



HKEx
香港交易所

編號

LSD/54/2013

Ref. No.:

日期

2013年11月25日

Date:

25 November 2013

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: Amendments to the Rules, Regulations and Procedures of Hong Kong Futures Exchange Limited (“**Rules of HKFE**”) – addition of Chapter XVII in relation to Designated Futures Contracts

查詢

Enquiry : OTC Clear Operation Team : 2211 6538
HKATS Hotline : 2211 6360

Holders of HKFE Trading Rights and Exchange Participants of HKFE are requested to note that the Securities and Futures Commission has approved the addition of Chapter XVII to the Rules of HKFE.

The amendments, as set out in the Appendix, will take immediate effect.

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

1. Application

Chapter XVII governs the clearing members of OTC Clearing Hong Kong Limited (“**OTC Clear**”), an affiliate of HKFE and a recognized clearing house under the Securities and Futures Ordinance (“**SFO**”) established to provide clearing services for over-the-counter (“**OTC**”) derivatives. **Holders of HKFE Trading Rights and Exchange Participants of HKFE who are not also clearing members of OTC Clear do not have to comply with this Chapter and are not affected by any of its provisions. The new Chapter does not apply to these persons.**

2. Background and purpose

Chapter XVII contains provisions governing the clearing and settlement of OTC derivatives transactions as “designated futures contracts” by OTC Clear. It is intended to operate in conjunction with the Securities and Futures (Futures Contracts) Notice (the “**s392 Notice**”) which came into operation on 27 June 2012 (please refer to http://www.legco.gov.hk/yr11-12/english/subleg/brief/81_brf.pdf for further information).

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

香港中環港景街一號國際金融中心一期12樓
12/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong

電話 Tel: +852 2522 1122 傳真 Fax: +852 2295 3106 網址 Website: www.hkex.com.hk 電郵 E-mail: info@hkex.com.hk

The overall effect of the s392 Notice and Chapter XVII is to enable designated futures contracts to be cleared by OTC Clear as “market contracts” under the SFO, thereby enjoying the insolvency override protection conferred under Division 3 of Part III of the SFO.

Legislative amendments on the regulation of OTC derivatives including proposals on the mandatory clearing regime are set out in the Securities and Futures (Amendment) Bill (the “**Amendment Bill**”) gazetted on 28 June 2013. Both the s392 Notice and Chapter XVII aim to support the voluntary clearing of OTC derivatives transactions pending the Amendment Bill becoming effective. It is intended that the s392 Notice and Chapter XVII will be repealed upon implementation of the full-fledged regulatory regime on OTC derivatives after the Amendment Bill has taken effect.

Christine Wong
Chief Counsel & Head
Legal Services Department

Rules, Regulations and Procedures of Hong Kong Futures Exchange Limited

CHAPTER XVII

DESIGNATED FUTURES CONTRACTS

General

1701. Terms used in this Chapter shall have the meaning given to them in Rule 1717.
1702. Pursuant to the section 392 Notice (reproduced in Rule 1718), certain structured products are regarded as futures contracts for the purpose of certain provisions of the Ordinance. The overall effect of the section 392 Notice is to enable such structured products to:
- (1) constitute a market contract if they are either effected on, or subject to, the rules of a recognized exchange company and cleared and novated through a recognized clearing house, and thereby
 - (2) enjoy the insolvency override protections conferred under Division 3 of Part III of the Ordinance.
1703. The structured products which are regarded as futures contracts in the section 392 Notice are referred to as Designated Futures Contracts in this Chapter.
1704. The Exchange is a recognized exchange company and these Rules constitute rules of a recognized exchange company. OTC Clear is a recognized clearing house and has been established to, among others, provide clearing and settlement services for Designated Futures Contracts.
1705. In furtherance to the section 392 Notice, the Exchange hereby sets out the Rules in this Chapter to provide for the clearing and settlement of Designated Futures Contracts. Accordingly, OTC Clear and OTC Clear Clearing Members shall be subject to this Chapter in connection with the clearing and settlement of Designated Futures Contracts.

Authorisation by the Exchange

1706. No Designated Futures Contracts shall be cleared and settled by OTC Clear unless they are authorised for clearing by the Exchange under Rule 1707 or Rule 1708.
1707. The Exchange hereby authorises OTC Clear to accept Designated Futures Contracts which are rates derivatives or foreign exchange derivatives and which, at a minimum, meet the eligibility requirements set out in the table below for clearing and settlement.

For rates derivatives:

Instrument		Currencies	Floating Rate Option	Maximum Residual Term	Designated Maturity
Standard Rates Derivatives Transactions	Single currency interest rate swaps	USD	USD-LIBOR-BBA	10 years (3,660 days)	One month, three months, six months and one year
		EUR	EUR-EURIBOR-Reuters EUR-LIBOR-BBA	10 years (3,660 days)	One month, three months, six months and one year
		HK\$	HKD-HIBOR-HIBOR=	10 years (3,660 days)	One month, three months, six months and one year
			HKD-HIBOR-HKAB		
		CNY (offshore)	CNY-SHIBOR-Reuters	10 years (3,660 days)	One month, three months, six months and one year
	Single currency basis swaps	USD	USD-LIBOR-BBA	10 years (3,660 days)	One month, three months, six months and one year
		EUR	EUR-EURIBOR-Reuters EUR-LIBOR-BBA	10 years (3,660 days)	One month, three months, six months and one year
Non Deliverable Rates Derivatives Transactions	Non-deliverable interest rate swaps	CNY	CNY-CNREPOFIX=C FXS-Reuters	5 years (1,830 days)	Not Applicable

For foreign exchange derivatives:

Reference Currency	Settlement Currency	Maximum Residual Term	Valuation Days Offset
CNY	USD	2 years (740 days)	2 Beijing Business Days
INR		2 years (740 days)	2 Mumbai Business Days
KRW		2 years (740 days)	2 Seoul Business Days
TWD		2 years (740 days)	2 Taipei Business Days

1708. With respect to any Designated Futures Contracts which are not within the scope of Rule 1707 but with respect to which OTC Clear wishes to provide clearing and settlement services, OTC Clear shall obtain the prior authorisation of the Exchange to clear and settle the relevant Designated Futures Contracts. The Exchange shall have regard to the following factors in deciding whether or not to grant the relevant authorisation under this Rule 1708:

- (1) the type of Designated Futures Contracts concerned and whether they are sufficiently standardised for clearing; and
- (2) whether the clearing of the relevant Designated Futures Contracts would complement the Exchange's product range, benefit Exchange Participants or create synergy with HKEx's strategic or business development or that of any company within HKEx's group of companies.

1709. The Exchange reserves the right to withdraw, amend or suspend its authorisation under Rules 1707 and 1708 in respect of the clearing and settlement of Designated Futures Contracts at any time provided that this right shall not be exercised by the Exchange without (1) the prior consent of the Commission; and (2) giving reasonable prior notice to OTC Clear and the OTC Clear Clearing Members, the duration of such prior notice to be subject to approval by the Commission.

1710. Where OTC Clear breaches any obligations under this Chapter, the Exchange is entitled to exercise its power under Rule 1709.

Obligations of OTC Clear Clearing Members

1711. OTC Clear Clearing Members may only submit Designated Futures Contracts for clearing and settlement in accordance with the OTC Clear Clearing Documentation and through trade registration systems approved by OTC Clear.

1712. Each OTC Clear Clearing Member shall undertake to the Exchange through OTC Clear (acting for itself and as the agent of the Exchange) in the OTC Clear Membership Agreement that for as long as the section 392 Notice remains in effect, it will comply with and abide by the Rules in this Chapter as in force from time to time.

1713. Where the Exchange has reasonable cause to suspect or believe that any OTC Clear Clearing Member is in breach of Rule 1711 or the undertaking referred to in Rule 1712, the Exchange shall have the power to require OTC Clear to commence investigation against such OTC Clear Clearing Member for the purpose of considering whether disciplinary proceedings should be taken against such OTC Clear Clearing Member under the Rules of OTC Clear.

The Exchange's power to publish trade information in respect of Designated Futures Contracts

1714. Without prejudice to any other right it may have to disclose information in its possession, the Exchange may, in such a manner and form and at such intervals as it deems appropriate, publish, disseminate or publicly distribute aggregated trade information in respect of Designated Futures Contracts cleared and settled through OTC Clear, whether relating to data on open positions, trading volumes or types of Designated Futures Contracts cleared and settled by OTC Clear, provided that the identities of OTC Clear Clearing Members and OTC Clear Clearing Member Clients cannot reasonably be determined from the information so published, disseminated or publicly distributed by the Exchange.

Scope of application

1715. The Rules in this Chapter are only applicable to OTC Clear and OTC Clear Clearing Members (in their capacity as such). For the avoidance of doubt, OTC Clear and OTC Clear Clearing Members (in their capacity as such) are not subject to any provisions in any other Chapter of these Rules. Exchange Participants other than OTC Clear Clearing Members (in their capacity as such) are not subject to the Rules in this Chapter.

1716. The Exchange will not be a party, whether as principal, agent or otherwise, to any Designated Futures Contracts submitted to OTC Clear for clearing and settlement, and the Exchange shall have no liability or obligations whatsoever with respect to any such contract or with respect to any OTC Clear Clearing Member.

Definitions

1717. For purposes of this Chapter:-

- (1) the expressions listed in this Rule 1717(1) shall bear the meanings assigned to them in Chapter I of these Rules: "Exchange", "Exchange Participant", "group of companies", "HKEx", "Ordinance" and "Rules"; and
- (2) unless the context otherwise requires, the following expressions shall bear the following meanings:

"Designated Futures Contract"	means a structured product set out in the schedule to the section 392 Notice;
"futures contract"	has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance;
"market contract"	has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance;

“OTC Clear”	means OTC Clearing Hong Kong Limited;
“OTC Clear Clearing Documentation”	means “Clearing Documentation” as defined in the Rules of OTC Clear;
“OTC Clear Clearing Member”	means any legal entity admitted as a clearing member of OTC Clear and in respect of which OTC Clear has not terminated its clearing membership;
“OTC Clear Clearing Member Clients”	means “Clients” as defined in the Rules of OTC Clear;
“OTC Clear Membership Agreement”	means a “Membership Agreement” as defined in the Rules of OTC Clear;
“recognized clearing house”	means a clearing house recognized by the Commission as such under section 37 of the Ordinance;
“recognized exchange company”	means an exchange company recognized by the Commission as such under section 19 of the Ordinance;
“Rules of OTC Clear”	means the rules and procedures applicable to the clearing services provided by OTC Clear as in force from time to time;
“section 392 Notice”	means the Securities and Futures (Futures Contracts) Notice 2012 made under section 392 of the Ordinance and effective as of 27 June 2012; and
“structured product”	has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance.

Section 392 Notice

1718. The section 392 Notice is reproduced below:

Chapter:	571AK	Securities and Futures (Futures Contracts) Notice 2012	Gazette Number	Version Date
		Empowering section	E.R. 2 of 2012	02/08/2012

(Cap 571, section 392)

(Enacting provision omitted—E.R. 2 of 2012)

[27 June 2012]

(Originally L.N. 81 of 2012)

Section:	1	(Omitted as spent—E.R. 2 of 2012)	E.R. 2 of 2012	02/08/2012
Section:	2	Structured product to be regarded as futures contract	L.N. 81 of 2012	27/06/2012

The structured product set out in the Schedule is to be regarded as a futures contract for the purposes of the following provisions of the Ordinance—

- (a) Division 3 of Part III;
- (b) section 63(1)(b);
- (c) section 71(1)(a)(iii);
- (d) the definition of **clearing house** in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
 - (i) section 37;
 - (ii) section 43; and
 - (iii) the definition of **clearing participant** in section 1 of Part 1 of Schedule 1; and
- (e) the definition of **market contract** in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
 - (i) section 18;
 - (ii) Division 3 of Part III;
 - (iii) section 271(9);
 - (iv) section 292(9); and
 - (v) Part 5 of Schedule 3.

Schedule:		Schedule	L.N. 81 of 2012	27/06/2012
-----------	--	-----------------	-----------------	------------

[section 2]

Structured Product to be Regarded as Futures Contract

Item	Description of structured product
1.	Any structured product that—
(a)	does not fall within the definition of securities in section 1 of Part 1 of Schedule 1 to the Ordinance; and
(b)	is not a contract or an option on a contract made under the rules or conventions of a futures market.

Cap 571AK - Securities and Futures (Futures Contracts) Notice 2012