appropriate rules prohibiting abusive trading practices; and enforce appropriate rules to maintain market and financial integrity.

Section 48.5(d)(2) provides that the CFTC evaluates, among other things, whether the FBOT and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country or countries that is comparable to the comprehensive supervision and regulation to which designated contract markets ("DCMs") and derivatives clearing organizations ("DCOs") are respectively subject under the CEA, CFTC regulations, and other applicable United States laws and regulations.

Section 48.5(d)(5) provides that the CFTC will look to determine if the government authorities support and enforce regulatory objectives in the oversight of the FBOT and the clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the CFTC in its oversight of DCMs and DCOs.

Section 48.7 provides, in part, that the CFTC requirements for registration include rules providing that the automated trading system of the FBOT meets certain

international standards, that contracts to be made available in the United States contain specified terms and conditions, that the clearing organization complies with certain international standards or the clearing organization registers with the CFTC as a DCO, and that the FBOT has implemented and enforces rules to ensure compliance with these and other CFTC requirements.

Exchange 1 makes the following representations.

- (1) Exchange 1 holds a valid CFTC Order of Registration as an FBOT.
- (2) All Exchange 1 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 Service may gain access to information held by Exchange 1 with respect to U.S. taxpayers.
- (4) Exchange 1 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 Exchange 1 by any person.
- (5) The supplying by Exchange 1 of its records to a U.S. grand jury or to the Service will not be a violation of, or inconsistent with the application of, the law of Country or any Political Subdivision thereof in which Exchange 1 has offices or maintains records.
- (6) Exchange 1 will retain its records respecting derivatives trading on Exchange 1 for a minimum of five years.
- (7) Exchange 1 will collect from all Exchange Participants that either have or are required to have United States taxpayer identification numbers their United States taxpayer identification numbers and, on request, will provide such information to the Service.
- (8) Exchange 1 will identify a senior management contact of each Exchange Participant and, on request, will make such information available to the Service. On request, Exchange 1 will ask Exchange Participants to identify their other executive officers to the Service.
- (9) Exchange 1 will provide such further information and assurances as may from time to time be requested by the Service in order to verify Exchange 1's entitlement to the determination under section 1256(g)(7)(C) of the Code.

(10) The Exchange Rulebook requires, and will be maintained to require, the following:

a) Exchange Participants that 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, Exchange 1 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. Failure of an Exchange Participant to comply with this provision will result in immediate suspension of such Participant's membership privileges on Exchange 1 (and the privileges of any successor to such Participant) until the Participant 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 Exchange 1, Exchange Participants (with respect to transactions occurring on Exchange 1) will supply to Exchange 1 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 (hereinafter collectively referred to as "records"). Such requests will be made by Exchange 1 whenever Exchange 1 receives a written request, summons or subpoena to produce such records from the Service or from any grand jury. Failure of an Exchange Participant to comply with this provision will result in immediate suspension of such Participant's trading privileges on Exchange 1 (and the privileges of any successor to such Participant) until the Participant 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.

Section 601.201(l) of the Statement of Procedural Rules provides in part that a ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary authority under section 7805(b) to limit the retroactive effect of the revocation or modification.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Under section 11.06 of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, if the revocation or modification of a letter ruling is for reasons other than a change in facts as described in section 11.05 of Rev. Proc. 2021-1, the revocation or modification generally will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that (1) there has been no change in the applicable law; (2) the letter ruling was originally issued for a proposed transaction; and (3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer’s detriment.

This letter revokes PLR 8528072 that was issued to Exchange 2 on April 18, 1985. The Service has decided under section 7805(b) to limit the effect of the revocation of PLR 8528072. The revocation of PLR 8528072 will apply beginning as of October 2, 2000.

Based on the foregoing and the CFTC Order of Registration of Exchange 1 as an FBOT, we determine that Exchange 1 has rules adequate to carry out the purposes of

section 1256 of the Code and is thus a qualified board or exchange within the meaning of section 1256(g)(7)(C) of the Code. This ruling is conditioned on the representations set forth above and compliance therewith.

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 a 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,

Bernard J. Audet, Jr.
Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)

cc: