

13 August 2015

Circular to Corporations Licensed for Type 2 Regulated Activity – Procedures for filing an application to the CFTC for an exemption to deal directly with U.S. customers

Further to the Press Release issued by the Securities and Futures Commission (“**SFC**”) on 26 March 2015¹, this Circular is to inform corporations licensed for Type 2 regulated activity of the procedures for filing an application to the United States Commodity Futures Trading Commission (“**CFTC**”) for exemption from registration under the relevant CFTC Order². The application is to be made via the SFC to the United States National Futures Association (“**NFA**”), which is delegated by the CFTC with the relevant responsibilities.

Eligibility criteria

To be eligible for the exemption, the licensed corporation must:

- (a) be licensed for Type 2 regulated activity (dealing in futures contracts);
- (b) trade on behalf of customers in Hong Kong and intend to trade on behalf of customers in the United States (“**U.S.**”);
- (c) be located outside the U.S.;
- (d) appoint an agent for service of process in the U.S.; and
- (e) provide the necessary representations and undertakings to the SFC and the NFA.

The exemption under the CFTC Order is not applicable to registered institutions.

Application procedures

A licensed corporation interested in obtaining the exemption under the CFTC Order should submit an application package to the NFA via the SFC, containing:

- (a) An application letter addressed to the NFA; and
- (b) An agency agreement signed by both the licensed corporation and its appointed agent for service of process in the U.S..

The licensed corporation is also required to provide a written representation to the SFC.

¹ <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR31>

² The CFTC is the regulatory body overseeing the U.S. futures and swaps markets including the regulation of intermediaries. The order was granted under CFTC’s Regulation 30.10 permitting SFC-licensed corporations to deal directly with U.S. customers in relation to trading of futures or options products on exchanges under the SFC’s oversight. These include the Hong Kong Futures Exchange Limited and all non-U.S. exchanges authorized by the SFC under Part III of the Securities and Futures Ordinance (“**SFO**”). For details of the order, please go to <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2015-06687a.pdf>.



Templates of the documents mentioned above can be downloaded from the SFC's website at <http://www.sfc.hk/web/EN/faqs/cftc-exemption-to-deal-directly-with-us-customers/>.

Upon receipt of the complete application package and the representation, the SFC will notify the CFTC and forward the package to the NFA. Once the NFA has made a determination in relation to the application, the licensed corporation will be informed of the result via the SFC.

On-going notification requirements

Licensed corporations granted an exemption under the CFTC Order are required to make timely notifications to the SFC and NFA should there be any material change to any of the representations made in or in support of the application for exemption.

Examples of notifiable changes include (but are not limited to):

- (a) termination of their activities in the U.S.; and
- (b) changes in the status of their confirmation that they and their licensed individuals who engage in activities subject to the CFTC Order would not be statutorily disqualified from registration under the U.S. Commodity Exchange Act.

Upon notification by a licensed corporation of any change in its status that would affect its continued eligibility for the exemption granted, such exemption may be suspended immediately.

Reminder and associated risk

Licensed corporations are reminded to ensure full compliance with the undertakings and representations made to the CFTC/NFA and SFC. They must read the CFTC Order carefully to understand the scope of the exemption and be satisfied that they are able to comply fully with the terms stipulated in the CFTC Order before sending in the applications.

Licensed corporations are also reminded that in the event of any breach of the CFTC's Part 30 Regulations, the CFTC and NFA may take action against them, which might impugn their fitness and properness to remain licensed under the SFO.

**Licensing Department
Intermediaries Division
Securities and Futures Commission**