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通告 CIRCULAR

事項

Subject: **The U.S. Foreign Account Tax Compliance Act**

查詢

Enquiry: **DCASS Hotline 2979 7222**

HKFE Clearing Corporation Limited (**HKCC**) and The SEHK Options Clearing House Limited (**SEOCH**) issued a circular on 8 October 2013 (Ref no. [CD/DCO/DCASS/025/2013](#)) drawing the attention of Participants to the U.S. Foreign Account Tax Compliance Act (**FATCA**). This circular provides Participants with an update since the last circular and reminds them of their potential obligations under FATCA.

FATCA Update

As mentioned previously, FATCA requires foreign financial institutions (**FFIs**)¹ to comply with certain obligations in order to avoid 30% FATCA withholding taxes on certain payments made to them. The obligations include (i) registering with the U.S. Internal Revenue Service (**IRS**); (ii) reporting to the IRS certain information concerning foreign financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers own certain interests; (iii) conducting certain due diligence procedures; and (iv) withholding of certain amounts in relation to non-compliant FFIs that hold foreign financial accounts.

The IRS website mentions several key upcoming dates:

- FFIs will be expected to submit, on or after 1 January 2014, their FATCA registrations to the IRS through the online FATCA registration system. Upon approval, FFIs will receive a global intermediary identification number (**GIIN**) from the IRS;
- Starting from June 2014, the IRS will publish a list of registered and approved FFIs and their GIINs on a monthly basis. In order to be included in the first IRS list to be published in June 2014, a FFI will need to have its registration submitted by 25 April 2014;
- FATCA withholding and account due diligence requirements for new accounts will come into effect on 1 July 2014. FFIs complying with FATCA should generally submit their FATCA registrations to the IRS before 1 July 2014.

¹ Under the FATCA Regulations, “FFI” means any financial institution that is a foreign entity; and “financial institution” is defined to include any entity which primarily conducts as a business the activities of trading in transferable securities for or on behalf of a customer. With respect to any foreign entity resident in a country that has a Model 2 IGA in effect, “FFI” is any entity that is treated as a financial institution pursuant to the Model 2 IGA.

Participants are requested to note the FATCA implementation timeline, review the FFI agreement released by the IRS, and understand the relevant FATCA compliance requirements. Relevant detailed information is available on the IRS website ([http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA))).

Participants are also requested to note that compliance with FATCA differs in some ways if there is in place an Intergovernmental Agreement (IGA) between the Government where FFIs are located and the U.S. Government.

Prospective Hong Kong Model 2 IGA

To facilitate compliance with FATCA by Hong Kong financial institutions and to minimize the compliance burden on them, it is our understanding that the Hong Kong Government has been in discussion with the U.S. Government with an aim to conclude a Model 2 IGA (**Hong Kong IGA**).

Based on the form of Model 2 IGA currently available on the U.S. Treasury website, it is our understanding that if a Hong Kong IGA is signed between the Hong Kong Government and the U.S. Government, Hong Kong financial institutions² will be directed to, among other things, (i) register with the IRS by 1 July 2014 to obtain a GIIN; and (ii) report to the IRS specified information about the accounts of U.S. persons and nonparticipating financial institutions maintained by them.

To support compliance with FATCA in alignment with the proposed Hong Kong IGA, HKCC and SEOCH will review and consider in due course whether it may be appropriate for it to make rule changes to require ongoing FATCA compliance by Participants that are FFIs, taking into account the FATCA implementation timeline and the relevant implications for Hong Kong financial institutions under the Prospective Hong Kong Model 2 IGA. Any rule changes, if made, will be subject to the approval of the Securities and Futures Commission.

In this respect, Participants should note that financial institutions under the proposed Hong Kong IGA cover not only banks and custodians, but also any entity that conducts the business of trading in transferable securities for or on behalf of a customer.

FATCA Compliance by Participants

It should be noted that commencing from 1 July 2014, information on Participants that are “nonparticipating financial institutions” may be reported to the IRS to the extent contemplated by the relevant FATCA rules. In addition, where a Participant does not comply with FATCA and is deemed a “nonparticipating financial institution”, a 30% FATCA withholding tax may be imposed on certain U.S. source payments made to it (e.g. dividend payments in respect of shares issued by U.S.-incorporated companies). Eventually, the 30% FATCA withholding tax will cover gross proceeds received by a “nonparticipating financial institution” (including proceeds received by it on behalf of clients) on the sale of shares issued by U.S. incorporated companies. Hence, where a Participant holds U.S. securities for its clients, its failure to comply with FATCA may have a direct impact on its clients.

In view of the upcoming FATCA implementation timeline, HKCC and SEOCH strongly recommends Participants to assess the potential implications of FATCA on their business operations and clients and the need to put in place operational and system changes to comply with FATCA if this has not already been done.

² Generally, those Hong Kong financial institutions (within the meaning of the Hong Kong IGA) that are not “exempt beneficial owners” or “deemed-compliant FFIs”

To help Participants better prepare for FATCA compliance, HKCC and SEOCH plans to organize seminars together with its tax advisor in the coming months to discuss the current state of play on FATCA and the implications of the proposed Hong Kong IGA. Further details will be announced in due course.

Certain information in this circular is derived from the IRS and the U.S. Treasury websites, and HKCC's and SEOCH's understanding of FATCA. While care has been taken to ensure accuracy of information provided, nothing in this circular is intended to be, or should be construed to constitute, legal or tax advice; and no information in this circular may be used or interpreted for the purpose of avoiding U.S. tax penalties. Participants should consult their own professional advisors on the implications of FATCA.

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