

will be amended to allow for offshore data transmission.

Such a principle has also been adopted by the “Understanding on Commitments in Financial Services” of the WTO, which states clearly that “No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.” Applying the principle of reciprocity arising out of the spirit of free trade espoused by the WTO, no country where customer-level financial data is either used or stored – especially WTO members such as Taiwan – should unreasonably impose restrictions on either international data transmissions or the physical location of data centers necessary for efficient and secure data storage. All sovereign jurisdictions benefit when customer-level financial data is properly stored and comprehensively protected. All suffer (including banks and their shareholders) when it is not.

For more than 40 years, multinational banks operating in Taiwan have effectively provided a rich palette of international financial services and related data processing through offshore data centers. These offshore data centers deliver operational efficiency and in all major aspects fully comply with Taiwan’s laws and regulations. Multinational banks have regularly imported global financial best practices to ensure high standards of data control and information security buttressed by robust business continuity plans. In essence: why try to fix what is not broken?

We therefore endorse the proposition that all multinational banks should continue to strengthen their management and supervision of offshore data centers as follows:

- All banks should maintain sound audit and monitoring mechanisms. Results from regular data-center reviews should be reported to their boards of directors periodically to ensure both compliance and comprehensive execution.
- Subsidiaries of multinational banks operating in Taiwan should properly supervise their offshore data centers to ensure that comprehensive customer data privacy and information security is maintained according to Taiwan regulatory requirements without exception.
- All banks should establish and routinely update comprehensive business continuity plans and execution plans to ensure that no interruption to business occurs in offering key financial services to their customers;
- All banks should regularly assist and accommodate Taiwan regulators to conduct on-site audits covering customer data confidentiality, related risk management, and business continuity plans.

The multinational banks operating in Taiwan will continue to import international best-practice standards covering data center operations management and supervision, and remain

willing to accommodate all reasonable regulatory requests as well as to supply details covering international data-center implementation standards along with relevant operating policies and procedures for reference.

Issue 5. Review the “Regulations Governing Foreign Bank Branches and Representative Offices.”

We appreciate that the FSC would like to ensure that foreign bank branches in Taiwan maintain sufficient NT dollar liquidity. However, the “Regulations Governing Foreign Bank Branches and Representative Offices” limit the NT dollar credit that a foreign bank branch may extend to one person, concerned party, or affiliated entity to NT\$7 billion (or the amount calculated pursuant to Article 33-3 of the Banking Act, which is even lower unless the branch has an extremely high level of local net worth). This restriction has constrained foreign banks from offering loans or guarantees to large public- or private-sector projects that may easily exceed NT\$7 billion, which may be contrary to the best interests of both local corporations and the Taiwan economy as a whole. We suggest that this NT-dollar single-borrower limit be either increased or eliminated altogether, since limits are already in place on the total amount of NT-dollar credits that a foreign bank branch can offer – that is, NT-dollar loans shall not exceed 20 or 30 times of the branch’s net worth, and other credits shall not exceed 15 or 20 times of the net worth, depending on whether it is a retail or wholesale bank.

At the same time, a “retail bank” is currently defined as a bank branch that accepts deposits of less than NT\$1.5 million from individuals and has more than 500 such accounts, and whose total deposits in such accounts from individuals exceeds 1% of the total amount of NT-dollar deposits accepted by the bank. We believe that the NT\$1.5 million deposit balance is not a real reflection of whether such accounts are “retail” in nature. Many individual clients are high net worth and/or professional investors having other NT-dollar investments in trust accounts or large foreign-currency deposits.

We suggest revising the definition of a retail bank to be a bank branch that accepts investment assets (rather than NT-dollar deposits only) of less than NT\$1.5 million from an individual client, and has more than 500 such clients – excluding dormant account with credit balance below NT\$1.5 million. Alternatively, the 1% threshold on the total deposit amount of individual-client accounts with less than NT\$1.5 million as a proportion of total NT-dollar deposits could be increased to 2% to be more reflective of the actual “retail” nature of a bank.

CAPITAL MARKETS

The Committee applauds the regulators’ tireless efforts in advancing the Taiwan capital market’s international profile, while maintaining order in the home market in the wake of global financial dislocation. We especially wish to thank the

Financial Supervisory Commission (FSC) for listening to the Committee's concerns and issues on an on-going basis.

Since the publication of last year's position paper, we are pleased to note that one of the many important issues the Committee has raised in the past – broadening the permissible coverage of Taiwan-based research to include the offshore affiliates of Taiwan enterprises – has been resolved. This is an encouraging development, since global capital markets are highly intertwined. As Taiwan's capital market progresses towards developed-economy status, it cannot set its own unique market practices or raise hurdles for industry participants without damage to its international reputation. Indeed, it is time for Taiwan to focus intently on enhancing the efficiency of its capital market, broadening its product offerings, and increasing its market depth and breadth to attract further global investments. In this regard, the Committee would also like to echo many of the issues raised in this document by other AmCham financial-services committees, which stress the need for streamlining market practices and avoiding onerous regulatory requirements that substantially increase the cost of doing business in this market.

As always, the Committee stands ready to assist the Taiwan government in its endeavors to ensure an efficient and competitive capital market. In this spirit, the Committee makes the following suggestions:

Issue 1: Enhance the Taiwan capital market's efficiency, depth, and breadth.

1.1 Consolidate the existing exchanges. Within the global financial arena, the size of the securities market in Taiwan is not considered to be especially large. The market is further fragmented by the existence of four different exchanges: the Taiwan Stock Exchange (TWSE) and GreTai Securities Market (GTSM) for equities and bond, the Taiwan Futures Exchange (TAIFEX) for listed derivatives, and the Taiwan Depository and Clearing Corp. (TDCC) for depository and settlement rules.

Competition in the financial sector has been moving forward from regional to global consolidation; the accompanying demand for an efficient market infrastructure is imperative and urgent, as evidenced by the recent merger discussions among international market operators, such as those between the Singapore Exchange Ltd. (SGX) and Australia's ASX Group (although it was eventually rejected by the Australian regulator), between the London Stock Exchange (LSE) and Canada's TMX Group, and between NSYE Euronext and Deutsche Bourse.

Efficiency could be enhanced and costs reduced if the four agencies were to be consolidated, as was done with the Hong Kong Stock Exchange (HKEX). We understand that existing legislation would need to be amended before this development could take place, but we urge the regulators to include serious study of

this proposal on their priority list.

1.2 Allow personnel cross-registration and business outsourcing/insourcing for related financial industries. To establish Taiwan as an Asia-Pacific Regional Financial Center has long been an objective pursued by the government and the financial industries. One of the key elements in achieving that objective is to build a business environment aligned with international best practices that aim to optimize operational efficiency and cost-effectiveness in processing flows and in integrating risk control across countries and financial industries.

Among the major barriers to reaching this goal in Taiwan are the rigid restrictions preventing skilled professionals in international securities and financial institutions from serving multiple legal entities and financial industries. In contrast, cross-registration of such personnel is a prevalent practice in most international markets, generally accepted from the point of view of corporate governance. Moreover, the restrictive outsourcing/insourcing rules in the banking industry provide limited relief in this regard. Due to these operating restrictions, global financial firms with “universal banking” organizational structures and/or “one-stop shopping” business models will be discouraged from expanding business activities in this market, rendering Taiwan much less attractive as a regional financial center.

To realize the potential opportunities in synergy and efficiency, we call on the competent authorities to liberalize the regulations to permit the cross-industry registration of financial professionals as long as they meet the specified qualifications for each respective financial industry. For instance, skilled risk or financial controllers working in a global financial group could register with both the bank and securities arm of the group. The integration would not only help to achieve synergies, but would also enable financial groups engaged in multiple financial businesses to adopt a consolidated and comprehensive approach to aggregate risk, rather than taking an isolated and single-dimensional view of risk control.

1.3 Review rules governing Offshore Structured Products. The Committee strongly recommends that the regulators undertake a thorough review of the “Rules Governing Offshore Structured Products,” which have been in force since July 2009. The result of the rules has been to create regulatory hurdles making it impossible for securities firms to offer offshore structured products to clients. We would like to suggest several practical ways to improve the situation. First, the Committee strongly urges revision of the relevant regulations to allow a Financial Holding Company (FHC) to be the issuer

or guarantor of offshore structured products, even if it does not directly own the securities, banking, or insurance license. Second, the Committee proposes relaxation of the long-term debt rating requirement (the equivalent of S&P AA- or above) of the issuer or guarantor of the relevant offshore structured products sold to general investors, as this stringent rating standard has ruled out many highly qualified potential issuers and guarantors maintaining an A or A+ rating. Third, the Committee requests that the FSC provide flexibility in the job scope of registered brokerage personnel who are not involved in order-taking, to allow them to concurrently engage in the Master Agent business. The above changes would provide investors with a broader choice of products, while providing them with the same protection as enjoyed by international investors in other jurisdictions.

Issue 2: Continue to enhance investor education to minimize misuse or misinterpretation of brokers' research.

2.1 Understand foreign securities brokers' control practices and enhance investor education to resolve issues related to media use of foreign securities brokers' research reports without consent.

The media often uses its own channels to obtain foreign securities brokers' research reports, and then quotes or takes excerpts from the contents. This unauthorized use may impact market performance or stock prices and sometimes generates investor complaints to the regulators. Upon receiving the complaints, the regulators usually conduct reviews and request additional explanations from the foreign securities brokers. Such constant inquiries cause a serious administrative burden for the brokers.

In fact, foreign securities brokers provide the research reports only to clients for their reference, and any trading decisions performed through brokers are at the clients' full discretion. Based on our understanding, under their internal guidelines foreign securities brokers will not provide research reports to the media. The issuance of press releases and any other contact with the media occurs only when relevant internal approvals have been given. The Committee hope that the regulators will recognize the foreign brokers' control practices and place their emphasis on continuing to enhance investor education through public seminars and printed materials, cautioning investors not to base their investment decisions on information published in newspaper or magazine articles. In addition, the current requirement of posting an explanation and/or disclaimer on the Taiwan Securities Association website whenever a client complaint is received should be abandoned.

2.2 Relax restrictions on investment in the Taiwan market by Chinese investors.

Following the trend of regional integration in Asia and also the expanded business cooperation across the Taiwan Strait in recent years, the economic relationship between Taiwan and China has entered a brand new era. But despite the considerable progress, cross-strait investment in Taiwan's capital market remains highly restricted. Liberalizing those restrictions becomes especially imperative following the implementation of the Economic Cooperation Framework Agreement (ECFA) and financial MOUs with China. An open and free capital market for trading and investment would provide a positive boost to Taiwan's economic performance.

Issue 3: Relax futures trading and related foreign-exchange rules.

Although the Taiwan Futures Exchange has made significant progress since its establishment in 1997, futures trading in Taiwan would benefit from several regulatory changes giving institutional investors greater incentive to participate in the market:

- Remove the pre-margin requirement for institutional investors, and instead allow brokers to exercise discretion regarding pre-margin payments, based on their own credit policy.
- Allow creation of a give-up mechanism to provide investors with more flexibility and options in trading futures across different Futures Commission Merchants (FCMs). Removing the pre-margin requirement would be a key prerequisite for offering a give-up mechanism. Investors would then no longer need to maintain two margins, at give-up and full-service FCMs respectively.
- Remove or increase the position limits of the contracts listed in TAIFEX to provide Foreign Institutional Investors (FINI) with an incentive to trade in Taiwan instead of other markets. The application to increase the position limits is time consuming and laborious, creating an artificial barrier to entry that weakens TAIFEX's competitiveness.
- Allow FINIs to trade futures with New Taiwan dollars. Currently, FINI clients can use only foreign currencies to trade futures and are subject to relevant NT\$ foreign-exchange conversion requirements. Because of the inconvenience this causes for foreign clients, allowing FINIs to trade futures with NT dollars would contribute to stimulating the Taiwan futures market.

Issue 4: Continue to enhance the Securities Borrowing and Lending (SBL) market.

Taiwan continues to be regarded as one of the most important markets in the Asian region for securities lending and borrowing (SBL). We appreciate the collective efforts of the TWSE, Ministry of Finance, and the FSC in reforming

and implementing enhancements in recent years. However, the unique features of Taiwan's SBL market means that further adaptation is still needed. Over the long run, we believe that an SBL system that is able to interface with global practice will attract more investor participation. Yet considering Taiwan's market infrastructure we are also fully aware of the challenge of totally overhauling the current system. We therefore offer the following key recommendations in the hope that they will help resolve some of the near-term settlement and delivery issues for negotiated SBL orders.

4.1 Improve the recall process and allow borrowers to access the "For Settlement Borrowing System" as the last resort when market restrictions prevent them from obtaining the recalled securities to meet the lender's settlement obligation. In typical SBL transactions in most markets, it is the borrower's responsibility to return securities when securities are recalled within the market-settlement cycle; otherwise, the borrower bears the responsibilities and costs. Under the current rules in Taiwan, the lender can recall and sell on the same day (T day) and meet T+2 settlement under certain conditions. The rules, however, do not consider the possibility that the borrower may be unable to purchase/borrow from the market and in turn may cause a settlement failure with penalty on the lender's part. While the selling broker of the lender is allowed to access the "For Settlement Borrowing System" when this situation occurs, the associated costs and the ultimate responsibilities still remain with the lender. We suggest that the borrower be given the same access to the "For Settlement Borrowing System" via its broker in the event of the stock in question reaching the Daily Fluctuation Ceiling or Foreign Ownership Limit, as both situations can be substantiated by the records of the buying brokers.

4.2 Improve market efficiency by allowing the custodians to report to the TWSE the free delivery of lent/ borrowed securities under an SBL transaction. Current TWSE regulations stipulate that the lender and borrower follow the terms and conditions of the negotiated agreement between them. However the process still requires inputting the negotiated SBL orders by brokers on both sides for the Exchange to confirm matching of the details, followed by share delivery through brokers, just as in a normal trade that does not have a counter party. As a negotiated SBL transaction is already agreed or "matched" between the lender and the borrower, it does not need to be matched again on the Stock Exchange via input by SBL brokers. We suggest that delivery and receipt of the loaned securities follow the "Taiwan Stock Exchange Corporation Securities Borrowing and Lending Rules." These rules allow the custodians to

report the transaction details to the TWSE, which in turn would instruct the TDCC to transfer the shares directly to and from the accounts of the borrower and lender without going through the accounts of the broker. This procedure would improve the processing efficiency substantially for the negotiated transactions.

CHEMICAL MANUFACTURERS

Addressing environmental challenges such as the setting of clear greenhouse gas emissions for the domestic chemical industry, ensuring a sufficient supply of raw materials for the industry's future development, and fostering convenient access to the mainland Chinese market for Taiwan's petrochemical products continue to be among the main concerns of this Committee.

The Taiwan government has the strategic intent to establish Taiwan as an important hub for Foreign Direct Investment that could facilitate companies' ability to do business with mainland China. This objective has become particularly relevant with the signing in June 2010 of the Economic Cooperation Framework Agreement (ECFA) with China and the continuing efforts to strengthen the foundation of cross-strait economic relations. In the chemical sector, one area where significant scope exists for improved cooperation is in the shipping and logistics of trade cargo.

Below are the issues that the Committee believes require attention to improve trade flow and volumes:

Issue 1: Improve regulations on greenhouse gas (GHG) emissions.

To achieve CO₂ emission reduction and energy-intensity targets, the government has established GHG emission efficiency standards and a corresponding CO₂ emission measurement mechanism. But there is a need for more clarity on the expected levels of GHG emissions that will be allowable in the Taiwan chemical industry.

The industry acknowledges that GHG emissions should be reduced and that this process requires regulations and controlled measurement and reporting. It is crucial, however, that the standards adopted are reasonable and that they are enforced fairly and strictly. To set high standards followed by lax enforcement is of no value. The chemical industry would prefer to know clearly what standards it must meet and what to expect from enforcement.

We believe that the regulations should also provide for support for carbon credit trading, which is a practical way to create some flexibility for industry while the government seeks to meet overall GHG goals. The government could help by establishing a carbon credit trading exchange (functioning similarly to a commodities exchange) as many other countries around the world have already done, to enable companies to efficiently and effectively utilize any allowable carbon credits. One joint-venture petrochemical company in Taiwan,