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Category:

Regulatory

Attachments:

(1) Representation of Prescribed Entity Status

(2) ICE Futures Europe Equity Options in the United States – Declaration by IFEU Member

Summary of content:

Offer and Sale of Equity Options in the United States; Arrangements under SEC Class No-Action Relief

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Offer and Sale of Equity Options in the United States; Arrangements under SEC Class No-Action Relief

On 28 March 2014, ICE Futures Europe (“IFEU” or the “Exchange”) co-joined the class No-Action relief issued by the Securities and Exchange Commission’s (“SEC”) Division of Trading and Markets for foreign options markets and their members that engage in familiarization with certain U.S. based persons (“the Class No-Action Relief”).

In the Class No-Action Relief, the SEC Division of Trading and Markets Staff took a no-action position that enables Members to familiarize qualifying entities in the United States with so-called “Approved Options” under prescribed conditions.

This Circular sets out the relevant terms and conditions of the Class No-Action Relief and the associated requirements for Members who wish to take advantage of the arrangements.

The Class No-Action Relief provides for Members to familiarise Prescribed Entities, as defined below, with specified Equity Option and Equity Index Option Contracts in accordance with the conditions set forth in this Circular. For the avoidance of doubt, direct trading access to Equity Option and Equity Index Option Contracts from the United States is prohibited.

Definition of Prescribed Entities

The Prescribed Entities who may be treated by Members as clients under the terms of the Class No-Action Relief are Eligible Broker-Dealers and Eligible Institutions. For the purposes of the Class No-Action Relief, an Eligible Broker-Dealer/Eligible Institution (and, individually, an “Eligible Broker-Dealer” or “Eligible Institution”) is defined as any entity that meets the following requirements:

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

Conditions Applicable to Members

General

A Member shall not treat as a client in respect of an Equity Option or Equity Index Option Contract any U.S. person or entity which is not a Prescribed Entity. A Member may treat U.S. persons or entities which are Prescribed Entities as clients in respect of those Equity Option and Index Option Contracts which are specified by the Exchange as “Eligible

Options". Eligible Options comprise all IFEU Individual Equity Options based on the securities of non-U.S. issuers and all current IFEU Index Options based on indices that contain no component securities of U.S. issuers. Eligible Options are identified as such in the List of Contract Details which can be found in the second and third tabs on the spreadsheet available at the following link:

https://www.theice.com/publicdocs/Full_Contract_List_Equities.xlsx

Members are advised that, under U.S. law, members of a Foreign Options Market (i.e. IFEU, in this instance) 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.

Representation from the Prescribed Entity

Before entering into transactions with or on behalf of their Eligible Broker-Dealer or Eligible Institution client, Members will be required to obtain and maintain a record of representations from such client, signed by an appropriate officer, in the form prescribed in the Class No-Action Relief, which is as follows:

- (a) It 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 Securities Act (and if a bank, savings and loan association, or other thrift institution, has a net worth meeting the requirements of Rule 144A under the Securities Act); and
 - (ii) has had prior actual experience in the U.S. standardised 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;
- (b) Its 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;
- (c) It 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;
- (d) It will cause any disposition of an Eligible Option it has purchased or written to be effected only on IFEU, 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 Member must be

- made in the designated currency;
- (e) It understands that if it has a contract as a writer of an Eligible Option with an IFEU Member, margin must be provided to that IFEU Member in such form and amount as determined by that Member, and such Member, if a non-clearing Member of IFEU, must provide margin to its Clearing Member; and if a Clearing Member of IFEU, must maintain, measure, and deposit margin on such Eligible Option with IFEU's appointed clearing house, ICE Clear Europe Limited ("ICEU"), in such form and amount as determined by ICEU;
 - (f) If it is an Eligible Broker-Dealer/Eligible Institution acting on behalf of another Eligible Broker-Dealer/Eligible Institution that is not a managed account, it 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 IFEU Member upon demand; and
 - (g) It will notify the IFEU Member 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 IFEU Member.

A template for this representation is provided at Attachment 1 to this Circular.

Existing representations will continue to remain in effect, i.e. customers who have filed an extant representation with a Member pursuant to Liffe requirements will not need to file a new representation.

Compliance with the Terms of the Class No-Action Relief

Any Member who intends to transact business in Eligible Options with one or more Prescribed Entities is required to complete and return the form at Attachment 2 to this Circular to the Membership Department at ICEEuropeMembership@theice.com. Subsequently, relevant representations and declaration will be included within the Exchange Annual Member Return which is distributed for completion and submission to the Exchange on an annual basis. For the avoidance of doubt, any Member who currently treats a Prescribed Entity as a client in respect of Eligible Options under Liffe auspices is likewise required to submit the form to IFEU no later than 7 November 2014.

In addition, such Member is required to maintain a list that must be available at any time at the request of the Exchange of those Prescribed Entities whom it treats, or has treated within the preceding five years, as clients in respect of Eligible Options.

Additional SEC Requirements

The Class No-Action Relief requires IFEU to comply with and assure compliance with, each of the representations and conditions contained in the Class No-Action Relief.

Members should note that the Class No-Action Relief is predicated,

amongst other things, on the overarching obligations in the IFEU Rules for Members to provide information to, or to otherwise assist, the Exchange in relation to IFEU business. Furthermore, the Class No-Action Relief requires that the Exchange is able and willing to provide relevant Member information to the SEC on request.

Please ensure that the appropriate members of staff within your organisation and customers are advised of the content of this Circular.

Signed:



Dee Blake
Head of Regulation