

Public Statements & Remarks

Statement of Commissioner Summer K. Mersinger Regarding No-Action Relief to Korea Exchange

October 17, 2022

I support the issuance of no-action relief to Korea Exchange (“KRX”), a foreign board of trade (“FBOT”), with respect to two futures contracts on the KOSPI 200, a security index comprised of 200 Korean stocks (the “Contracts”).

This no-action relief will provide assurance to market participants while the Commission^[1] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftn1) considers KRX’s request for certification of the Contracts pursuant to CFTC Rule 30.13.^[2] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftn2) That Rule provides that the Commission may certify that a futures contract on a broad-based security index trading on an FBOT conforms to the applicable requirements of the Commodity Exchange Act (“CEA”) to be offered or sold to persons located within the United States pursuant to the exclusive jurisdiction of the CFTC.^[3] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftn3)

If this no-action relief sounds familiar, it is because almost identical relief was issued with respect to the Contracts just under a year ago.^[4] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftn4) Last year, KRX requested no-action relief while the Commission considered its request for certification of the Contracts when the KOSPI 200 transitioned from a narrow-based to a broad-based security index – only to do so again now because the KOSPI 200 transitioned back to a narrow-based and then again to a broad-based security index this year.

I accept that an FBOT may submit multiple requests for certification of a futures contract on a security index. This is due to the complicated allocation of jurisdiction between the CFTC and the SEC with respect to futures contracts on broad- and narrow-based security indexes under U.S. law.

But what I do not accept is CFTC staff having to devote resources to multiple requests for no-action relief accompanying such requests for certification – which seems to be a self-inflicted wound on our part. The reason an FBOT such as KRX requests this no-action relief is because, under our rules, a lag may exist between the date that a security index underlying the FBOT’s futures contract is characterized as broad-based and the date on which the FBOT secures the Commission’s certification of its contract.

The Commission should amend CFTC Rule 30.13, and/or issue appropriate guidance, to reduce (if not eliminate) the likelihood of FBOT requests for no-action relief to address such a time lag. Unfortunately, though, I am not aware that the Commission has provided direction or resources to our staff to do either.

And I am disappointed that this is the third time in my short 6-month tenure as a Commissioner that I have felt compelled to press the Commission to fix its rules rather than rely on temporary band-aids and work-arounds such as repeated no-action letters where those rules have proved unworkable or, as here, extremely unwieldy.^[5] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftn5)

I commend the staff of our Division of Market Oversight for their high-quality analyses of the broad vs. narrow-based status of foreign security indexes and their diligent handling of FBOT requests for certification of futures contracts on such indexes. However, it is the Commission's responsibility to prioritize – and provide staff with the resources necessary for – fixing rules that experience demonstrates do not work, or do not work as efficiently as they should.

I urge the Commission to provide such direction and resources here.

[1] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftnref1) This Statement will refer to the agency as the "CFTC" or "Commission."

[2] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftnref2) Commission Rule 30.13, 17 C.F.R. § 30.13.

[3] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftnref3) See CEA Sections 2(a)(1)(C)(ii) and (iv), 7 U.S.C. §§ 2(a)(1)(C)(ii) and (iv). Generally speaking, under the CEA and the federal securities laws: i) futures contracts on broad-based security indexes trade subject to the exclusive jurisdiction of the CFTC; and ii) futures contracts on narrow-based security indexes are "security futures products" that trade subject to joint regulation by the CFTC and the Securities and Exchange Commission ("SEC").

[4] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftnref4) CFTC Letter No. 21-25 (Division of Market Oversight, November 23, 2021), available at CFTC Staff Provides No-Action Letter to Korea Exchange, Inc. Concerning the Offer or Sale of KOSPI and Mini KOSPI 200 Futures Contracts | CFTC (<https://www.cftc.gov/PressRoom/PressReleases/8464-21>).

[5] (https://www.cftc.gov/PressRoom/SpeechesTestimony/statementmersinger101422#_ftnref5) See Statement of Commissioner Summer K. Mersinger Regarding Extension of No-Action Relief from Certain Position Aggregation Requirements under CFTC Regulation 150.4 (August 10, 2022), available at Statement of Commissioner Summer K. Mersinger Regarding Extension of No-Action Relief from Certain Position Aggregation Requirements under CFTC Regulation 150.4 | CFTC (<https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement081022>); and Statement of Commissioner Summer K. Mersinger on Order of Registration Regarding AEGIS SEF, LLC (July 20, 2022), available at Statement of Commissioner Summer K. Mersinger on Order of Registration Regarding AEGIS SEF, LLC | CFTC (<https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement072022>).

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