

Amendment to CCP regulations under the FIEA

In our news letter of May 2010, we summarized amendments to the Financial Instruments and Exchange Act (Act No. 25 of 1948, the “**FIEA**”) promulgated on May 19, 2010, relating to the regulatory rules over the clearing of the OTC derivative transactions (the “**2010 FIEA Amendment**”). As we mentioned in the news letter above, however, a number of the details were left to subordinate regulations. On April 1, 2011, amendments to such subordinate regulations in connection with the 2010 FIEA Amendment became effective (the “**2011 Subordinate Amendment**”) and some of regulatory rules over the CCPs (central counterparties) were clarified thereby. This news letter outlines these clarified regulations regarding the CCPs under the 2011 Subordinate Amendment.

1. Exemption from Financial Instruments Obligation Assumption Service

According to the 2010 FIEA Amendment, certain types of transactions shall be exempt from the definition of the “Financial Instruments Obligation Assumption Service” (the “**FIOA Service**”), which means services to be provided by the Financial Instruments Clearing Organizations (i.e., CCPs licensed under the FIEA, “**FICO**”), if they are not harmful to the investor’s protection or the interest of the public from the viewpoint of the impact on Japanese market and of the circumstances thereof. The 2010 FIEA Amendment also sets forth that subordinate regulations (and not the FIEA itself) shall specify the type of transactions that shall be exempted from the FIOA Service. The 2011 Subordinate Amendment provides that the commissioner of the Financial Services Agency (the “**FSA**”) will designate such exempted transactions if they are cleared by non-Japanese CCPs and have inconsequential impact on the Japanese market. Therefore, we still need to wait for the commissioner's designation of the exempted transactions (as of the date of this news letter, no designation has been made). We understand that the commissioner of the FSA will make this designation by considering the international trends in regulations over the OTC derivative transactions.

2. Domestic FICO

As noted in our May 2010 news letter, the 2010 FIEA Amendment introduces certain requirements on the capital amount of the domestic FICO, but the minimum capital amount is left to further subordinate regulations. The 2011 Subordinate Amendment provides that the minimum capital amount shall be 1 billion yen.

3. Foreign FICO

As noted in our May 2010 news letter, the 2010 FIEA Amendment allows foreign entities which provide a service similar to the FIOA Service in a jurisdiction outside Japan to carry out the FIOA Service in Japan by obtaining a license. Such entities shall be referred as the “Foreign Financial Instruments Clearing Organizations” (the “**Foreign FICO**”). This enables non-Japanese CCPs to provide a clearing service directly to the Japanese market. The 2011 Subordinate Amendment provides that one of the requirements to obtain such a license is that the relevant applicant must have not less than three years' experience in conducting clearing services in foreign jurisdictions.

4. Link method

(1) Authorization of the link method

Under the 2010 FIEA Amendment, a domestic FICO may, upon an authorization of the Prime Minister, carry out a clearing service in concert with another CCP (this is referred to as the “link method”). This enables a foreign CCP to provide a clearing service in Japan without obtaining the license of the Foreign FICO above, if such domestic FICO and foreign CCP satisfy certain authorization requirements. The 2011 Subordinate Amendment provides that one of the requirements to obtain such an authorization is that a relevant foreign CCP must have not less than three years' experience in conducting clearing services in foreign jurisdictions.

There are two methods for a non-Japanese CCP to enter the Japanese market, (i) obtain a Foreign FICO license or (ii) the link method. Under both methods, a non-Japanese CCP which is willing to enter into the Japanese market would need three years' experiences in conducting clearing services.

Please see the diagram set forth in Exhibit 1, outlining differences of regulations between the domestic FICO, Foreign FICO and the link method with a foreign CCP.

(2) Aligned clearing service

The 2010 FIEA Amendment leaves to subordinate regulations the contents of clearing service under the link method (the “**Aligned FIOA Service**”). The 2011 Subordinate Amendment provides following four methods as the Aligned FIOA Service. Just for convenience, we use the terms “Aligned CCP X” and “Aligned CCP Y” as CCPs using the link method, and the terms “Customer X” and the “Customer Y” as parties to transactions to be cleared by the link method. Also, the diagram set forth in Exhibit 2 illustrates the first method, second method and third method.

(i) First method

(a) Firstly, Aligned CCP X owes both of obligations which are owed by Customer X and Customer Y, and (b) secondly, Aligned CCP X transfers to Aligned CCP Y the obligations which are originally owed by Customer X.

(ii) Second method

(a) Firstly, Aligned CCP Y owes both of obligations which are owed by Customer X and Customer Y, and (b) secondly, Aligned CCP Y transfers to Aligned CCP X the obligations which are originally owed by Customer Y.

(iii) Third method

(a) Firstly, Aligned CCP X owes obligations which are owed by Customer X and Aligned CCP Y owes obligations which are owed by Customer Y, and (b) secondly, Aligned CCP X and Aligned CCP Y transfer their respective obligations to the other Aligned CCP.

(iv) Fourth method

Any other action so that Aligned CCP X owes obligations which are originally owed by Customer Y and Aligned CCP Y owes obligations which are originally owed by Customer X.

Since the fourth method is a “catch-all” method which covers any actions not otherwise covered under the first three methods, we understand that the 2011 Subordinate Amendment would not limit or restrict a clearing service or its structure under the link method.

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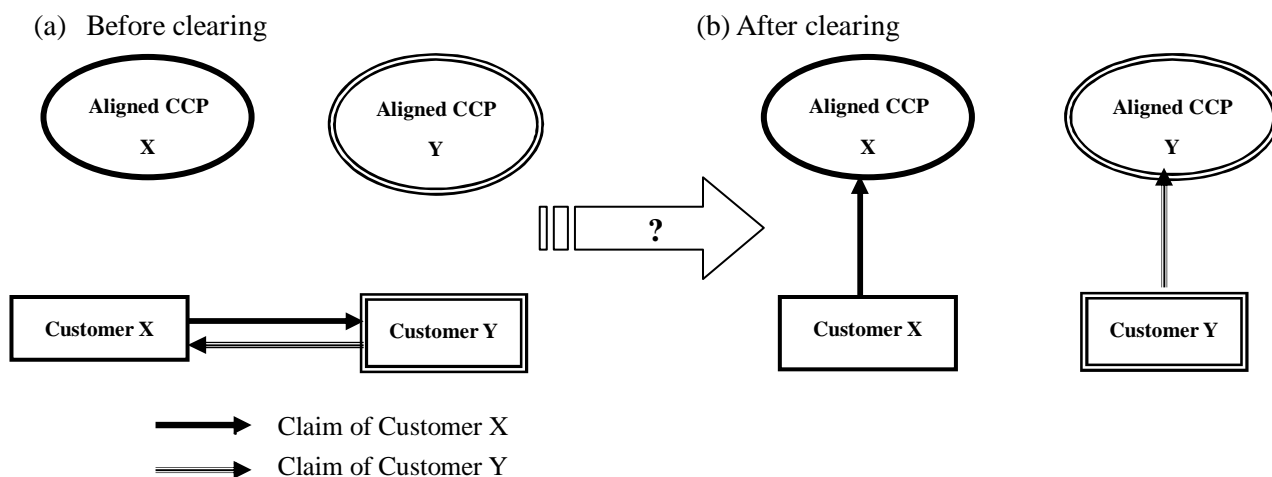
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Exhibit 1: Comparison of regulations between domestic FICO, Foreign FICO and link method with a foreign CCP

	Domestic FICO	Foreign FICO	Link method between domestic FICO and a foreign CCP
license or authorization	License	License	Authorization to the domestic FICO
type of entity	Japanese corporation (<i>kabushiki kaisha</i>)	A Foreign FICO must be a foreign entity which has a license or authorization to conduct clearing services outside Japan.	A foreign CCP must be a foreign entity which has a license or authorization to conduct clearing services outside Japan.
Experience of clearing service	N/A	A Foreign FICO must have three years' experience in conducting clearing services.	A foreign CCP must have three years experience in conducting clearing services.
Representative in Japan	N/A	A Foreign FICO is required to have a representative in Japan.	A foreign CCP is not required to have a representative in Japan.
Minimum capital amount	1 billion yen	None	None (for a foreign CCP)
Change of capital amount	Decrease: Authorization Increase: Notification	Notification	Notification (for a foreign CCP)
Amendment to Articles of Incorporation/business rules	Authorization	Authorization	Notification (for a foreign CCP)
Regulations over conducting subsidiary business	Approval	None	None
Regulations over major shareholders	Yes	None	None

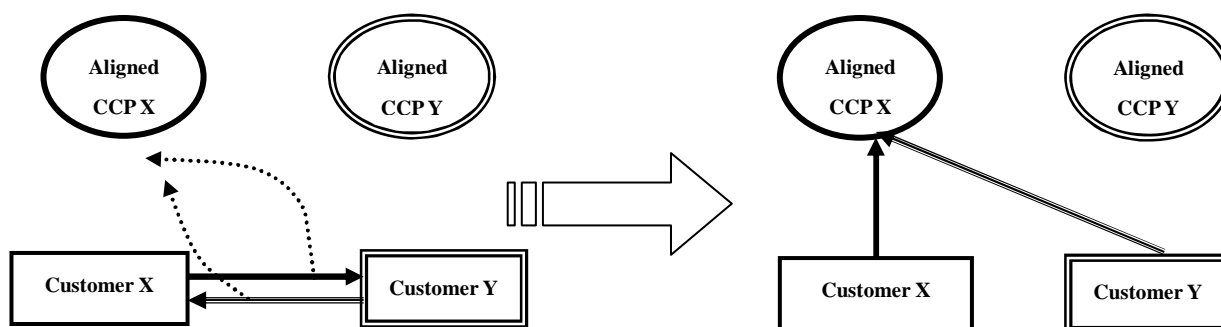
Exhibit 2: Diagram of the link method



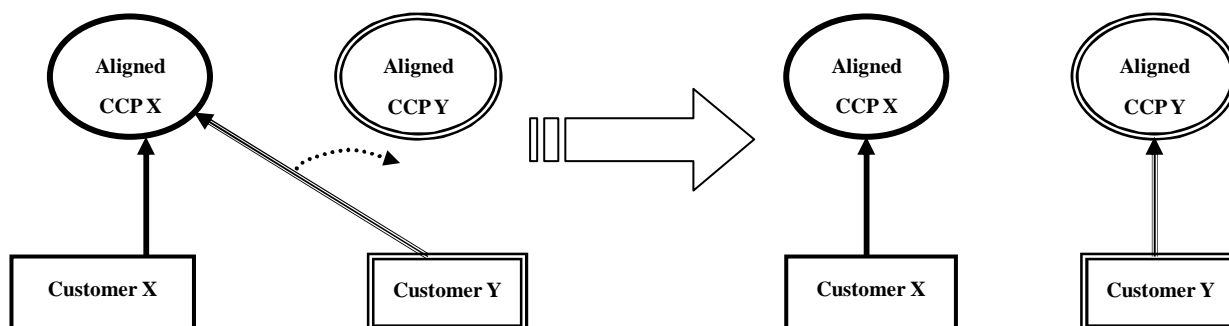
※ Under the link method, claims between each Customer will be changed to those against Aligned CCP X and Aligned CCP Y.

(1) First method

(i) First step -- Aligned CCP X owes both of obligations which are owed by Customer X and Customer Y.

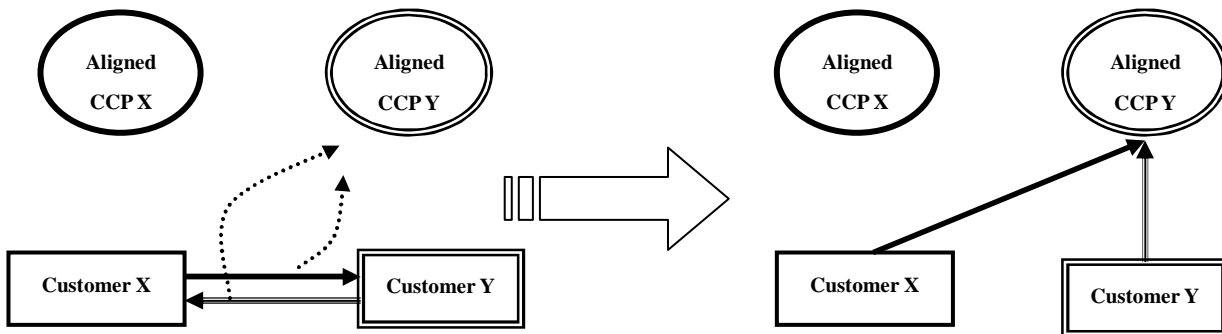


(ii) Second step -- Aligned CCP Y owes an obligation which is originally owed by Customer X.

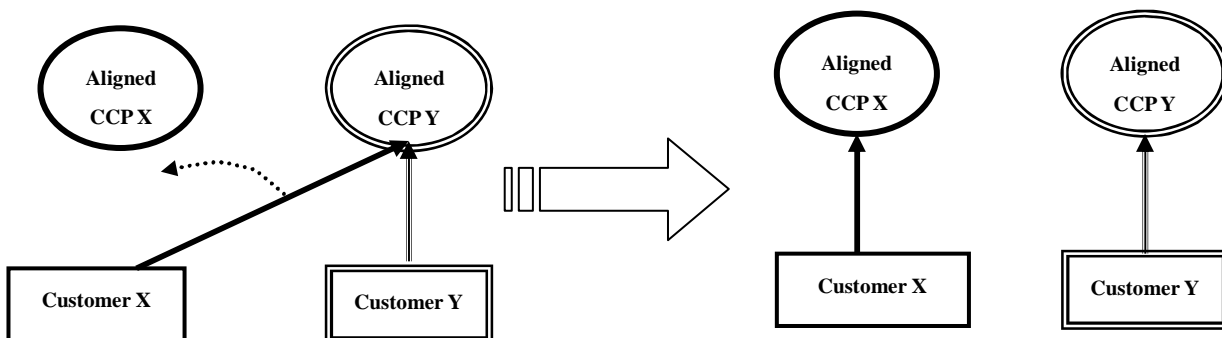


(2) Second method

(i) First step -- Aligned CCP Y owes both of obligations which are owed by Customer X and Customer Y.

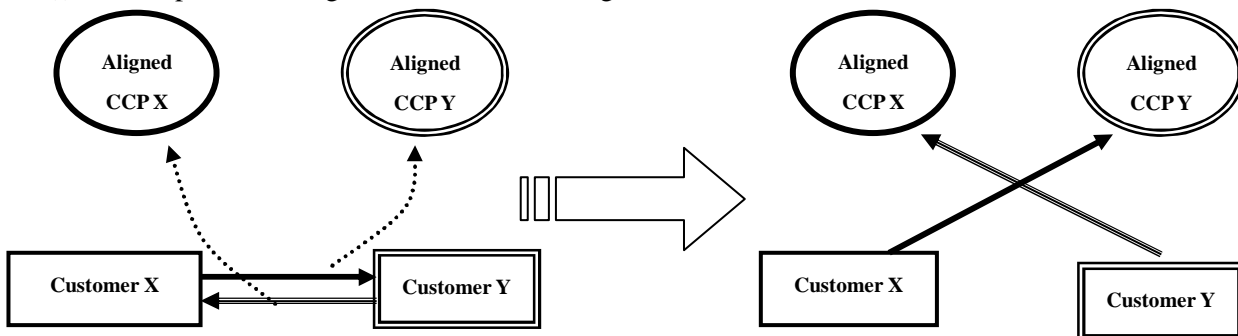


(ii) Second step -- Aligned CCP X owes an obligation which is originally owed by Customer Y.



(3) Third method

(i) First step -- Each Aligned CCP owes an obligation of each Customer.



(ii) Second step -- Each Aligned CCP transfers their respective obligations to the other Aligned CCP.

