



編號

Ref. No.: MO/DT/124/15

日期

Date: 27 August 2015

香港期貨交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

Hong Kong Futures Exchange Limited

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

通告 CIRCULAR

事項

Subject: U.S. Securities and Exchange Commission Class No-action Relief

查詢

Enquiry: Calvin Ip (Tel: 2211-6152 E-mail: calvinip@hkex.com)

Hong Kong Futures Exchange Limited (“HKFE”) is pleased to announce that it has notified the U.S. Securities and Exchange Commission (“SEC”) that HKFE and/or its participants (“EPs”) intend to engage in limited activities to familiarize certain registered broker-dealers and large financial institutions in the U.S. with HKFE’s options market and certain options traded on it (“familiarization activities”). The engagement in familiarization activities shall be in reliance on the SEC letter¹ providing class no-action relief, subject to the conditions described therein, to all foreign options markets and their members and representatives (“Class Relief Letter”).

The above arrangement will cover EP’s limited activities in reliance on the Class Relief Letter to familiarize U.S. Eligible Brokers-Dealers / Eligible Institutions with HKFE’s Hang Seng Index Options², H-shares Index Options and Mini-Hang Seng Index Options products (“Eligible Options”), subject to compliance with the conditions stated in the Class Relief Letter. EPs are requested to note that “Eligible Broker-Dealer/Eligible Institution” (“EBD/EI”) is defined in the Class Relief Letter to mean any entity that meets the following standards:

1. it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the U.S. Securities Act of 1933 (“Securities Act”)³; or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act; and
2. it must have had prior actual experience with traded options in the U.S. options markets (and, therefore, would have received the disclosure document for U.S. standardized options called for by Rule 9b-1 under the U.S. Securities Exchange Act of 1934 (“Exchange Act”).

¹ Letter dated 1 July 2013 issued by the SEC - <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/liffe-am-070113.pdf>

² SEC has previously granted to HKFE an individual no-action relief letter in connection with its familiarization activities with respect to HKFE’s Hang Seng Index Options – Letter from Robert Colby, Deputy Director, division of Market Regulation, to Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom (September 26, 1995).

³ For example, any investment company, insurance company, dealer, bank, etc. that owns and invests a specified amount in securities and meets the criteria set forth in the definition.

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EPs are also requested to refer to the separate HKFE circular of 27 August 2015 regarding amendments to the Rules, Regulations and Procedures of HKFE (“HKFE Rules”) which enable HKFE to prescribe conditions and procedures for EPs to comply with for the purpose of relying on the extension of the Class Relief Letter covering familiarization activities with respect to the Eligible Options. The conditions and procedures set forth in this circular are prescribed by HKFE pursuant to Rule 309(c) of the HKFE Rules.

EPs who may potentially engage EBD/EIs in familiarization activities with respect to the Eligible Options shall comply with the conditions stated in the Class Relief Letter and the following conditions and procedures:

1. under U.S. law, EPs that are not registered with the SEC as broker-dealers may deal with Eligible Institutions only in accordance with Rule 15a-6 under the Exchange Act, principally through U.S. registered broker-dealers, as provided in Rule 15a-6;
2. any options on securities of U.S. issuers, or on an index that includes any securities of U.S. issuers, that are traded on HKFE, if any, are not available for sale to U.S. persons⁴;
3. EPs who intend to transact Eligible Options with one or more EBD/EI are required to notify HKFE for record keeping purpose by completing and returning the signed form at Appendix I of this circular to dtproducts@hkex.com.hk before transacting, following with a hard copy sending to Derivatives Trading, Global Market Division at 6/F Two Exchange Square, 8 Connaught Place, Central, Hong Kong;
4. without prejudice to paragraph 3 above, EPs engaging or are expected to continue to engage in transactions in Eligible Options with EBD/EI in reliance on the Class Relief Letter shall, if they wish to continue to engage in such transactions, provide HKFE with annual confirmation of compliance with the conditions and procedures in the Class Relief Letter and this circular in accordance with the requirements specified by HKFE from time to time;
5. before effecting a transaction in Eligible Options with an EBD/EI, EPs are required to obtain, and maintain a record of, representations from such EBD/EI, signed by an appropriate officer, to the effect as that set forth in Conditions B1 – 7 of the Class Relief Letter. HKFE may require EPs to provide copies of the representations to it. A sample of the representation form is set forth in Appendix II; and
6. such other conditions, requirements, procedures and criteria as HKFE may prescribe from time to time.

⁴ Options on securities of U.S. issuers, or on an index that includes any securities of U.S. issuers, do not qualify for the no-action relief provided under the letter referred to in note 2 or the Class Relief Letter, and are not available for sale to EBD/EI.

EPs are advised to refer to the relevant rules and regulations under the Securities Act and the Exchange Act, and the Class Relief Letter which are available on the <http://www.sec.gov> for details, and to consult their professional advisors before engaging in any activities with U.S. clients to ensure compliance with the requirements of SEC.

In order to enable EPs to have a better understanding of the SEC Class No-Action Relief as well as CFTC Regulation Part 30.10 Exemption which was effective in March 2015, HKEx has scheduled the following two briefing. Interested EPs should complete the enrolment form (Appendix III) and return it to HKEx on or before 4 September 2015.

Date:	11 September (Cantonese) 16 September (English)
Time:	4:30 pm – 5:00 pm (Registration) 5:00 pm – 6:00 pm (Briefing Session)
Venue:	The Exchange Auditorium, The Exchange Exhibition Hall, 1/F, One & Two Exchange Square, Central, Hong Kong

P C Wong
Senior Vice President
Derivatives Trading
Global Markets Division

This circular has been issued in the English language with a separate Chinese language translation. If there is any conflict in the circulars between the meaning of Chinese words or terms in the Chinese language version and English words in the English language version, the meaning of the English words shall prevail.

Confirmation relating to Compliance of U.S. Securities and Exchange Commission Class No-action Relief

To: Hong Kong Futures Exchange Limited (“HKFE”)

We confirm that we, as HKFE Participant, will transact business in Eligible Options¹ with or for Eligible Broker-Dealers / Eligible Institutions in the United States in reliance on the class no-action relief letter² issued by the U.S. Securities and Exchange Commission (“SEC”) on 1 July 2013 (“Letter”). We confirm that we shall comply with the conditions and requirements stated in the Letter and in HKFE circular Ref. No. MO/DT/124/15, issued on 27 August, 2015, and any updates thereto. In particular, we confirm that we shall obtain a signed form of representations from each Eligible Broker-Dealer / Eligible Institution in accordance with the Letter and the circular.

We certify that we will only deal with Eligible Broker-Dealers / Eligible Institutions in compliance with Rule 15a-6 under the U.S. Securities Exchange Act of 1934.

We acknowledge that we will be required, and we hereby agree, to provide confirmation of compliance to HKFE, in accordance with the requirements specified by HKFE from time to time, annually.

From

HKFE Participant Name: _____

Name of Responsible Officer: _____

Signature: _____

Date: _____

¹ Hang Seng Index Options, H-share Index Options and Mini-Hang Seng Index Options traded on HKFE

²<http://www.sec.gov/divisions/marketreg/mr-noaction/2013/liffe-am-070113.pdf>

Sample Form of Representations from U.S. Eligible Broker-Dealer/Eligible Institution

In connection with the dealings of _____ [Name of Eligible Broker-Dealer/Eligible Institution] (the “Firm”) with _____ [Name of HKFE Participant] (the “HKFE Participant”) in relation to Eligible Options, the Firm understands that the HKFE Participant is not registered with the U.S. Securities and Exchange Commission as a broker or dealer, and that the HKFE Participant is dealing with the Firm in reliance on an exemption from such registration as provided in Rule 15a-6 under the U.S. Securities Exchange Act of 1934 (“Exchange Act”).

The undersigned represents that he or she is an officer of the Firm knowledgeable about its business and affairs and is authorized to provide the representations herein. On behalf of the Firm, the undersigned hereby further represents that:

1. The Firm is an Eligible Broker-Dealer/Eligible Institution, and as such it (i) owns and invests on a discretionary basis a specified amount of eligible securities sufficient for it to be a qualified institutional buyer under Rule 144A under the U.S. Securities Act of 1933 (“Securities Act”) (and if a bank, savings and loan association, or other thrift institution, has net worth meeting the requirements of Rule 144A under the Securities Act), and (ii) has had prior actual experience in the U.S. standardized options markets and as a result thereof has received the options disclosure document entitled “Characteristics and Risks of Standardized Options” (the “Options Disclosure Document” or “ODD”) that is prepared by the Options Clearing Corporation and the U.S. options exchanges;
2. The Firm's transactions in Eligible Options will be for its own account or for the account of another Eligible Broker-Dealer/Eligible Institution or for the managed account of a non-U.S. person within the meaning of Rule 902(k)(2)(i) of Regulation S under the Securities Act;
3. The Firm will not transfer any interest or participation in an Eligible Option it has purchased or written to any other U.S. person, or to any person in the United States, that is not an Eligible Broker-Dealer/Eligible Institution;
4. The Firm will cause any disposition of an Eligible Option it has purchased or written to be effected only on HKFE and settled on HKFE (or its associated clearing house, HKFE Clearing Corporation Limited (“HKCC”)), and it understands that any required payments for premium, settlement, exercise, or closing of any Eligible Option with respect to which it has a contract with the HKFE Participant must be made in the designated currency;
5. The Firm understands that if it has a contract as a writer of an Eligible Option with a HKFE Participant, margin must be provided to that HKFE Participant in such form and amount as

determined by that participant, and such participant, if a non-clearing member of HKFE (or HKCC), must provide margin to its clearing member in such form and amount as determined by that clearing member; and if a clearing member of HKFE (or HKCC), must maintain, measure, and deposit margin on such Eligible Option with HKCC, in such form and amount as determined by HKCC;

6. If the Firm is acting on behalf of another Eligible Broker-Dealer/Eligible Institution that is not a managed account, the Firm has obtained from the other Eligible Broker-Dealer / Eligible Institution a written representation to the same effect as the foregoing and will provide it to the HKFE Participant upon demand; and
7. The Firm will notify the HKFE Participant of any change in the foregoing representations prior to placing any future order, and the foregoing representations will be deemed to be made with respect to each order it gives to the HKFE Participant.

[Name of Eligible Broker-Dealer/Eligible Institution]

By: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Enrolment Form for Briefing Sessions for SEC Class No-Action Relief and CFTC Regulation

Part 30.10 Exemption (For Exchange Participants)

(Completed form should be returned by email to dproducts@hkex.com.hk on or before 4 September 2015)

Section I Exchange Participant Contact Person Information

Participant Name	Participant ID
Contact Person	Contact No
Email Address	Fax No.

Section II Details of the Briefing Sessions

Date:	11 September (Cantonese) 16 September (English)
Time:	4:30 pm – 5:00 pm (Registration) 5:00 pm – 6:00 pm (Briefing Session)
Venue:	The Exchange Auditorium, The Exchange Exhibition Hall, 1/F, One & Two Exchange Square, Central, Hong Kong

Briefing Session Registration

Name in English (in Block Letters)	Position	Choices of Date	
		First	Second
1.			
2.			

Note: Confirmation will be sent to the contact person by e-mail 3 days before the date of briefing session. If any Exchange Participants which have submitted the enrolment form and cannot attend the briefing session, please notify contact person of this circular as soon as possible.

Responsible Officer Signature with Company Chop : _____

Name of Responsible Officer: _____

Date: _____