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**香港期貨結算有限公司**

(香港交易及結算所有限公司集團全資附屬成員機構)

**HKFE Clearing Corporation Limited**

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

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**通告 CIRCULAR**

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Subject: Amendments to the Rules and Procedures of HKFE Clearing Corporation Limited  
("HKCC Rules")

Enquiry : DCASS Hotline : 2979 7222

Exchange Participants of Hong Kong Futures Exchange Limited are requested to note that the Securities and Futures Commission has approved amendments to the HKCC Rules to facilitate HKCC 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.

The marked-up version of the amendments can be downloaded from the "Rule Update - Rules and Procedures of HKCC" section of the HKEx website.

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Rules and Procedures of HKFE Clearing Corporation Limited

**CHAPTER I**

**INTERPRETATION**

Definitions

101. In these Rules the definitions contained in the Exchange Rules (as hereinafter defined) shall where the context permits be incorporated herein by reference and the following expressions shall, unless the context otherwise requires, bear the following meanings:-

“Tax Information Exchange Framework”	means (i) sections 1471 to 1474 of the United States Internal Revenue 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;
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“Withholding Tax”	means any withholding or deduction pursuant to the Tax Information Exchange Framework.
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**CHAPTER II**

**HKCC PARTICIPANTSHIP**

Procedure on application

208. Every applicant shall apply for registration as an HKCC Participant under the same name as that under which it is registered as an Exchange Participant. The applicant shall provide the Clearing House with such certifications, declarations, representations, undertakings, documents and further information as the Clearing House may require for dealing with the application.

214. Every HKCC Participant must at all times during the currency of its HKCC Participantship:

- (i) adhere strictly to the provisions of the Ordinance;
- (ia) 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 an HKCC 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;

- (ka) meet all requirements to repay and reimburse the Clearing House on demand any amount paid by the Clearing House out of the HKCC Contingent Advance Capital;
- (l) unless exempted by the Clearing House (which exemption may be granted on such conditions as the Clearing House considers appropriate), have installed such computer equipment and software as may be specified by the Clearing House for gaining access to DCASS and CCMS and ensure that such computer equipment and software is operated and maintained in accordance with the requirements as prescribed from time to time by the Clearing House;
- (m) provide the Clearing House with sufficient information so as to enable the Clearing House to determine whether any payments to be made by the Clearing House under these Rules are withholdable payments pursuant to the Tax Information Exchange Framework and to enable the Clearing House to meet any applicable obligations relating to the Tax Information Exchange Framework; and
- (n) notify the Clearing House of any change in the details supplied to the Clearing House at the time of admission and thereafter, including but not limited to anything relating to such HKCC Participant, its directors or employees which would render inaccurate, incomplete or superseded a statement or information previously furnished by such HKCC Participant to the Clearing House in connection with either (a) such HKCC Participant's application for admission to be an HKCC Participant or (b) the status of such HKCC Participant under the Tax Information Exchange Framework, the documentation previously furnished by such HKCC Participant on such status or the meeting by the Clearing House under clause (m) of any obligations relating to the Tax Information Exchange Framework.

Continuing obligations of HKCC Participants

214A. Every HKCC Participant shall, upon the Board's direction, provide the Exchange with any information requested by an exchange, clearing house, governmental, regulatory or other competent authority or an organization (whether within or outside Hong Kong) with which HKEx, the Clearing House or the Exchange has entered into an information arrangement or agreement or pursuant to the Tax Information Exchange Framework.

Disclosure of information

219. All information in the possession of the Clearing House relating to an HKCC Participant shall be kept confidential by the Chairman, Managing Director, staff or officers of the Clearing House or HKEx having access to the same, except that:-

- (c) the Clearing House may disclose information at any time:-
  - (iv) to any exchange, clearing house, governmental, regulatory or other competent authority or any organization (whether within or outside Hong Kong) with which HKEx, the Clearing House or the Exchange has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework;
- (d) the Clearing House shall disclose information in response to a request from the Commission or if ordered by a court of competent jurisdiction so to do;

- (e) the Clearing House may disclose information to any body or person responsible for determining disciplinary matters pursuant to these Rules or to whom the Clearing House may be required by Chapter V of these Rules to disclose information; and
  - (f) the Clearing House may disclose and report any information at any time 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, the 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.
221. Except where (i) it is required by a court in Hong Kong or by applicable law, decree, regulation, rule, code, guidance, order, published practice or concession, judgment or decision of a governmental, regulatory or other competent authority so to do, or (ii) it is permitted under these Rules, neither the Clearing House nor any of its officers shall disclose any information to any governmental department or agency other than the Commission.

Tax

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

Circumstances giving rise to disciplinary proceedings

516. Any HKCC Participant which:
- (h) fails to meet or comply with any disciplinary sanction or other requirement imposed on it; or
  - (i) fails to provide information requested by an exchange, clearing house, regulatory authority or an organization (whether within or outside Hong Kong) with which HKEx, the Clearing House or the Exchange has entered into an information sharing arrangement or agreement or pursuant to Rule 214(m) or (n).

**CLEARING HOUSE PROCEDURES FOR FUTURES/OPTIONS CONTRACTS  
TRADED ON THE AUTOMATED TRADING SYSTEM OF THE EXCHANGE  
("HKATS")**

**Chapter 2 Clearing and Settlement Procedures**

2.6 Methods of Providing Cover for Clearing House Margin

2.6.4 *Exchange Fund Bills/Notes*

Where interest or, upon maturity, redemption money, is paid to the Clearing House in relation to Exchange Fund Bills/Notes which are the subject of cover for Clearing House margin liability provided by an HKCC Participant, the Clearing House shall pay to the HKCC Participant, by crediting its CCMS Collateral Account with the Clearing House on the same Business Day, a sum equivalent to the amount of such interest or 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 the Clearing House or any other parties). The Clearing House 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, the Clearing House shall be entitled to deduct or withhold Withholding Tax (whether withheld by the Clearing House or any other parties) from any payment of interest or redemption money (or payment of any other income) received by the Clearing House on the Exchange Fund Bills/Notes to an HKCC Participant (or from any other payment made by the Clearing House to an HKCC 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.

2.6.6 *U.S. Government Treasury Bills and Notes*

Where interest or, upon maturity, redemption money, is paid to the Clearing House in relation to U.S. Treasuries which are the subject of cover for Clearing House margin liability provided by an HKCC Participant, the Clearing House shall pay to the HKCC Participant, by crediting its CCMS Collateral Account with the Clearing House on the same Business Day, a sum equivalent to the amount of such interest or 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 the Clearing House or any other parties). The Clearing House 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, the Clearing House shall be entitled to deduct or withhold Withholding Tax (whether withheld by the Clearing House or any other parties) from any payment of interest or redemption money (or payment of any other income) received by the Clearing House on the U.S. Treasuries to an HKCC Participant (or from any other payment made by the Clearing House to an HKCC 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. In the event that the HKCC Participant's clearing account is not in U.S. dollars, such amount will be credited to a U.S. dollar bank account designated by the HKCC Participant.