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香港場外結算有限公司

(香港交易及結算所有限公司附屬公司)

OTC Clearing Hong Kong Limited

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

通告 CIRCULAR

事項

Subject: Amendments to the Rules of OTC Clearing Hong Kong Limited (“OTC Clear Rules”)

查詢

Enquiry : otc_operations@hkex.com.hk

Clearing Members of OTC Clearing Hong Kong Limited are requested to note that the Securities and Futures Commission has approved amendments to the OTC Clear Rules to facilitate OTC Clear 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 OTC Clear" section of the HKEx website.

Christine Wong
Chief Counsel & Head
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Amendments to OTC Clear Rules

PART I GENERAL PROVISIONS

Chapter 1 Definitions and Interpretation

Definitions

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

<p>“Tax Information Exchange Framework”</p>	<p>means:</p> <ul style="list-style-type: none"> (1) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (the “Code”) or any similar or successor legislation introduced by the United States; (2) any agreement described in section 1471(b) of the Code; (3) any regulations or guidance pursuant to any of the foregoing; (4) any official interpretations of any of the foregoing; (5) any intergovernmental agreement (an “IGA”) to facilitate the implementation of any of the foregoing; or (6) any law implementing an IGA;
<p>“Web Portal”</p>	<p>means a user interface via which a Clearing Member can, amongst other things, lodge a request for movement of Collateral or retrieve a report;</p>
<p>“Web Portal User Manual”</p>	<p>means a user manual which details the process of raising a request for movement of Collateral or retrieving a report via Web Portal; and</p>
<p>“Withholding Tax”</p>	<p>means any withholding or deduction pursuant to the Tax Information Exchange Framework.</p>

Chapter 2 General Provisions

Liability

203. Except as otherwise expressly provided in these Clearing Rules, OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of anything done or omitted to be done by it in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person as a result of or in connection with the following matters:

- (9) any act or omission by OTC Clear in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law;
204. OTC Clear reserves the right to act in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law.

Disclosure of Information

212. All information provided to or in the possession of OTC Clear regarding past or current positions carried by OTC Clear for a Clearing Member, Margin payments between OTC Clear and a Clearing Member or deliveries made by or to a Clearing Member and any financial statements submitted to OTC Clear by any Clearing Member shall be kept confidential by OTC Clear in accordance with such procedures or policies as OTC Clear may from time to time determine. Notwithstanding the foregoing, OTC Clear may disclose any information described in the immediately preceding sentence, any information received from a Clearing Member and any other information in connection with a Clearing Member at any time:

- (3) pursuant to any requirement or request of any Governmental Authority, including, but not limited to, the SFC, HKMA, and the Inland Revenue Department of the Hong Kong government; or to any Person required by or in accordance with the Tax Information Exchange Framework;
- (9) to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEx has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework;

provided that, in any such case other than under sub-paragraphs (1), (3), (4), (5) and (9) 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-paragraph (1), (3), (4), (5) or (9) above, then the confidentiality of the information need not be made known to the recipient).

213. OTC Clear may direct a Clearing Member to provide it with any information requested by a trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEx has entered into information sharing agreement or arrangement or pursuant to the Tax Information Exchange Framework.

PART II

MEMBERSHIP

Chapter 5 Information Obligations

Notifications by Clearing Members

501. Each Clearing Member shall notify OTC Clear in writing without delay providing full particulars known to it of:
- (5) anything relating to the Clearing Member which would cause any statement or information previously furnished to OTC Clear in connection with (a) the Rates Derivatives Clearing Services and/or FX Derivatives Clearing Services, (b) its application for admission to be a Clearing Member, or (c) the Tax Information Exchange Framework, to be inaccurate, incomplete or superseded.

PART III CLEARING OPERATIONS

Chapter 10 Payments

Income on Non-Cash Collateral

1006. OTC Clear will pay an amount to a Clearing Member representing any income received by OTC Clear on non-cash Collateral transferred to OTC Clear, whether in satisfaction of its Margin requirements or CM Funded Contribution Amount, net of any Tax (including net of any Withholding Tax). Distributions of such income will take into account any deduction required to reflect any accommodation charges, administration costs or commitment fees for credit lines incurred by OTC Clear in respect of such non-cash Collateral in accordance with section 7.6.2 of the Clearing Procedures. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework or other Applicable Laws, OTC Clear shall be entitled to deduct or withhold Withholding Tax (whether withheld by OTC Clear or any other parties) from any payment of income received by OTC Clear on the non-cash Collateral to a Clearing Member (or from any other payment made by OTC Clear to a Clearing Member) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax.

Chapter 11 Tax

Tax

1101. In the event that any payment made by a Clearing Member to OTC Clear under the Clearing Documentation or any Contract is subject to deduction or withholding (either at the time of such payment or in the future) for or on account of any Tax and/or any Withholding Tax, then the Clearing Member shall pay to OTC Clear an amount (the “**Additional Amount**”), in addition to the payment to which OTC Clear is otherwise entitled under the Clearing Documentation or any Contract, necessary to ensure that the net amount actually received by OTC Clear (free and clear of any such deduction or withholding for or on account of any such Tax and/or Withholding Tax), will be equal to the full amount OTC Clear would have received in the absence of any such deduction or withholding.

1102. OTC Clear shall make any payments due to a Clearing Member under the Clearing Documentation or any Contract net of any deduction or withholding for or on account of any Tax it is required to make from such payments and (to the extent required by the Tax Information Exchange Framework or Applicable Laws) net of any Withholding Tax, and OTC Clear shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such deduction, withholding or payment of any such Tax or any such Withholding Tax.

1103. If:

- (1) a Clearing Member is required by any Applicable Law, as modified by the practice of any relevant Governmental Authority, to make any deduction or withholding from any payment made to OTC Clear under the Clearing Documentation or any Contract for or on account of any Tax, in respect of which the Clearing Member would be required to pay an Additional Amount to OTC Clear under Clearing Rule 1101;

1105. Each Clearing Member shall provide OTC Clear with sufficient Information so as to enable OTC Clear to determine whether any payments to be made by it under the Clearing Documentation or any Contract are withholdable payments pursuant to the Tax Information Exchange Framework and to enable OTC Clear to meet any applicable obligations relating to the Tax Information Exchange Framework.

PART IV RISK MANAGEMENT AND DEFAULT PROCEDURES

Chapter 13 Default Procedures

Indemnity

1316. Each Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear:

- (3) incurred or suffered in connection with any actions taken by OTC Clear or any actions that OTC Clear 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 Clearing Member.