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香港中央結算有限公司

(香港交易及結算所有限公司全資附屬公司)

Hong Kong Securities Clearing Company Limited

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

通告 CIRCULAR

事項 投資者戶口持有人規則修訂
Subject: Amendments to the Terms and Conditions for Investor Participants

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Investor Participants are requested to note that the Securities and Futures Commission has approved amendments to the Terms and Conditions for Investor Participants to facilitate Hong Kong Securities Clearing Company Limited to comply with its obligations as a participating foreign financial institution under the U.S. Foreign Account Tax Compliance Act.

The amendments, as set out in the Appendix, will come into effect on 1 July 2014.

Christine Wong
Chief Counsel & Head
Legal Services Department

請各位投資者戶口持有人注意，證券及期貨事務監察委員會已批准投資者戶口持有人規則，有關便利香港中央結算有限公司符合作為美國《海外帳戶稅收合規法案》參與海外金融機構的責任之修訂。

載於附件之修訂由 2014年7月1日起生效。

法律服務部
首席法律顧問及主管
黃凱明 謹啟

香港交易及結算所有限公司
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TERMS AND CONDITIONS FOR INVESTOR PARTICIPANTS**1. Definitions**

1.1 In this document, unless the context otherwise requires, the following expressions have the following meanings:-

“Code”

means the United States Internal Revenue Code of 1986, as amended;

“Tax Information Exchange Framework”

means (i) sections 1471 to 1474 of the Code, (ii) any similar or successor legislation to (i) introduced by the United States, (iii) any agreement described in section 1471(b) of the Code, (iv) any regulations or guidance pursuant to any of the foregoing, (v) any official interpretations of any of the foregoing, (vi) any intergovernmental agreement to facilitate the implementation of any of the foregoing (an “IGA”), or (vii) any law implementing an IGA;

“Unit Trust”

means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

“Withholding Balance”

means, in relation to an Investor Participant, stocks deposited with HKSCC by the Investor Participant which are not yet re-registered into the name of HKSCC's nominee and are not yet credited to the Participant's Stock Account, such stocks are not available for settlement or withdrawal but in respect of which nominee services in CCASS will generally be provided; and

“Withholding Tax”

means any withholding or deduction pursuant to the Tax Information Exchange Framework.

3. Admission of Investor Participants

3.5 Each applicant must also provide HKSCC with such certifications, declarations, representations, undertakings, documents and further information as HKSCC may require for dealing with the application. An Investor Participant's admission as an Investor Participant in CCASS is conditional upon receipt by HKSCC of the required information and the following completed documents:-

12. Money Settlement Services

- 12.6 HKSCC shall make any payments due to an Investor Participant net of any Withholding Tax (whether withheld by HKSCC or any other parties), and HKSCC shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax. HKSCC shall be entitled to deduct Withholding Tax from payments to an Investor Participant.
- 12.7 In the event that any payment made by an Investor Participant to HKSCC is subject to deduction or withholding (either at the time of such payment or in the future) for or on account of any Withholding Tax, then the Investor Participant shall pay to HKSCC an amount, in addition to the payment to which HKSCC is otherwise entitled, necessary to ensure that the net amount actually received by HKSCC (free and clear of any such deduction or withholding for or on account of any such Withholding Tax), will be equal to the full amount HKSCC would have received in the absence of any such deduction or withholding.

13. Obligations of Investor Participants

- 13.9 Without prejudice to the generality of clause 13.8, an Investor Participant undertakes that it will:-
- (i) comply with any law, decree, rule, regulation, or order of any government, regulatory authority, competent authority, court or tribunal anywhere in the world, applicable to it or to its status, the performance of its obligations as an Investor Participant or its participation in CCASS, including, for the avoidance of doubt, all applicable laws, decrees, rules, regulations, and orders of any government, regulatory authority, competent authority, court or tribunal relating to the prevention of bribery, money laundering, tax evasion, financial crimes and terrorist financing;
 - (ii) notify HKSCC of any change in the details supplied to HKSCC at the time of admission and thereafter, including but not limited to anything relating to such Investor Participant and, in the case of a Corporate Investor Participant, its directors or employees which would render inaccurate, incomplete or superseded a statement or information previously furnished by such Investor Participant to HKSCC in connection with either (a) such an Investor Participant's application or admission to be an Investor Participant or (b) the status of such Investor Participant under the Tax Information Exchange Framework, the documentation previously furnished by such Investor Participant on such status or the meeting by HKSCC under sub-clause (iii) of any obligations relating to the Tax Information Exchange Framework; and
 - (iii) provide HKSCC with sufficient information so as to enable HKSCC to determine whether any payments to be made by HKSCC under these Rules are withholdable payments pursuant to the Tax Information Exchange Framework and to enable HKSCC to meet any applicable obligations relating to the Tax Information Exchange Framework.

18. Suspension of Stock Account or services

- 18.1 Without prejudice to any other rights HKSCC may have against an Investor Participant, HKSCC may suspend the Stock Account of an Investor Participant and/or at the same time suspend or limit the services or facilities to an Investor Participant, including, without limitation, settlement, depository and nominee services and SMS, under any one or more of the following circumstances:-
- (vi) in the event of the legal incapacity of an Individual Investor Participant or any one of the individuals comprising the Joint Individual Investor Participant;
 - (vii) in the event of the bankruptcy, liquidation or winding up of the Investor Participant or any one of the individuals comprising the Joint Individual Investor Participant, as the case may be, or the initiation of any proceedings in relation thereto; or
 - (viii) a failure of the Investor Participant to provide information to HKSCC pursuant to Clause 13.9 (ii) or (iii).

25 Data Protection

- 25.2 Unless consent of the individual is obtained, personal information of an individual held by HKSCC relating to Investor Participants will be kept confidential but HKSCC may release some of the information to external parties including but not limited to agents, contractors or third party service providers who provide administrative, telecommunications, computer, payment clearing, insurance or other services to HKSCC in connection with the operation of its business, any other person under a duty of confidentiality to HKSCC (including by way of contract), the Securities and Futures Commission, the Exchange, any recognized exchange controller, any company of which the recognized exchange controller which is the controller of HKSCC is the controller, other recognized clearing houses, central depositories, bodies of exchanges, overseas governmental or regulatory bodies, governmental departments and issuers or Depositories of Eligible Securities authorised by law and/or pursuant to the Rules, notwithstanding that any such persons may be outside of Hong Kong.

26. Indemnity

- 26.1 Each Investor Participant shall indemnify HKSCC, the Exchange, and a recognized exchange controller which is the controller of HKSCC and their respective agents, nominees, representatives, officers and employees and hold each of them harmless against all costs (including reasonable legal costs), fees, expenses, liabilities, taxes, assessments, losses, fines, penalties, and damages of any nature whatsoever (including the interest accrued to any such amount) suffered or incurred by any of them directly or indirectly as a result of or in connection with the following matters (except where HKSCC is guilty of anything not done or not omitted to be done in good faith on its part and is directly responsible for any such costs, fees, expenses, liabilities, taxes, assessments, losses and damages):
- 26.2 Each Investor Participant shall indemnify HKSCC, the Exchange, and a recognized exchange controller which is the controller of HKSCC and keep HKSCC, the Exchange and a recognized exchange controller which is the controller of HKSCC indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim, damage, cost or expenses of whatever nature which HKSCC, the Exchange and a recognized exchange controller which is the controller of HKSCC incurred or suffered in connection with any actions taken by HKSCC or any actions that HKSCC is required to take to comply with any obligations relating to the Tax Information Exchange Framework (or fails to take relating to Withholding Tax obligations) with respect to such Investor Participant.

投資者戶口持有人規則

1. 釋義

1.1 於本文中，除非文義另有所指，否則下列詞語具有如下含義：

「收入法」

新修訂的《1986年美國國內收入法》(U.S. Internal Revenue Code of 1986)；

「稅務資料交換框架」

(i) 收入法第 1471 至 1474 條，(ii) 任何與 (i) 相近或其後繼的美國法律，(iii) 任何於收入法第 1471 (b) 條所描述的協議，(iv) 任何有關上述法律的條例或指引，(v) 任何官方對上述法律的詮釋，(vi) 任何為促進執行上述法律而訂立的跨政府協議(「IGA」)，或 (vii) 任何執行 IGA 的法律；

「單位信託」

任何安排，而其目的或效果是提供設施，使人能以信託受益人的身份分享由取得、持有、管理或處置證券或任何其他財產而產生的利潤或收入；

「待處理股份」

指投資者戶口持有人存放在香港結算而未以香港結算代理人名義重新登記且未記存在其股份戶口的股份，該等股份不供交收或提取，但一般可享有代理人服務及；

「預扣稅」

稅務資料交換框架下對款項的任何稅務預扣或扣除。

3. 投資者戶口持有人之接納

3.5 每位申請成為投資者戶口持有人的人士亦必須提供香港結算就處理該申請而要求的任何證明、聲明、陳述、承諾、文件及進一步的資料。香港結算接納投資者戶口持有人時，是根據申請人遞交的香港結算所要求的資料及下列文件審核其資格：

12. 款項交收服務

12.6 香港結算將向投資者戶口持有人支付扣除所有預扣稅後的淨值（無論該稅款由結算公司或其他方預扣）。結算公司無須彌補任何因預扣稅而在該付款中引起的差額，或因預扣稅而作出任何額外付款。香港結算亦有權在向投資者戶口持有人所作的付款中扣除預扣稅款。

12.7 如投資者戶口持有人向香港結算所作的付款（無論於支付時或將來）受制於任何預扣稅扣除或預扣，投資者戶口持有人除須支付原本香港結算應收的款項外，亦須向香港結算作出額外付款，以確保香港結算收取的金額（在免去及排除因預扣稅而引起的所有扣除及預扣的金額後）的淨值等同於沒有任何該等扣除或預扣的情況下香港結算應收的全數金額相同。

13. 投資者戶口持有人之責任

13.9 在不影響本文條款第13.8條的原則的情形下，投資者戶口持有人承諾：

(i) 將遵守世界上任何地方適用於該投資者戶口持有人、其身份、其履行投資者戶口持有人的責任、或其參與中央結算系統的任何法律、法令、規則、規例或任何政府、監管權力、有效監管機關、法院或審裁處的指令，為免產生疑問，包括所有有關防止賄賂、清洗黑錢、逃稅漏稅、金融罪行及恐怖份子融資活動適用的法律、法令、規則、規例、及任何政府、監管權力、有效監管機關、法院或審裁處的指令；

- (ii) 獲接納為投資者戶口持有人時及以後向香港結算提供的資料若有任何更改，將通知香港結算。有關更改包括但不限於任何有關該投資者戶口持有人，及就公司投資者戶口持有人而言其董事或僱員的資料更改，而有關更改將導致該投資者戶口持有人之前遞交香港結算有關 (a) 被接納為投資者戶口持有人或有關申請、或 (b) 其於稅務資料交換框架下的身份、之前遞交資料有關其身份的文件或其為履行下文第 (iii) 所描述香港結算在稅務資料交換框架下的任何責任時要求其提供的聲明或資料的失確、不完整性，或使其取代該投資者戶口持有人之前遞交的聲明及資料；及
- (iii) 將向香港結算提供充分資料以便讓香港結算判斷其根據規則下而作出的付款是否屬於稅務資料交換框架下的可預扣付款，及使香港結算履行所有適用於香港結算有關稅務資料交換框架的責任。

18. 凍結股份戶口或暫停股份戶口服務

- 18.1 在不影響香港結算對投資者戶口持有人的任何其他權利的情形下，香港結算可於下列任何一項或多項的情況下凍結投資者戶口持有人的股份戶口，並／或同時暫停或限制為投資者戶口持有人提供的服務或設施（包括但不限於交收、存管及代理人服務以及短訊服務）：
- (vi) 個人投資者戶口持有人為法律上無行為能力的人士，或組成同一聯名投資者戶口持有人的任何一名人士為法律上無行為能力的人士；
 - (vii) 投資者戶口持有人或組成同一聯名投資者戶口持有人的任何一名人士破產、清盤或結束營業（視乎情況而定），或有人就此提出訴訟；或
 - (viii) 投資者戶口持有人未能向香港結算提供本文條款第 13.9 (ii) 或 (iii) 所要求的資料。

25. 資料保密

- 25.2 除非有關人士同意，香港結算會將投資者戶口持有人的個人資料保密，但可將部分的資料提供給其他人士或機構，包括但不限於（包括任何在香港以外地方的人士或機構）：任何中間人、承包商，或任何提供行政、電訊、電腦、款項結算、保險或其他與香港結算業務運作有關的服務的第三者服務供應商；任何對香港結算有保密責任的人士（包括以合約規定的）；證券及期貨事務監察委員會；聯交所、任何認可控制人、身為香港結算控制人的認可控制人為其控制人的任何公司；其他的認可結算所、中央存管處、交易所機構；海外的政府或監管機構；法例授權的政府部門及合資格證券發行人或存管人；一般規則所載香港結算須向其申報資料的人士及機構。

26. 賠償

- 26.1 就香港結算、聯交所、身為香港結算控制人的認可控制人，以及其代理、代理人、代表、行政人員及僱員因下列事項或與下列事項有關而直接或間接蒙受或承擔的任何性質的成本（包括合理的法律費用）、收費、開支、法律責任、稅項、估值款項、損失、罰款及損害賠償（包括任何該等款項所累算的利息），每位投資者戶口持有人須向其作出賠償（除非香港結算因本身出於不真誠而作出或不作出任何作為而有罪，並須直接承擔該等成本、收費、開支、法律責任、稅項、估值款項、損失及損害賠償）：
- 26.2 每位投資者戶口持有人須向香港結算、聯交所、身為香港結算控制人的認可控制人保證，及保持對香港結算、聯交所及身為香港結算控制人的認可控制人承諾，因香港結算履行對該投資者戶口持有人有關稅務資料交換框架的責任所採取的行動或須採取的行動（或因香港結算未能履行與該投資者戶口持有人有關的預扣稅責任），而蒙受或承擔任何性質的虧損、費用（包括強制執行費用）、利息、責任（包括任何稅項或其他財務責任）、索償、損失及任何性質的代價或費用，該投資者戶口持有人須向其作出賠償。