



18 March 2011

**Conditions for Authorization to Provide Automated Trading Services (“ATS”) under Part III of the Securities and Futures Ordinance (the “SFO”) in respect of the Xetra system**

Pursuant to section 95(2) of the SFO, the Commission hereby authorizes Open Market DBAG for providing ATS in Hong Kong through the Xetra system with effect from 18 March 2011. The authorization will be subject to annual renewal thereafter and with the following conditions.

Open Market DBAG shall undertake to:

1. Ensure that Open Market DBAG admits as members only corporations licensed by the Commission under Part V or authorized under Part III of the SFO unless the Commission agrees otherwise and Open Market DBAG has proactively notified the Commission of the registration status of prospective members in Hong Kong.
2. Upon prior written notice, provide the Commission with information relating to transactions (authorized by the Commission under section 95(2) of the SFO) to be conducted via the Xetra system by members of Open Market DBAG in Hong Kong for the purposes of any inquiry or investigation by the Commission under the SFO into transactions originating from Hong Kong and/or the conduct of the members of Open Market DBAG in Hong Kong. Such information disclosure can be facilitated by the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions (IOSCO MMOU) for the purposes of cross-border cooperation, exchange of information and investigatory assistance, to which the regulatory authorities of Hong Kong and Germany are signatories, and/or the Memorandum of Understanding signed between the Commission and BaFin in March 1998;
3. Notify the Commission on any material changes to the matters set out in paragraphs 52 and 62 of the Guidelines for the Regulation of ATS (dated March 2003) and particularly to the matters specified below, prior to the changes taking effect –
  - 3.1. Company structure;
  - 3.2. The Xetra system (including changes in hardware, software and other technology);
  - 3.3. Contractual documentation, if there are direct or indirect changes to the contractual responsibilities for members of Open Market DBAG in Hong Kong;



- 3.4. Criteria for approval or disapproval of members of Open Market DBAG in Hong Kong; and
    - 3.5. Markets and products to be traded through the Xetra system by members of Open Market DBAG in Hong Kong;
  4. Put in place appropriate business continuity plans and disaster recovery programmes for the operation of Open Market DBAG in Hong Kong and notify the Commission of any material changes to the plans or programmes;
  5. Provide the Commission with the following **monthly** statistics:
    - 5.1. The volume of trades (**by each member of Open Market DBAG**) conducted on the markets over the Xetra system resulting from orders originating from Hong Kong; and
    - 5.2. The aggregate volume of trades conducted on the markets over the Xetra system;
- Such statistics are to be provided at such intervals as the Commission may specify and, in the absence of any such specification, on a **quarterly** basis within two weeks after the end of March, June, September and December. A nil return is required if there is no trading in the relevant interval; and
6. Notify the Commission of the identity and location of members of Open Market DBAG in Hong Kong (by providing a **monthly** status report within two weeks after the end of each month).

The Commission may, by notice in writing, amend or revoke the above conditions or impose new conditions where it is satisfied that it is appropriate to do so, pursuant to section 97 of the SFO.