

CHAPTER V

GENERAL OBLIGATIONS OF EXCHANGE PARTICIPANTSHIP

Adherence to Rules

501. Each Exchange Participant shall adhere strictly to and be bound by the provisions of the Ordinance, these Rules, the Regulations, the Procedures and any conditions stipulated in the notice of approval of its Exchange Participantship given pursuant to Rule 305 or in any approval given by the Exchange and shall at all times comply with the decisions, directions, determinations, findings of fact and/or interpretation of the Board, the Chief Executive and any other person or body of persons in the exercise or performance of any function, duty, obligation, power, right, privilege or discretion conferred on it by or pursuant to these Rules for the purposes of or in connection with the application and administration thereof.

Continuing Obligations of Exchange Participant

502. Each Exchange Participant must at all times:-

- (a) hold at least one Futures Exchange Trading Right;
- (b) (deleted)
- (c) (deleted)
- (d) be a limited company incorporated in Hong Kong;
- (e) comply with the requirements of Rule 530 (Participantship of Clearing House);
- (f) in the case of an Exchange Participant registered under the category of Trader, notify the Exchange promptly on demand of the identity of the person in whom ownership of its share and loan capital, and its management and control, are effectively vested;
- (g) (deleted)
- (h) in the case of an Exchange Participant registered under the category of Merchant Trader:-
 - (i) be a company whose principal business comprises dealing in one or more commodities underlying an Exchange Contract; or

- (ii) be a subsidiary of a company or entity whose principal business comprises dealing in one or more commodities underlying an Exchange Contract;

and all F.O. Business of a Merchant Trader must be conducted in connection with or ancillary to the said principal business of the Merchant Trader or its holding company;

- (i) (except in relation to Exchange Participants to which Rule 309(b) applies) be, or deemed to be, duly licensed as a licensed corporation to carry on Type 2 regulated activity under the Ordinance;
- (j) hold a valid business registration certificate under the Business Registration Ordinance;
- (k) comply with the Financial Resources Rules and such other financial requirements from time to time prescribed by the Exchange; and
- (l) comply with all requirements for the maintenance, operation, use and security of HKATS insofar as they relate to the Exchange Participant.

No Trust of Exchange Participant Rights

503. No Exchange Participant shall assign, sell, transfer, pledge, mortgage or create any trust, charge, lien or other encumbrance over its rights, benefits or privileges as an Exchange Participant. The Exchange shall not be bound or compelled in any way to recognise (even when having notice thereof) any dealing or disposition made in contravention of this Rule.

504. (deleted)

Restrictions on Resignation

505. No person may resign as an Exchange Participant of the Exchange except with the prior written approval of the Board which may be given subject to any conditions the Board thinks fit. Pending such approval, these Rules shall continue to bind any Exchange Participant which has given notice of resignation as if such notice had not been given and the jurisdiction of the Exchange over that Exchange Participant, its business, affairs and employees shall be in no way affected by such notice.

General Obligations and Obligations to notify the Exchange and the Commission

506. An Exchange Participant shall notify the Exchange in writing immediately upon the happening of any one or more of the following:-

- (a) the discovery of a failure by it to comply with any of these Rules, the Regulations, the Procedures, the Ordinance or any of the conditions stipulated in the notice of approval of its Exchange Participantship given pursuant to Rule 305 or in any approval given by the Exchange;
- (b) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the appointment of a receiver, provisional liquidator, liquidator or administrator or the winding-up, re-organisation, reconstruction, amalgamation, dissolution or bankruptcy of the Exchange Participant or any of its shareholders or the making of any receiving order or arrangement or composition with creditors;
- (c) the bankruptcy of any of its directors;
- (d) its becoming aware of any breach of these Rules, the Regulations, the Procedures or the Ordinance perpetrated by any other Exchange Participant;
- (e) its becoming aware of any matter required to be notified to the Exchange, the Board or the Chief Executive under these Rules;
- (f) the occurrence of any of the events that require notification to be given to the Commission under section 146 of the Ordinance and/or sections 54 and 55 of the Financial Resources Rules;
- (g) the exercise of any disciplinary measure against it by any regulatory or other professional or trade body or the refusal, suspension or revocation of any regulatory licence consent or approval required in connection with its business;
- (h) any other events as the Board may from time to time specify; and
- (i) any failure or apparent failure in the operation or functioning of its HKATS equipment or any other equipment, system or facilities that are critical to the business operation of the Exchange Participant.

506A. An Exchange Participant shall, upon the Board's direction, provide the Exchange with any information requested by an exchange, regulatory authority or an organization (whether within or outside Hong Kong) with whom HKEX or the Exchange has entered into an information sharing arrangement or agreement.

507. An Exchange Participant shall promptly upon the request of the Exchange provide the Exchange with information as the Exchange may from time to time require for the purposes of these Rules or for the performance of its functions under the Ordinance. An Exchange Participant shall, if requested by the Exchange,:-

- (a) give prompt notice to the Exchange of any change in any information supplied for its Exchange Participants whether supplied to the Exchange at the time of application for Exchange Participants or any time thereafter.
- (b) (deleted)
- (c) (deleted)

507A. Any person who has been approved by the Commission under Part V of the Ordinance as a substantial shareholder shall be registered by the Exchange as a Substantial Shareholder. Any Exchange Participant with Substantial Shareholder(s) shall promptly provide to the Exchange in writing the name and detailed information as required by the Exchange of any person registered as a substantial shareholder under the Part V of the Ordinance.

508. (deleted)

508A. For the avoidance of doubt, the reference in Rule 507(a), to “application for Exchange Participants” shall, in the case of an Exchange Participant which was a Member immediately prior to the Scheme Effective Date, mean its application for Membership under the then prevailing Rules.

Names of Exchange Participants

509. An Exchange Participant shall carry on business in Hong Kong in its registered company name only, and not under any other name.

510. (deleted)

Addresses of Exchange Participants

511. (a) Each Exchange Participant shall maintain a record of every address at which it carries on F.O. Business and shall indicate one address as its principal or main place of business.

(b) In relation to each such address, each Exchange Participant shall immediately upon the request of the Exchange notify the Exchange of the place where the Exchange Participant’s books and records relating to the F.O. Business carried out at that address are kept and any change in such place. Each Exchange Participant shall maintain a record of every place at which its books and records are kept and shall, so far as practicable, keep all its books and records in one place. If any original books and records are not kept in Hong Kong, the Exchange may require that duplicate books and records be kept in Hong Kong and maintained up to date on a day to day basis.

- (c) (deleted)
- (d) In the event of any doubt as to whether activities carried on at an address amount to the carrying on of F.O. Business, the opinion of the Chief Executive as to whether the activities amount to the carrying on of F.O. Business shall be final and conclusive.

512. (deleted)

513. (deleted)

514. (deleted)

General Conduct in Business and Trading

515. – 516. (deleted)

517. No Exchange Participant shall, in Hong Kong or elsewhere, take part in, be concerned in, or carry out, directly or indirectly, one or more transactions with the intention that it or they has or have, or is or are likely to have, the effect of creating an artificial price or maintaining at a level that is artificial (whether or not it was previously artificial) a price, for dealings in an Exchange Contract or for a commodity which is the subject of an Exchange Contract.

518. No Exchange Participant shall, in Hong Kong or elsewhere, do anything or cause anything to be done, with the intention that it has, or is likely to have, the effect of creating a false or misleading appearance :-

- (a) of active trading in Exchange Contracts; or
- (b) with respect to the market for, or the price for dealings in, Exchange Contracts.

519. No Exchange Participant shall, in Hong Kong or elsewhere, enter into or carry out directly or indirectly, any fictitious or artificial transaction or device, with the intention that it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in the price of any Exchange Contract.

520. No Exchange Participant shall buy or sell any Futures Contract or Options Contract or attempt to do so or participate in a scheme or plan to do so for the purpose of unduly or improperly influencing the market price of any Futures Contract or Options Contract, or for the purpose of manipulating or attempting to manipulate prices or cornering or attempting to corner any market of any commodity, or creating a market or other situation detrimental to the Exchange.

521. Each Exchange Participant shall procure that all F.O. Business conducted by it relating to Exchange Contracts shall be concluded on or through the facilities of

the Exchange and that all F/O Contracts are reported and registered with the Clearing House in such manner as the Exchange or the Clearing House shall from time to time prescribe, for clearing by the Clearing House in accordance with its rules.

522. No Exchange Participant shall directly or indirectly:-
- (a) be interested in or associated in business with, or transact any business with or for:-
 - (i) any individual, body corporate, partnership or other form of business organisation conducting F.O. Business relating to Exchange Contracts other than on or through the facilities of the Exchange; or
 - (ii) any individual, body corporate, partnership or other form of business organisation making a practice of unlawful dealing in difference in market quotations of commodities;
 - (b) allow any of its offices to be used for such purposes; or
 - (c) be party or privy to any arrangements the purpose or effect of which is that instructions for the transaction of F.O. Business on behalf of any person are dealt with in a manner which, in the context of the arrangements as a whole, can reasonably be regarded as unlawful dealing in differences in market quotations of commodities or as constituting or involving betting, wagering, gaming or gambling with respect to such items.
- 522A. Each Exchange Participant shall achieve Year 2000 Compliance in respect of all systems used for the purposes of conducting its F.O. Business, including its trading system, accounting system, and any back-office clearing and settlement systems. Each Exchange Participant shall immediately notify the Exchange of any failure, error or defect in such systems which is caused by such systems not being Year 2000 Compliant.
- 522B. In accordance with paragraph 4.3 of the SFC Code of Conduct, each Exchange Participant should have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its Clients and other Exchange Participants from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
- 522C. Except as may otherwise be permitted by the Chief Executive, under no circumstances shall an Exchange Participant deal with an Exchange Participant whose Exchange Participantship or right to access HKATS has been suspended.

523. – 526. (deleted)

Responsible Officers and Employees

527. (deleted)

527A. Unless otherwise determined by the Exchange, all licensed representatives of an Exchange Participant who have been approved by the Commission under Part V of the Ordinance as responsible officers in relation to Type 2 regulated activity shall be registered with the Exchange as Responsible Officers and be placed on the Register of Responsible Officers kept by the Exchange. Upon request by the Exchange, an Exchange Participant shall promptly provide to the Exchange any information of any of its responsible officers. Each Responsible Officer shall undertake to comply with all applicable Rules, any relevant regulations, procedures and guidelines made hereunder or any conditions and directions from time to time prescribed by the Exchange. At all times, an Exchange Participant shall have at least one Responsible Officer who is an executive director of the Exchange Participant registered with the Exchange.

527B. (deleted)

527C. (deleted)

527D. The Chief Executive may, at any time, revoke the registration of any Responsible Officers.

528. (a) Each Exchange Participant shall maintain a register of its employees which must be kept up-to-date and made available to designated HKEX staff on demand. This register shall contain the following particulars with respect to each employee:-

his present forename and surname (including in the case of a Chinese employee the Chinese characters for his forename and surname)

any former surname

any alias

his job title

his usual residential address

his nationality

the number of his Hong Kong identity card

the date of his becoming or ceasing to be an employee

the name and address of every former employer of such employee within the two years immediately preceding the commencement of his employment by the Exchange Participant

particulars of every licence, registration or authorization at any time maintained by or in respect of such employee pursuant to the Ordinance or other regulatory provisions including the licence, registration or authorization number, the date of licence granted, first registration or authorization and the date of revocation of such licence, registration or authorization.

- (b) (deleted)
- (c) (deleted)
- (d) Each Exchange Participant shall ensure that every employee and Authorized Person of such Exchange Participant is competent and has acquired the necessary skills and knowledge to carry out his responsibilities.
- (e) (deleted)

529. Each Exchange Participant shall be liable for all the actions of its employees, Responsible Officers and Authorized Persons, and shall be liable to disciplinary action in respect of any act or omission of its employees, Authorized Persons and Responsible Officers in any of the circumstances set out in Rule 701.

Participation of Clearing House

- 530. (a) Each Exchange Participant which intends to clear trades in its own name through the Clearing House must be registered as a Participant of the Clearing House.
- (b) Each Non-Clearing Participant intending to trade in a Market operated by the Exchange whether for its own account or otherwise must first enter into an agreement with an HKCC Participant which is registered under the category "General Clearing Participant" relating to the clearing of trades through the Clearing House in such form or containing such provisions as may from time to time be required by the Clearing House and shall at all times ensure that such agreement remains in full force and effect. A Non-Clearing Participant shall give prior notice to the Exchange in writing of the termination of such agreement before it is actually terminated, unless the General Clearing Participant has already given notice to terminate the agreement to HKCC in accordance with the Clearing House Rules. Unless or until such time as an Exchange Participant is or becomes a Participant of the Clearing House or has a valid, binding and effective clearing agreement with a General Clearing

Participant, it shall not be allowed to trade on or through the facilities of the Exchange.

- (ba) A Non-Clearing Participant which has entered into clearing agreements with more than one General Clearing Participant must ensure that each trade of the Non-Clearing Participant is designated to the relevant General Clearing Participant for clearing on the basis of the HKATS log-in through which the trade is executed or in such other manner as the Exchange may specify and must have arrangements in place to notify the General Clearing Participant of such designation. The Exchange may impose a limit on the number of clearing agreements into which a Non-Clearing Participant may enter. A Non-Clearing Participant which has appointed only one General Clearing Participant to clear its trades is deemed to have all trades executed by itself designated to the General Clearing Participant for clearing.
- (c) When an Exchange Participant registers trades with the Clearing House on behalf of Clients who are not Participants of the Clearing House, it shall not match one Client's trades against another Client's trades and close out such trades with the Clearing House.

531. – 533. (deleted)

Professional Accountant's Report

- 534. (a) The Exchange or the Commission may require an Exchange Participant to obtain a report from a Professional Accountant in the form specified by the Exchange or Commission from time to time.
- (b) When a Professional Accountant is appointed by an Exchange Participant to prepare a report required under Rule 534 (a):-
 - (i) the Exchange Participant shall provide to the Professional Accountant a written appointment letter specifying the terms and conditions of the appointment and the duties of the Professional Accountant including but not limited to the following provisions:-
 - (A) that the Professional Accountant is thereby authorised and required to submit to the Exchange and the Commission such report as required under the appointment;
 - (B) that the Professional Accountant is thereby authorised and required to disclose to the Exchange and the Commission all information obtained whilst performing his duties

under the appointment concerning the purpose(s) for which he is appointed, provided that this paragraph shall not require the Professional Accountant to disclose any particular part of such information where that particular part also relates to a third party and may not be communicated by the Professional Accountant as stipulated in this paragraph by virtue of a legal obligation owed by the Professional Accountant to that third party which prevents such communication;

(C) that the Professional Accountant is thereby authorised and required to include with any qualification of his report to the Exchange and the Commission under Rule 534(b)(i)(A), a statement specifying the relevant requirements of the Exchange and the Commission and the reasons why the opinion expressed in such a report is qualified; and

(D) the terms upon which the Exchange Participant appoints a Professional Accountant under Rule 534(a) must provide, inter alia, that :-

(1) the Professional Accountant is authorised and required, within 5 Business Days of the resignation of his duties as a Professional Accountant for the Exchange Participant to provide the Exchange and the Commission with:-

(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the Exchange and the Commission; or

(b) a statement of any such aforesaid circumstances;

(2) if, in his capacity, or in the performance of his functions, as the Professional Accountant of the Exchange Participant, the Professional Accountant acquires information tending to suggest, or the Professional Accountant is of the opinion, that the Exchange Participant has not complied, or may not be able to comply, with any relevant legislation, Rules or Regulations governing its

accounting system, financial affairs or operational system, then the Professional Accountant shall thereby be authorised and required:-

- (a) to communicate such information or opinion to the Exchange and the Commission regardless of whether he has been requested by the Exchange or the Commission to do so; and
 - (b) should the Professional Accountant consider it appropriate to do so, to communicate such information or opinion to any auditor of the Exchange Participant or any other auditor or Professional Accountant who has acted for the Exchange Participant for any period not earlier than 9 months before the date of appointment of the Professional Accountant appointed under Rule 534(a); and
- (3) in the event of the Professional Accountant complying in good faith with the requirements of this Rule, he shall be deemed not to be in breach of any duty which he might otherwise have, and shall not thereby incur any liability, to the Exchange Participant; and
- (ii) the Exchange Participant shall obtain written confirmation of acceptance of the terms and conditions of the appointment from the Professional Accountant.

Information Requests

535. Each Exchange Participant shall within the period specified in the demand or within such further period as may be approved by the Chief Executive or any other designated HKEX staff submit to the Chief Executive or any such other designated HKEX staff such statements and/or produce such books, records, accounts and documents as the Chief Executive or any such other designated HKEX staff may demand, including the books, accounts and telephone recordings required to be maintained in accordance with the SFC Code of Conduct.

Audits

536. (a) Designated HKEX staff and any other persons appointed by the Exchange for the purpose may from time to time inspect all of the books, records, accounts and documents maintained or required to be maintained by each Exchange Participant relating to its business and its financial position and that of its Clients, including the books, accounts and telephone recordings required to be maintained in accordance with the SFC Code of Conduct.
- (b) Such staff and other persons shall have the right of access during normal business hours, with or without prior notice, to the premises of an Exchange Participant, or the premises of associated companies of the Exchange Participant where such associated companies are in possession of relevant materials including the Exchange Participant's equipment used to participate in HKATS and all records stored therein and to such other relevant records of such Exchange Participant as may be required, and such Exchange Participant or associated companies as the case may be, shall fully co-operate and make available to them all information, books and records as and when required.
537. Designated HKEX staff and any other persons appointed by the Exchange for the purpose shall be entitled to interview and request confirmation from any Client, executing agent or other person dealing with an Exchange Participant, of any balance or any other matter relating to the compliance by the Exchange Participant with the Ordinance, these Rules, the Regulations or the Procedures.
538. (a) Each Exchange Participant, and where applicable any associated companies of an Exchange Participant, shall allow the designated HKEX staff and any other persons appointed by the Exchange for the purpose to make notes from any of the records of an Exchange Participant and each Exchange Participant is required to supply them, free of charge, copies of any or all documents which in their opinion are necessary to be given to the Exchange in order to facilitate any inspection of an Exchange Participant's books and records.
- (b) Any notes or copies taken pursuant to this Rule shall become the property of the Exchange.

Confidentiality

539. (a) All information in the possession of the Exchange and persons employed or engaged by the Exchange or HKEX relating to an Exchange Participant, associated companies of an Exchange Participant or Clients of an Exchange Participant shall be kept confidential by the Exchange and all other persons having access to the same, except that:-
- (i) those persons may disclose such information to their immediate senior officer of the Exchange or HKEX, the Chief Executive or

to the chief executive or chief operating officer of HKEX for the time being appointed or deemed to have been appointed in accordance with the Ordinance or, as the context may require, their designees;

- (ii) such information may be disclosed to any officer or employee of the Exchange or HKEX, and to any person engaged by the Exchange or HKEX, who in the opinion of the Chief Executive needs to know the information;
 - (iii) the Exchange may disclose any information at any time:-
 - (1) to the Clearing House;
 - (2) to the Commission;
 - (3) to any exchange, regulatory authority or any organization (whether within or outside Hong Kong) with whom HKEX or the Exchange has entered into an information sharing arrangement or agreement;
 - (4) to any recognized exchange controller; and/or
 - (5) to any company of which a recognized exchange controller which is the controller of the Exchange is a controller.
 - (iv) the Exchange shall disclose information in response to a request from the Commission or if it is ordered by a Court of competent jurisdiction so to do;
 - (v) (deleted)
 - (vi) the Exchange may disclose information to any body or person responsible for determining disciplinary matters pursuant to the Rules or to whom the Exchange may be required by Chapter VII of the Rules to disclose information; and
 - (vii) no breach of confidentiality shall arise by reason only that information shall appear in any registers and records maintained by the Exchange pursuant to these Rules.
- (b) For the avoidance of doubt, it is hereby stated that the surveillance functions of the Exchange and the Clearing House are merged, so that any and all information available to the Exchange or the Clearing House relating to an Exchange Participant's affairs will be regularly exchanged

and will be liable to disclosure in accordance with these Rules and/or the Clearing House Rules.