



編號 OTCO/001/2014

Ref. No.:

日期

Date: 1 January 2014

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 subsidiary of Hong Kong Exchanges and Clearing Limited)

通告 CIRCULAR

事項

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

查詢

Enquiry: **2211 6538 (Mr. Patrick Leung)**

This circular provides OTC Clearing Hong Kong Limited (OTC Clear) Clearing Members with background and latest update in respect of the Foreign Account Tax Compliance Act (**FATCA**) in the United States (**U.S.**) and reminds them of their potential obligations under FATCA.

FATCA

FATCA is a tax law enacted in the U.S. in March 2010 and will become effective in 2014. FATCA aims to prevent the non-compliance with U.S. tax obligations by U.S. taxpayers holding foreign financial accounts.

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) registration with the U.S. Internal Revenue Service (the **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:

- FFI 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;

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.

香港交易及結算所有限公司
Hong Kong Exchanges and Clearing Limited

- 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.

Clearing Members are requested to note the FATCA implementation timeline, review the FFI agreement released by 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))).

Circulars issued by the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority regarding compliance with FATCA can be found on their websites at www.sfc.hk and www.hkma.gov.hk respectively.

Clearing Members 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, OTC Clear will review and consider in due course whether it may be appropriate for it to make rule changes to require ongoing FATCA compliance by its Clearing Members 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 SFC.

² Generally, those financial institutions that are not “exempt beneficial owners” or “deemed-compliant FFIs” under the relevant U.S. Treasury Regulations.

FATCA Compliance by OTC Clear Clearing Members

It should be noted that commencing from 1 July 2014, information on Clearing Members that are “nonparticipating financial institutions” may be reported to the IRS to the extent contemplated by the relevant FATCA rules. In addition, where a Clearing Member 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.

In view of the upcoming FATCA implementation timeline, OTC Clear strongly recommends Clearing Members 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.

To help its Clearing Members better prepare for FATCA compliance, OTC Clear 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 OTC Clear’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. Clearing Members should consult their own professional advisors on the implications of FATCA.

Kelvin Lee
Acting Head of OTC Clear