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香港聯合交易所期權結算所有限公司

(香港交易及結算所有限公司集團全資附屬成員機構)

The SEHK Options Clearing House Limited

(A wholly-owned member of the Hong Kong Exchanges and Clearing Limited Group)

通告 CIRCULAR

事項 期權結算規則及期權買賣交易所參與者結算運作程序之修訂
Subject: Amendments to the Options Clearing Rules and the Operational Clearing Procedures for Options Trading Exchange Participants of The SEHK Options Clearing House Limited ("SEOCH")

查詢

Enquiry : DCASS Hotline : 2979 7222

Exchange Participants of The Stock Exchange of Hong Kong Limited are requested to note that the Securities and Futures Commission has approved amendments to the Options Clearing Rules and the Operational Clearing Procedures to facilitate SEOCH 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 Appendices 1 and 2, will come into effect on 1 July 2014.

The marked-up version of the amendments can be downloaded from the following sections of the HKEx website:

- "Rule Update - Options Clearing Rules of SEOCH"
- "Rule Update - Operational Clearing Procedures for Options Trading Exchange Participants of SEOCH"

Christine Wong
Chief Counsel & Head
Legal Services Department

請各位聯交所參與者注意，證券及期貨事務監察委員會已批准期權結算規則及期權買賣交易所參與者結算運作程序，有關利便聯交所期權結算所符合作為美國《海外帳戶稅收合規法案》參與海外金融機構的責任之修訂。

載於附件一及二（只有英文版）之修訂由 2014年7月1日起生效。

有關規則的標明修訂本可在香港交易所網站中下載：

- "規則修訂 - 期權結算規則 - 聯交所期權結算所"
- "規則修訂 - 期權買賣交易所參與者結算運作程序 - 聯交所期權結算所"

法律服務部
首席法律顧問及主管
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Options Clearing Rules

CHAPTER 1

DEFINITIONS AND INTERPRETATION

Definitions

101. In these Clearing Rules, unless the context otherwise requires:-

“Tax Information Exchange Framework” means (i) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (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;

“Withholding Tax” means any withholding or deduction pursuant to the Tax Information Exchange Framework;

CHAPTER 3

SEOCH PARTICIPANTSHIP

306. [Repealed]

307. Each applicant shall provide the SEOCH Board with such certifications, declarations, representations, undertakings, documents and further information, as the SEOCH Board may require for dealing with the application.

CHAPTER 4

SEOCH PARTICIPANTS' OBLIGATIONS

Continuing Obligations

403. Each SEOCH Participant shall at all times:-

(14) be able to demonstrate, to the satisfaction of SEOCH, the ability to comply with the above at all times;

(15) maintain in force a mandate in such form as may be prescribed by SEOCH authorising SEOCH:

(a) to transfer SEOCH Collateral provided by the SEOCH Participant to HKSCC (as required by HKSCC) in relation to the settlement of the delivery obligations of the SEOCH Participant or the CCASS GCP, where applicable, under the CNS System; and

- (b) to pay Settlement Amount in relation to stock delivery obligations settled by securities collateral already provided to SEOCH to the cash account of the SEOCH Participant or the CCASS GCP, where applicable, maintained with HKSCC;
- (16) 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 conduct of its business and the performance of its obligations as a SEOCH Participant, 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; and
- (17) notify SEOCH of any change in the details supplied to SEOCH at the time of admission and thereafter, including but not limited to anything relating to such SEOCH Participant, its directors or employees which would render inaccurate, incomplete or superseded a statement or information previously furnished by such SEOCH Participant to SEOCH in connection with either (a) such SEOCH Participant's application for admission to be a SEOCH Participant or (b) the status of such SEOCH Participant under the Tax Information Exchange Framework, the documentation previously furnished by such SEOCH Participant on such status or the meeting by SEOCH under Rule 403E of any obligations relating to the Tax Information Exchange Framework.

403E. Each SEOCH Participant shall provide SEOCH with sufficient information so as to enable SEOCH to determine whether any payments to be made by SEOCH under these Rules are withholdable payments pursuant to the Tax Information Exchange Framework and to enable SEOCH to meet any applicable obligations relating to the Tax Information Exchange Framework.

Confidentiality

428. All information in the possession of SEOCH relating to a SEOCH Participant will be kept confidential by the directors and other staff or officers of SEOCH having access to the same in accordance with the procedures made by SEOCH. SEOCH, however, may disclose any information at any time:-
- (8) to any exchange, clearing house, governmental, regulatory or competent authority or any organization (whether in Hong Kong or elsewhere) with whom HKEx, SEOCH or the Exchange has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework;
 - (10) to any company of which a recognized exchange controller which is a controller of the Exchange is a controller;
 - (11) to the chief executive or the chief operating officer of HKEx for the time being appointed or deemed to have been appointed in accordance with the Securities and Futures Ordinance or, as the context may require, their designees; or

- (12) if so required pursuant to any requirement or request of any governmental, regulatory or other competent authority whether within or outside Hong Kong (including, but not limited to, the Commission, Hong Kong Monetary Authority and the Inland Revenue Department of the Hong Kong government) or by or in accordance with the Tax Information Exchange Framework,

provided that, in any such case other than under sub-paragraphs (7), (8) and (12) above, the confidentiality of the information is made known to the recipient (it being understood that, if a case is described in multiple sub-paragraphs of this sentence that include sub-paragraphs (7), (8) or (12) above, then the confidentiality of the information need not be made known to the recipient).

- 428A. The Board may direct a SEOCH Participant to provide it with any information required or requested by an exchange, clearing house, governmental, regulatory or other competent authority or any organization (whether in Hong Kong or elsewhere) with whom HKEx, SEOCH or the Exchange has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework.

443. [Repealed]

Tax

444. SEOCH shall make any payments due to a SEOCH Participant net of any Withholding Tax (whether withheld by SEOCH or any other parties), and SEOCH shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax. SEOCH shall be entitled to deduct Withholding Tax from payments to a SEOCH Participant.
445. In the event that any payment made by a SEOCH Participant to SEOCH 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 SEOCH Participant shall pay to SEOCH an amount, in addition to the payment to which SEOCH is otherwise entitled, necessary to ensure that the net amount actually received by SEOCH (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 SEOCH would have received in the absence of any such deduction or withholding.
446. Each SEOCH Participant shall indemnify SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH and keep SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH 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 SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH incurred or suffered in connection with any actions taken by SEOCH or any actions that SEOCH 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 SEOCH Participant.

**CHAPTER 8
DISCIPLINARY**

Situations Calling for Disciplinary Action

802. In addition to the situations calling for disciplinary action against a SEOCH Participant pursuant to Clearing Rule 801, SEOCH may take disciplinary action in relation to SEOCH Participants:-

- (6) if the SEOCH participant fails to provide information requested by an exchange, clearing house, governmental, regulatory or other competent authority or an organization (whether within or outside Hong Kong) with whom HKEx, SEOCH or the Exchange has entered into an information sharing arrangement or agreement or pursuant to Clearing Rule 403(17) or Rule 403E.

期權結算規則

第一章

定義及釋義

定義

101. 除文意另有所指外，在此等結算規則中：

- 「稅務資料交換
框架」 (i) 新修訂的《1986年美國國內收入法》(U.S. Internal Revenue Code of 1986) (「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；
- 「預扣稅」 稅務資料交換框架下對款項的任何預扣或扣除。

第三章

聯交所期權結算所參與者資格

申請

306. 【已刪除】

307. 各申請人必須向聯交所期權結算所董事會提交其處理申請個案所需的證明、聲明、陳述、承諾、文件及進一步資料。

第四章

聯交所期權結算所參與者的責任

持續責任

403. 各聯交所期權結算所參與者在任何時候均須：

- (14) 在聯交所期權結算所信納的情況下，證明其在任何時候均能遵守上述各項的能力；
- (15) 維持一項按聯交所期權結算所規定形式的有效授權書，授權聯交所期權結算所：

- (a) 將有關聯交所期權結算所參與者或其中央結算系統全面結算參與者(視屬何者適用)就其於持續淨額交收系統的交收責任而由聯交所期權結算所參與者提供的聯交所期權結算所抵押品轉交予中央結算公司(根據中央結算公司要求);及
 - (b) 就其已提供予聯交所期權結算所的抵押股份作股票交收的有關交收款項轉予聯交所期權結算所參與者或其中央結算系統全面結算參與者(視屬何者適用)在中央結算公司的現金賬戶內;
- (16) 遵守世界上任何地方適用於該聯交所期權結算所參與者、其身份、其業務運作及其履行聯交所期權結算所參與者的責任的任何法律、法令、規則、規例或任何政府、監管當局、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、監管當局、有效監管機關、法院或審裁處的指令；及
- (17) 獲接納為聯交所期權結算所參與者時及其後向聯交所期權結算所提供的資料若有任何更改，將通知聯交所期權結算所，包括但不限於任何有關該聯交所期權結算所參與者、其董事或僱員資料的更改，而有關更改將導致該聯交所期權結算所參與者之前遞交給聯交所期權結算所有關 (a) 申請接納成為聯交所期權結算所參與者，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規則第403E條所描述有關聯交所期權結算所在稅務資料交換框架下的任何責任時要求該參與者提供的聲明或資料的失確、不完整，或使其取代該聯交所期權結算所參與者之前遞交的聲明及資料。

403E. 向聯交所期權結算所提供充份資料以便讓聯交所期權結算所判斷其根據本規則下而作出的付款是否屬於稅務資料交換框架下的預扣付款，及使聯交所期權結算所履行所有適用於聯交所期權結算所有關稅務資料交換框架的責任。

保密性

428. 聯交所期權結算所擁有有關聯交所期權結算所參與者的一切資料須由有權參閱該等資料的聯交所期權結算所的董事及其他職員或高級人員根據聯交所期權結算所制定的程序予以保密，惟聯交所期權結算所可在任何時間將資料披露予：

- (8) 任何根據簽訂了的資料共用安排或協議或稅務資料交換框架而提出要求的交易所、結算所、政府、監管當局或有效監管機關或任何機構(不論設於香港或其他地方)；

- (10) 任何作為交易所控制人的認可控制人為其控制人的公司；
- (11) 根據《交易所及結算所條例》委任的(或被視為已被委任的)當時的交易結算公司行政總裁或營運總裁或該等人士委派的人士，視乎文意而定；或
- (12) 在香港境內或境外設立的政府、監管當局或其他有效監管機關（包括但不限於證監會、金管局及香港政府稅務局），如其或按稅務資料交換框架有所要求，

惟在任何上述第(7)、(8)及(12)分段除外的情況下，均須將資料的保密性告知接獲者（請注意惟在符合多於一項上述分段，包括第(7)、(8)及(12)分段，所描述的情況下，資料的保密性將不須告知接獲者）。

428A. 董事會可指示聯交所期權結算所參與者提供由根據簽訂了的資料共用安排或協議或稅務資料交換框架的交易所、結算所、政府、監管當局或其他有效監管機構或任何機構（無論設於香港或其他地方）要求的任何資料。

443. 【已刪除】

稅務

444. 聯交所期權結算所將向聯交所期權結算所參與者支付扣除所有預扣稅後的淨額（不論該稅款由聯交所期權結算所或其他方預扣），而聯交所期權結算所無需該在該付款中彌補任何因預扣稅而引起的差額，或因預扣稅而作出任何額外付款。聯交所期權結算所有權在向聯交所期權結算所參與者所作的付款中扣除預扣稅款。
445. 如聯交所期權結算所參與者向聯交所期權結算所所作的付款（不論於支付時或將來）受制於任何預扣稅扣除或預扣，聯交所期權結算所參與者除須支付原本聯交所期權結算所應收的款項外，亦須向聯交所期權結算所作出額外付款，以確保聯交所期權結算所收取（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）的淨額將等同於在沒有任何該等扣除或預扣的情況下聯交所期權結算所應收的全數金額。

446. 每位聯交所期權結算所參與者須向聯交所期權結算所、交易所及身為聯交所期權結算所控制人的認可控制人保證，及保持對聯交所期權結算所、交易所及身為聯交所期權結算所控制人的認可控制人承諾，該聯交所期權結算所參與者須向其賠償因聯交所期權結算所履行對該聯交所期權結算所參與者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（或因聯交所期權結算所未能履行與該聯交所期權結算所參與者有關的預扣稅責任），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。

第八章

紀律

需採取紀律處分的情況

802. 除根據結算規則第801條載列需對聯交所期權結算所參與者採取紀律處分的情況外，聯交所期權結算所可就以下情況對聯交所期權結算所參與者採取紀律處分：
- (6) 如該聯交所期權結算所參與者未有提供由根據結算規則第403(17)條或第403E條或其與交易結算公司、聯交所期權結算所或交易所簽訂的資料共用安排或協議的交易所、結算所、政府、監管當局或其他有效監管機構或任何其他機構（不論設於香港境內或境外）要求的資料。

Operational Clearing Procedures for Options Trading Exchange Participants**7. COLLATERAL****7.4 Exchange Fund Bills/Notes****7.4.3 Interest Payment of EFBN**

Where interest is paid to SEOCH in relation to EFBN which are the subject of cover for margin or Variable Contribution requirement provided by a SEOCH Participant, SEOCH will pay to the SEOCH Participant by crediting the relevant CCMS Collateral Account of the SEOCH Participant on the same Business Day, a sum equivalent to the amount of such interest, less any withholding tax that may be required to be deducted pursuant to any applicable tax laws and regulations and/or net of any Withholding Tax (whether withheld by SEOCH or any other parties). SEOCH will have no obligation to gross-up any such interest payment or to pay any additional amount as a result of such deduction or Withholding Tax. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework, SEOCH shall be entitled to deduct or withhold Withholding Tax (whether withheld by SEOCH or any other parties) from any payment of interest money (or payment of any other income) received by SEOCH in relation to the EFBN to a SEOCH Participant (or from any other payment made by SEOCH to a SEOCH Participant) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax.

7.4.4 Maturity Redemption of EFBN

Where redemption money is paid to SEOCH upon maturity of any EFBN which is the subject of cover for margin or Variable Contribution requirement provided by a SEOCH Participant, unless otherwise notified to the contrary by SEOCH, SEOCH will pay to the SEOCH Participant, by crediting the relevant CCMS Collateral Account of the SEOCH Participant on the Business Day following maturity of the EFBN, a sum equivalent to the amount of such redemption money, less any withholding tax that may be required to be deducted pursuant to any applicable tax laws and regulations and/or net of any Withholding Tax (whether withheld by SEOCH or any other parties). SEOCH will have no obligation to gross-up any such redemption money or to pay any additional amount as a result of such deduction or Withholding Tax. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework, SEOCH shall be entitled to deduct or withhold Withholding Tax (whether withheld by SEOCH or any other parties) from any payment of redemption money (or payment of any other income) received by SEOCH in relation to the EFBN to a SEOCH Participant (or from any other payment made by SEOCH to a SEOCH Participant) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax. SEOCH will, on the same day, debit the matured EFBN from the CCMS Collateral Account of the SEOCH Participant.