



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

March 24, 2015

Pamela Shores, Esq.  
Linklaters  
10th Floor, Alexandra House  
18 Chater Road  
Hong Kong

**Re: The Hongkong and Shanghai Banking Corporation Limited and HSBC Bank plc  
File No. TP 15-10**

Dear Ms. Shores:

In your letter dated March 24, 2015,<sup>1</sup> as supplemented by conversations with the staff, you request on behalf of The Hongkong and Shanghai Banking Corporation Limited, a company incorporated in Hong Kong (“HSBC”), and HSBC Bank plc (“HSBC Bank”), a company incorporated in England, an exemption from Rule 101 of Regulation M under the Securities Exchange Act of 1934 (“Exchange Act”) in connection with a conditional share exchange offer by CK Global Investments Limited (the “Offeror”), a wholly owned subsidiary of CKH Holdings (the “Exchange Offer” or the “Hutchison Scheme”).<sup>2</sup>

You seek an exemption to permit the Global Markets Divisions<sup>3</sup> of HSBC and HSBC Bank to conduct specified transactions (or “Market Activities”) outside the United States in the ordinary shares of CK Hutchison Holdings Limited (“CKH Holdings Shares”) and American Depository Receipts representing CKH Holdings Shares (the “ADRs”) during the Exchange Offer. Specifically, you request that the Global Markets Divisions be permitted to continue to engage in derivative arbitrage and hedging activities, as well as stock borrowing and lending activities, as described in your letter.

You also seek an exemption to permit the Global Markets Divisions to conduct specified transactions in the United States in CKH Holdings Shares and ADRs during the Exchange Offer. Specifically, you request that the Global Markets Divisions be permitted to continue to engage in

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<sup>1</sup> We have attached a copy of your letter. Each defined term in our response has the same meaning as defined, directly or by reference, in your attached letter, unless we note otherwise.

<sup>2</sup> In your letter, you state that HSBC, through its Banking and Capital Financing Division, is the sole financial advisor to Cheung Kong, CKH Holdings, and the Offeror in connection with the Exchange Offer and, therefore, may be deemed a “distribution participant” for purposes of Rule 101 of Regulation M.

<sup>3</sup> In your letter, you state that Global Markets Divisions may be deemed to be “affiliated purchasers” of HSBC and, therefore, subject to Rule 101 of Regulation M.

limited derivative arbitrage and hedging activities, as well as stock borrowing and lending activities, in the United States, as described in your letter.

*Response:*

Based on the facts and representations that you have made in your letter, but without necessarily concurring in your analysis, the Securities and Exchange Commission (“Commission”) finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant, and hereby grants, HSBC and HSBC Bank an exemption from Rule 101 of Regulation M to permit the Global Markets Divisions to continue to engage in the transactions described in your letter during the Exchange Offer.

This exemption is subject to the following conditions:

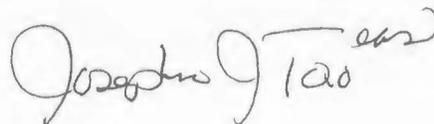
1. None of the transactions of the Global Markets Divisions described in your letter shall occur in the United States, with the exception of the limited derivative arbitrage and hedging activities, as well as stock borrowing and lending activities, as described in your letter;
2. All of the transactions described in your letter for which you seek relief shall be effected in the ordinary course of business and not for the purpose of facilitating the Exchange Offer;
3. The documents distributed to U.S. investors in connection with the Exchange Offer will disclose the possibility of, or the intention to engage in, the transactions described in your letter;
4. HSBC, HSBC Bank, and the Global Markets Divisions will provide to the Commission’s Division of Trading and Markets (“Division”), upon request, a time-sequenced schedule of all such transactions made during the Exchange Offer. Such schedule will include:
  - (a) size, broker (if any), time of execution, and price of the transactions;
  - (b) the exchange, quotation system, or other facility through which the transactions occurred; and
  - (c) whether the transactions were made for a customer account or a proprietary account;
5. Upon request of the Division, HSBC, HSBC Bank, and the Global Markets Divisions will transmit the information requested in item 4 (above) to the Division at its offices in Washington, D.C., within 30 days of its request;
6. HSBC, HSBC Bank, and the Global Markets Divisions shall retain all documents and other information required to be maintained pursuant to this letter for at least two years following the completion of the Exchange Offer;

7. Representatives of HSBC, HSBC Bank, and the Global Markets Divisions shall be made available (in person at the offices of the Commission in Washington, D.C., or by telephone) to respond to inquiries of the Division relating to their records; and
8. Except as otherwise directed by this letter, HSBC, HSBC Bank, and the Global Markets Divisions will comply with Regulation M.

This exemption is based solely on the facts presented and the representations made in your letter. Any different facts or circumstances may require a different response. In the event that any material change occurs with respect to any of those facts or representations, transactions in the CKH Holdings Shares and ADRs must be discontinued, pending presentation of the facts for our consideration.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, including Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the participants in the various transactions. We express no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority,<sup>4</sup>

A handwritten signature in black ink that reads "Josephine J. Tao" with a stylized flourish at the end.

Josephine J. Tao  
Assistant Director

Attachment

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<sup>4</sup> 17 CFR 200.30-3(a)(6).

Josephine J. Tao  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

March 24, 2015

**Re: The Hongkong and Shanghai Banking Corporation Limited and HSBC Bank plc –  
Request for Exemptive Relief from Rule 101 of Regulation M**

Dear Ms. Tao:

We are writing on behalf of The Hongkong and Shanghai Banking Corporation Limited (“**HSBC**”), a company incorporated in Hong Kong, and HSBC Bank plc (“**HSBC Bank**”), a company incorporated in England, about the application of Regulation M to transactions by the Global Markets Divisions (the “**Global Markets Divisions**”) of HSBC and HSBC Bank in the ordinary shares of CK Hutchison Holdings Limited (“**CKH Holdings Shares**”) and unsponsored American Depositary Receipts (“**ADRs**”) representing CKH Holdings Shares. HSBC and HSBC Bank are subsidiaries of HSBC Holdings plc (together with its subsidiaries, the “**HSBC Group**”), a company incorporated in England. The request for relief relates to transactions to be undertaken by the Global Markets Divisions during the distribution of CKH Holdings Shares in connection with the Hutchison Scheme (as defined below).

## **1 Background to the Transactions**

On January 9, 2015, Cheung Kong (Holdings) Limited (“**Cheung Kong**” and together with its subsidiaries, the “**Cheung Kong Group**”), a company incorporated in Hong Kong and whose shares were listed on the Main Board of The Stock Exchange of Hong Kong Limited (the “**Stock Exchange of Hong Kong**”), and Hutchison Whampoa Limited (“**Hutchison**” and together with its subsidiaries, the “**Hutchison Group**”), a company incorporated in Hong Kong and whose shares are listed on the Stock Exchange of Hong Kong, announced the transactions (the “**Transactions**”) described below.

### **1.1 The Cheung Kong Reorganization**

The holding company of the Cheung Kong Group would be changed from Cheung Kong to CK Hutchison Holdings Limited (“**CKH Holdings**” and together with its subsidiaries, the “**CKH Holdings Group**”), a company incorporated in the Cayman Islands, by way of a scheme of arrangement pursuant to Division 2 of Part 13 of the Companies Ordinance, Chapter 622 of the Laws of Hong Kong (the “**Cheung Kong Reorganization**”). CKH Holdings would become the new parent company of the Cheung Kong Group.

A list of the names of the principals, solicitors and registered foreign lawyers of Linklaters in Hong Kong is open to inspection at its registered office at 10th Floor, Alexandra House, Chater Road, Hong Kong.

Linklaters Hong Kong is a law firm affiliated with Linklaters LLP, a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on [www.linklaters.com](http://www.linklaters.com) and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on our regulatory position.

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Following the change of the holding company, the CKH Holdings Group would continue to be substantially the same as the Cheung Kong Group save for changes to its legal structure. The implementation of the Cheung Kong Reorganization would not affect the business, net assets, liabilities or financial position of the Cheung Kong Group, save for certain professional costs relating to the establishment of CKH Holdings and the Cheung Kong Reorganization that would be incurred. In addition, (i) the ownership, voting control and management of the Cheung Kong Group would, through CKH Holdings, remain unchanged; (ii) the interests of Cheung Kong in its subsidiaries would remain unaffected; (iii) the Cheung Kong shareholders eligible to receive CKH Holdings Shares in the scheme would hold the same proportionate interests in CKH Holdings as they held in Cheung Kong at the record date; and (iv) the payment of dividends would not be affected. The existing Cheung Kong directors are also the CKH Holdings directors. The rights of holders of CKH Holdings Shares would be governed by the laws of the Cayman Islands and the articles of association of CKH Holdings. The Cayman Islands is one of the jurisdictions accepted by the Stock Exchange of Hong Kong for issuers seeking a listing, with the rights of shareholders under the laws of the Cayman Islands being considered to be broadly commensurate with the rights of shareholders under the laws of Hong Kong. Following the Cheung Kong Reorganization, one CKH Holdings Share would represent substantively the same investment in the same business that one ordinary share in Cheung Kong represented prior to the Cheung Kong Reorganization.

CKH Holdings Shares would be publicly traded on the Stock Exchange of Hong Kong. All of the ordinary shares of Cheung Kong ("**Cheung Kong Shares**") in issue would be cancelled and eligible shareholders of Cheung Kong would receive one CKH Holdings Share for every one Cheung Kong Share. Cheung Kong would become a subsidiary of CKH Holdings.

The scheme document and proxy forms relating to the Cheung Kong Reorganization were distributed to Cheung Kong shareholders, including shareholders in the United States, on February 6, 2015. The shareholder meeting was held on February 25, 2015, and the scheme was approved by the Cheung Kong shareholders with over 99% of the votes cast supporting the proposal. Following approval of the scheme by the Court of First Instance of the High Court of Hong Kong (the "**Court**") and the satisfaction of certain additional conditions precedent, the CKH Holdings Shares were listed on the Stock Exchange of Hong Kong on March 18, 2015. The Cheung Kong Shares were delisted from the Stock Exchange of Hong Kong on the day of and immediately before the listing of the CKH Holdings Shares.<sup>1</sup>

The new CKH Holdings Shares, as the ordinary shares of the successor issuer of the Cheung Kong Shares, have taken the place of the Cheung Kong Shares and the activities with respect to the Cheung Kong Shares have transferred to the new CKH Holdings Shares. The CKH Holdings Shares have replaced the Cheung Kong Shares in the Hang Seng Index. HSBC and HSBC Bank believe that the future trading volume and distribution by market for CKH Holdings Shares should be substantially the same as the historical trading volume and distribution by market for Cheung Kong Shares.

Cheung Kong Shares were, and the new CKH Holdings Shares are, traded in the over-the-counter market in the United States. Unsponsored ADRs representing Cheung Kong Shares have historically traded in the over-the-counter market in the United States.<sup>2</sup>

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<sup>1</sup> The Cheung Kong Reorganization was not subject to the requirements of the Code on Takeovers and Mergers (the "**Takeovers Code**") in Hong Kong because (i) there was no substantial change in percentage shareholding of any shareholder; (ii) there was no acquisition or consolidation of control by any person or a group of persons; and (iii) shareholders' economic interests in Cheung Kong were not affected by implementation of the scheme.

<sup>2</sup> The ADR programs relating to Cheung Kong Shares are unsponsored and were established by depositary banks without the participation or consent of Cheung Kong. Since neither Cheung Kong nor CKH Holdings is involved in any ADR programs, HSBC and HSBC Bank cannot provide information with respect to their establishment or maintenance.

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CKH Holdings Shares delivered pursuant to the Cheung Kong Reorganization were issued in the United States without registration under the Securities Act of 1933 (the "**Securities Act**") pursuant to Section 3(a)(10) thereof.

### 1.2 The Merger Proposal

The Hutchison Group proposes to acquire approximately 6.24% of the common shares of Husky Energy Inc. ("**Husky**"), a company incorporated in Alberta, Canada, the shares of which are listed on the Toronto Stock Exchange (the "**Husky Share Exchange**"). In addition, CK Global Investments Limited (the "**Offeror**"), a wholly owned subsidiary of CKH Holdings, is making a conditional share exchange offer to the shareholders of Hutchison for the cancellation of all the ordinary shares of Hutchison ("**Hutchison Shares**") in issue (other than shares held by certain subsidiaries of CKH Holdings) by way of a scheme of arrangement pursuant to Division 2 of Part 13 of the Companies Ordinance, Chapter 622 of the Laws of Hong Kong (the "**Hutchison Scheme**" and together with the Husky Share Exchange, the "**Merger Proposal**"). Eligible shareholders in Hutchison will receive new CKH Holdings Shares at the share exchange ratio of 0.684 of a new CKH Holdings Share for every one Hutchison Share with no cash element, and this share exchange ratio was determined based on the average closing prices of the Cheung Kong Shares and the Hutchison Shares on the Stock Exchange of Hong Kong for the five trading days up to (and including) January 7, 2015, without any premium or discount. Upon completion of the Hutchison Scheme, Hutchison will become a wholly owned subsidiary of CKH Holdings.

The scheme document and proxy forms relating to the Hutchison Scheme are expected to be distributed to Hutchison shareholders, including shareholders in the United States, on or around March 31, 2015, and the shareholder vote to approve the Hutchison Scheme is expected to be held three to four weeks later.

The making of the offer by the Offeror pursuant to the Hutchison Scheme is also subject to the approval of CKH Holdings shareholders who satisfy certain independence criteria under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**") because the Hutchison Scheme constitutes a "very substantial acquisition" for CKH Holdings under Chapter 14 of the Listing Rules and also a "connected transaction" as defined in Chapter 14A of the Listing Rules. A shareholder circular and proxy forms relating to the Hutchison Scheme are expected to be distributed to CKH Holdings shareholders, including shareholders in the United States, on the same date as the distribution of the scheme document and proxy forms to Hutchison shareholders, and the vote by CKH Holdings shareholders is expected to be held on the same date as the vote by Hutchison shareholders to approve the Hutchison Scheme.

Assuming the Hutchison Scheme is approved by the shareholder votes, and subject to Court approval of the Hutchison Scheme and the satisfaction of certain additional conditions precedent, the Merger Proposal is expected to be completed by the end of June 2015.

Hutchison Shares, unsponsored ADRs representing Hutchison Shares and common shares of Husky are traded in the over-the-counter market in the United States.

CKH Holdings Shares delivered pursuant to the Hutchison Scheme will be issued in the United States without registration under the Securities Act pursuant to Section 3(a)(10) thereof.

### 1.3 The Spin-off Proposal

Immediately following the Merger Proposal, certain property assets of CKH Holdings will be spun off and listed on the Stock Exchange of Hong Kong (the "**Spin-off Proposal**"). The Spin-off Proposal is conditional upon, among other things, completion of the Cheung Kong Reorganization and the Merger Proposal described above. Certain property assets of the CKH Holdings Group and the Hutchison Group

are proposed to be reorganized and held by Cheung Kong Property Holdings Limited ("**CK Property**"), which will at that time be wholly owned by CKH Holdings. CK Property will then issue new ordinary shares ("**CK Property Shares**") to eligible CKH Holdings shareholders by way of a distribution in specie at the distribution ratio of one CK Property Share for every one CKH Holdings Share then held. Application will be made to list the CK Property Shares on the Stock Exchange of Hong Kong. Listing is expected to take place on the same date as the completion of the Merger Proposal.<sup>3</sup>

CK Property Shares delivered pursuant to the Spin-off Proposal are expected to be distributed in the United States to a limited number of CKH Holdings shareholders that are "qualified institutional buyers", as defined in Rule 144A under the Securities Act, in transactions exempt from registration under Section 4(a)(2) of the Securities Act.

HSBC is the sole financial advisor to Cheung Kong, CKH Holdings and the Offeror in relation to the Cheung Kong Reorganization and the Merger Proposal and a sponsor of the Spin-off Proposal.

## 2 Requested Relief

We respectfully request on behalf of HSBC and HSBC Bank that the Staff (the "**Staff**") of the Securities and Exchange Commission (the "**SEC**") grant exemptive relief from, or will not recommend that the SEC take enforcement action under, Rule 101 of Regulation M in connection with the Global Markets Divisions' engaging in the Market Activities described below in the ordinary course of their respective businesses as described below and in accordance with applicable local law. Moreover, each of HSBC and HSBC Bank confirms that the Market Activities described below will not, in any way, be conducted in furtherance of or to facilitate the Transactions. In addition, the Market Activities described below in respect of CKH Holdings Shares and ADRs representing CKH Holdings Shares will be substantially the same in nature and extent as the HSBC Group's historical market activities in respect of Cheung Kong Shares and ADRs representing Cheung Kong Shares.

The "**Market Activities**" conducted by the Global Markets Divisions will include the following:

- **Derivative Arbitrage and Hedging:** The Global Markets Divisions may solicit and effect trades in CKH Holdings Shares and ADRs for their own accounts and for the accounts of their respective customers for the purpose of derivative arbitrage or hedging activities, such as closing out existing derivatives or delta hedging in respect of existing derivatives, index-related or tracker fund arbitrage or similar activities in connection with the Global Markets Divisions' derivatives market-making activities.
- **Securities Borrowing and Lending:** The Global Markets Divisions may engage in borrowing and lending transactions in CKH Holdings Shares and ADRs (including the unwinding of such transactions) with their customers.

These transactions in CKH Holdings Shares may be effected on the Stock Exchange of Hong Kong and in the over-the-counter markets in Hong Kong and the United States or, in the case of ADRs, in the over-the-counter markets in the United States, and, in some cases, elsewhere outside the United States.<sup>4</sup>

The availability of the exemptive and/or no-action relief HSBC and HSBC Bank are requesting would be conditioned on the disclosure and record-keeping undertakings and obligations outlined below.

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<sup>3</sup> The timing of events contemplated in relation to the Transactions described above may vary.

<sup>4</sup> The majority of the Market Activities for which relief is sought in this letter will be conducted on the Stock Exchange of Hong Kong.

We are acting as U.S. counsel to HSBC and HSBC Bank in connection with the matters described in this letter. HSBC and HSBC Bank have provided us with, and authorized us to make on their behalf, the factual representations set forth in this letter. The statements contained in this letter with respect to Hong Kong regulation have been reviewed by Linklaters, Hong Kong counsel to HSBC and HSBC Bank.

### **3 Description of the Market Activities**

#### **3.1 Background and Market for the CKH Holdings Shares and ADRs**

The following information in respect of Cheung Kong Shares and ADRs is provided because HSBC and HSBC Bank believe that it provides the most informative data with regard to the expected trading volume in CKH Holdings Shares and ADRs after the issuance of CKH Holdings Shares and admission to trading. As the CKH Holdings Shares represent the successor shares to the Cheung Kong Shares, HSBC and HSBC Bank believe that the future trading volume and distribution by market for CKH Holdings Shares and ADRs can be expected to be in line with the historical trading volume and distribution by market for Cheung Kong Shares and ADRs.

Until March 18, 2015, the Cheung Kong Shares were listed on the Stock Exchange of Hong Kong, and their principal trading market was in Hong Kong. During 2014, the average daily trading volume of Cheung Kong Shares on the Stock Exchange of Hong Kong was approximately 3.53 million Cheung Kong Shares, or approximately HK\$468 million (or approximately U.S.\$60.3 million at the exchange rate on December 31, 2014) in value, which represented approximately 96.8% of the aggregate average daily trading volume of Cheung Kong Shares (including Cheung Kong Shares represented by ADRs) on the Stock Exchange of Hong Kong and in the over-the-counter markets in Hong Kong and the United States ("**Cheung Kong ADTV**").

As of December 31, 2014, Cheung Kong's aggregate market capitalization was approximately HK\$301,796 million (or approximately U.S.\$38,915 million at the exchange rate on December 31, 2014) and Cheung Kong's free-float adjusted market capitalization was approximately HK\$170,635 million (or approximately U.S.\$22,002 million at the exchange rate on December 31, 2014). As of December 31, 2014, Cheung Kong was the 15th largest Hong Kong-listed company in terms of market capitalization.

Cheung Kong Shares (including Cheung Kong Shares represented by ADRs) have historically traded in the over-the-counter market in the United States. During 2014, the average daily trading volume of Cheung Kong Shares (including Cheung Kong Shares represented by ADRs) traded in the over-the-counter market in the United States was approximately 117,361 Cheung Kong Shares, or approximately U.S.\$2 million in value.

#### **3.2 The Global Markets Divisions**

In the ordinary course of their businesses, the Global Markets Divisions have historically conducted an extensive array of trading and other market activities in connection with Cheung Kong Shares and ADRs. The activities described below involving CKH Holdings Shares and ADRs are expected to be unchanged in nature and extent from activities involving Cheung Kong Shares and ADRs prior to the completion of the Cheung Kong Reorganization.

The Global Markets Divisions operate separately from other business divisions within the HSBC Group. The Global Markets Divisions conduct full-services securities businesses throughout the world, and their principal executive offices are located in London. The Market Activities described below, for which the Global Markets Divisions are requesting relief, are managed principally by representatives in Hong Kong and London. The operations of the Global Markets Divisions are conducted through entities regulated by and licensed under the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the

“SFO”), as enforced by the Securities and Futures Commission of Hong Kong (the “SFC”), in Hong Kong and the Financial Services and Markets Act 2000, as enforced by the Bank of England Prudential Regulation Authority and the Financial Conduct Authority, in the United Kingdom, among other laws and regulations.

HSBC and HSBC Bank sought and were granted “exempt principal trader” (“EPT”) status for the Global Markets Divisions by the SFC in its exemptive letter dated December 2, 2014 (the “Exemptive Letter”). EPT status provides exemptive relief to the Global Markets Divisions in relation to certain restrictions under the SFC’s Takeovers Code to allow them to continue to engage in certain dealing activities that would otherwise be restricted during the Transactions. This relief is described in greater detail under the heading “The Hong Kong Regulatory Market”. HSBC and HSBC Bank have confirmed that the Market Activities described below, for which they are requesting relief, are permitted under and will be conducted in accordance with applicable Hong Kong laws and regulations and the Exemptive Letter, or at any time they are potentially prohibited by the Takeovers Code, HSBC and HSBC Bank will seek additional exemptive relief from the SFC.

HSBC and HSBC Bank maintain and enforce written policies and procedures that are reasonably designed to prevent the transfer of information to or from the Global Markets Divisions (the “Information Barriers”). These Information Barriers are intended to prevent improper motives from influencing the purchasing activity of the Global Markets Divisions and to prevent the flow of confidential information between the senior management and corporate development teams of other members of the HSBC Group on the one hand, and the trading and investment management personnel of the Global Markets Divisions on the other hand. In connection with the Market Activities of the Global Markets Divisions, HSBC, HSBC Bank and the Global Markets Divisions will comply with the applicable requirements under Hong Kong, English and U.S. law, including the applicable rules and regulations of the relevant exchanges and trading facilities.

### 3.3 The Market Activities

#### 3.3.1 Derivative arbitrage and hedging

The Global Markets Divisions conduct derivatives market-making activities and manage these activities principally from Hong Kong and London. These activities are conducted primarily outside the United States. As a result of their EPT status in Hong Kong, the Global Markets Divisions are permitted to continue to conduct certain of these activities during the Transactions, including the purchase and sale of currently existing derivative products for their own accounts and for the accounts of their respective customers on the Stock Exchange of Hong Kong. These derivative products may include currently existing options, warrants, convertible securities and other structured products that are exercisable for or convertible into, or the value of which is determined by reference to, CKH Holdings Shares or ADRs or third-party baskets or indices including CKH Holdings Shares or ADRs. The derivatives market making of the Global Markets Divisions permitted due to their EPT status involves purchasing and selling currently existing derivatives related to CKH Holdings Shares and ADRs in order to facilitate customer orders and provide liquidity to the market.

As a result of their respective derivatives market-making activities, the Global Markets Divisions maintain varying positions in these derivatives, and their respective financial exposure to movements in the price of the underlying shares or ADRs varies from time to time. In order to manage this financial exposure, the Global Markets Divisions regularly engage in derivative arbitrage and hedging activities. As a result of their EPT status in Hong Kong, the Global Markets Divisions are permitted to continue to conduct certain of these activities during the Transactions, such as closing out existing derivatives, delta hedging in respect of existing derivatives, index-related and tracker fund arbitrage and similar activities assented to

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by the SFC that involve, in whole or in part, purchases and sales of CKH Holdings Shares and ADRs for the Global Markets Divisions' own accounts or for the accounts of their respective customers. These Market Activities are incidental to the Global Markets Divisions' acting as market makers in currently existing derivatives relating to CKH Holdings Shares and ADRs.

### 3.3.2 Securities borrowing and lending

The Global Markets Divisions engage in borrowing and lending transactions in shares and ADRs (including the unwinding of such transactions) with their customers (including affiliates of the Global Markets Divisions) in order to facilitate the settlement of trades, coverage of short positions and other transactions for which borrowed securities are commonly used. These securities borrowing and lending transactions are conducted at the request of the customer and involve securities designated by the customer, which may include CKH Holdings Shares or ADRs. In some circumstances, a customer may purchase CKH Holdings Shares or ADRs from a third party in anticipation of lending them to one of the Global Markets Divisions, or a customer may arrange for a third party to purchase CKH Holdings Shares or ADRs after the customer has borrowed them from the Global Markets Divisions.

The Global Markets Divisions engage in the Market Activities described above solely in the ordinary course of business and not in furtherance of or to facilitate the Transactions. These Market Activities may be effected on the Stock Exchange of Hong Kong and in the over-the-counter markets in Hong Kong and the United States or, in the case of ADRs, in the over-the-counter markets in the United States, and, in some cases, elsewhere outside the United States. The majority of the Market Activities for which relief is sought in this letter will be conducted on the Stock Exchange of Hong Kong. During 2014, the Market Activities involving Cheung Kong Shares (including Cheung Kong Shares represented by ADRs) accounted for approximately 7.8% of Cheung Kong ADTV.

In connection with the Market Activities, HSBC's and HSBC Bank's affiliated U.S. broker-dealer, HSBC Securities (USA) Inc., may execute orders in the over-the-counter market in the United States on behalf of the Global Markets Divisions or customers of the Global Markets Divisions. HSBC and HSBC Bank estimate that less than 5% of the Market Activities occur in the United States. During 2014, the Market Activities involving Cheung Kong Shares (including Cheung Kong Shares represented by ADRs) in the United States accounted for less than 1% of Cheung Kong ADTV.

The Market Activities described above involving CKH Holdings Shares and ADRs are expected to be unchanged in nature and extent from those involving Cheung Kong Shares and ADRs prior to the completion of the Cheung Kong Reorganization.

## 4 Application of Regulation M

### 4.1 Relief Requested

We respectfully request that the Staff grant exemptive relief from, or confirm that the Staff will not recommend that the SEC take enforcement action under, Rule 101 of Regulation M in connection with the Market Activities in which the Global Markets Divisions may engage in the ordinary course of their respective businesses in accordance with applicable local law.

The availability of the exemptive and/or no-action relief HSBC and HSBC Bank are requesting would be conditioned on the disclosure and record-keeping undertakings and obligations outlined below.

### 4.2 Discussion

In connection with the Hutchison Scheme, CKH Holdings Shares will be distributed to U.S. investors and CKH Holdings will be engaged in a distribution in the United States for purposes of Regulation M. We

have assumed that, under Regulation M, the restricted period (the "**Regulation M Restricted Period**") will begin on or around March 31, 2015, when the materials in connection with the Hutchison Scheme are distributed, and will end following approval by the Hutchison shareholders of the Hutchison Scheme at the shareholders' meeting. Thus, the Regulation M Restricted Period may last several weeks.

HSBC, through its Banking and Capital Financing Division in Hong Kong, is a financial advisor to Cheung Kong, CKH Holdings and the Offeror in connection with the Hutchison Scheme, and may therefore be deemed to be a "distribution participant" as defined in Rule 100 of Regulation M. As affiliates of HSBC that regularly purchase securities for their own accounts and the accounts of others or recommend or exercise investment discretion with respect to the purchase of securities, the Global Markets Divisions may be deemed to be "affiliated purchasers" of HSBC as defined in Rule 100 of Regulation M.<sup>5</sup>

As such, the Market Activities would be subject to Rule 101 throughout the Regulation M Restricted Period. Under Rule 101, the Global Markets Divisions will not be permitted to bid for or purchase, or attempt to induce any person to bid for or purchase, CKH Holdings Shares or ADRs during the Regulation M Restricted Period unless one of the specified exceptions under Rule 101 is available.

Regulation M normally would not interfere with market making and other market activities in actively traded securities. However, the CKH Holdings Shares will not be actively traded during the Regulation M Restricted Period for purposes of Regulation M because they will not have an ADTV (as defined by Regulation M) of at least U.S.\$1 million for a period of two full calendar months. As the CKH Holdings Shares represent the successor shares to the Cheung Kong Shares, HSBC and HSBC Bank believe that the future trading volume and distribution by market for CKH Holdings Shares and ADRs can be expected to be in line with the historical trading volume and distribution by market for Cheung Kong Shares and ADRs. Prior to their delisting, the Cheung Kong Shares would have easily satisfied the exception to the provisions of Rule 101 for actively traded securities.

As a result, there would be no exceptions available under Rule 101 that would permit the Global Markets Divisions to engage in the Market Activities. Without the requested exemptive and/or no-action relief, the Global Markets Divisions would not be permitted to engage in the Market Activities for an extended period of time.

The securities borrowing and lending activities conducted by the Global Markets Divisions will not constitute bids for, purchases of or inducements to make bids for or purchases of CKH Holdings Shares or ADRs in the traditional sense. Nevertheless, HSBC and HSBC Bank believe that in some circumstances the activities of the Global Markets Divisions may be deemed to be attempts to induce a bid or purchase because a customer may purchase CKH Holdings Shares or ADRs from a third party in anticipation of lending them to a Global Markets Division, or a customer may arrange for a third party to purchase CKH Holdings Shares or ADRs after the customer has borrowed them from a Global Markets Division. HSBC and HSBC Bank therefore seek relief in order to continue to conduct these activities, in addition to the derivative arbitrage and hedging activities described above, during the Regulation M Restricted Period.

HSBC and HSBC Bank believe that the continuation of the Market Activities will not have a significant effect on the market price of the CKH Holdings Shares and ADRs. In addition, these ordinary course activities are important aspects of the HSBC Group's business as a major financial institution in Hong Kong and the United Kingdom and, therefore, interrupting these activities for a period could have an adverse impact on the HSBC Group's business, including its ability to manage properly its and its clients' risks.

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<sup>5</sup> The Global Markets Divisions would otherwise qualify for the exception to the definition of "affiliated purchaser" set forth in paragraphs (3)(i)-(iii) thereof, but insofar as they engage in principal trading in CKH Holdings Shares and ADRs for the purpose of the Market Activities, the exception will not be available to the Global Markets Divisions.

### 4.3 The Hong Kong Regulatory Market

#### 4.3.1 Overview

Financial markets in securities in Hong Kong are primarily regulated under the SFO, as enforced by the SFC. Persons who carry on business in Hong Kong in activities regulated under the SFO, which include acting as a broker-dealer, investment advisor or discretionary asset manager, are required to be licensed by the SFC. Banking entities licensed by the Hong Kong Monetary Authority are also permitted to engage in SFO-regulated activities, provided they have registered with the SFC and have met all applicable requirements.

#### 4.3.2 Market misconduct offenses

Parts XIII and XIV of the SFO prohibit various forms of market misconduct. Violations can result in civil proceedings before the Market Misconduct Tribunal under Part XIII of the SFO, which may result in the imposition of sanctions, such as disgorgement of profits and exclusion from participating in the securities and futures markets. Violations can also result in criminal prosecution through the Hong Kong judicial system under Part XIV of the SFO, which may result in imprisonment for up to ten years. Prohibited forms of market misconduct include market manipulation. Specifically, Parts XIII and XIV of the SFO prohibit conduct that is intentionally or recklessly manipulative of the price or trading volume of listed securities.<sup>6</sup> This would include the following:

- carrying out artificial transactions or devices that maintain, increase, reduce, stabilize or cause fluctuations in the price of securities;
- engaging in any activity that is likely to have the effect of creating a false or misleading appearance of active trading on a market or creating or maintaining an artificial price; and
- disclosing false or misleading information that is likely to induce securities transactions or otherwise affect the price of securities.

Certain types of transactions, such as sales and purchases of securities that do not involve a change of beneficial ownership, are *prima facie* regarded as market misconduct unless the person engaged in the conduct can establish that there was a legitimate purpose for the transaction that did not involve the creation of a false market for the relevant securities.

#### 4.3.3 SFC supervisory authority over regulated firms

The SFC has issued a "Code of Conduct" and other guidelines applicable to licensed firms under which they have, among other things, a general obligation to act honestly, fairly and in the best interests of clients and the integrity of the market and to otherwise comport themselves in a "fit and proper" manner. Failure to uphold these standards of conduct, even in the absence of a violation of statutory law, could result in the SFC's imposing disciplinary sanctions, including licensing restrictions and monetary penalties, against the culpable firm or licensed individuals. For example, a licensed firm that fails to implement proper systems and controls to prevent market misconduct by its employees could be subject to discipline by the SFC, even if actual market misconduct was not proven to have taken place.

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<sup>6</sup> The relevant offenses are false trading, price rigging, stock market manipulation, disclosure of information about prohibited transactions and disclosure of false or misleading information inducing transactions. SFO sec. 274-278, 295-299.

### 4.3.4 Takeovers Code

In addition to the market misconduct prohibitions, the Takeovers Code imposes various restrictions on dealings by parties involved in an offer for a Hong Kong-listed company, as well as persons deemed to be “acting in concert” with them. These restrictions include the following:

- a prohibition on all dealings whatsoever in securities of the target by any person (other than the offeror) who is privy to confidential price-sensitive information concerning the transaction between the time when there is reason to suppose that an approach or an offer or revision is contemplated and the announcement of the approach, the offer, the revision or of the termination of the discussions;
- a prohibition on dealings in the securities of the offeror except where the transaction (whether actual, contemplated or whose terms are being or have been revised) is not price-sensitive in relation to such securities;
- a prohibition during an offer period on the offeror and persons acting in concert with it from selling any securities in the target except with the prior consent of the SFC and following 24 hours' public notice that such sales might be made; and
- a prohibition during the offer period on the offeror and persons acting in concert with it from dealing in any securities in the offeror or conducting any on-market buy-back of such securities.

In addition, persons subject to the Takeovers Code must comply with reporting requirements in respect of any dealings that are not prohibited.

The definition of “acting in concert” includes both the financial advisor to an offeror as well as any persons controlling, controlled by or under the same control as the advisor. Therefore, as a practical matter, the dealing restrictions and other requirements under the Takeovers Code will apply to the financial advisor’s group as a whole. Upon application to the SFC, such persons may be able to obtain “exempt fund manager” (“**EFM**”) or EPT status that will allow them to continue to engage in certain dealing activities outside the Takeovers Code restrictions. An EFM is a person who manages investment accounts on a discretionary basis, and the exempt status applies to all discretionary dealings in client funds managed by the EFM. EPT status is restricted to trading activities conducted by the EPT trading as principal in securities for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index-related product or tracker fund arbitrage in relation to the relevant securities or similar activities assented to by the SFC during the offer period. Both EFMs and EPTs are subject to certain ongoing disclosure requirements during the offer period, as set out in Rule 22 of the Takeovers Code. Any permitted trading activities conducted by an EFM are required to be privately disclosed to the SFC. Any permitted trading activities conducted by an EPT are required to be publicly disclosed on the websites of the Stock Exchange of Hong Kong and the SFC (or, in the case of agency trades on behalf of a non-discretionary client, privately disclosed to the SFC). Subject to limited exceptions, all such disclosures must be made by no later than 10:00 a.m. (Hong Kong time) on the day after the dealing occurs. Further, in order to maintain their exempt status, EFMs and EPTs must provide the SFC with annual confirmations that, among other things, Information Barriers remain in place.

On December 2, 2014, the SFC granted the Global Markets Divisions EPT status in the Exemptive Letter, which permits them, among other things, to trade as principal in securities for the purpose of derivative arbitrage or hedging activities such as closing out existing derivatives, delta hedging in respect of existing derivatives, index-related product or tracker fund arbitrage in relation to the relevant securities or other similar activities (which would otherwise have been restricted by the Takeovers Code), subject to

maintenance of the Information Barriers and the public and private disclosure obligations described above. The SFC also noted in the Exemptive Letter that securities borrowing and lending transactions (including the unwinding of such transactions) carried out by the Global Markets Divisions in the ordinary course of their businesses would not be subject to restriction under the Takeovers Code.

### 5 Conditions and Relief

In consideration of the foregoing, we respectfully request that the Staff grant exemptive relief from, or confirm that the Staff will not recommend that the SEC take enforcement action under, Rule 101 of Regulation M in connection with the Market Activities during the Regulation M Restricted Period. The Global Markets Divisions would conduct these activities in the ordinary course of their respective businesses in accordance with applicable law in Hong Kong and England.<sup>7</sup>

As a condition to the relief being requested, HSBC and HSBC Bank would undertake to include disclosure in the scheme document that will be distributed to Hutchison shareholders and the circular that will be distributed to CKH Holdings shareholders in connection with the Hutchison Scheme. The disclosure would be substantially similar to the following:

“During the distribution of CKH Holdings Shares in the Hutchison Scheme, certain divisions of HSBC and HSBC Bank that have been granted “exempt principal trader” status under the Takeovers Code intend to engage in various dealing and brokerage activities involving CKH Holdings Shares and ADRs when and to the extent permitted by applicable laws and regulations, including the Takeovers Code. In particular, these divisions of HSBC and HSBC Bank intend (1) to engage in trades in CKH Holdings Shares and ADRs for their own account and the accounts of their customers for the purpose of derivative arbitrage or hedging activities, such as closing out existing derivatives, delta hedging in respect of existing derivatives, index-related product or tracker fund arbitrage or similar activities assented to by the SFC; and (2) to engage in borrowing and lending transactions in CKH Holdings Shares and ADRs (including the unwinding of such transactions).

These divisions of HSBC and HSBC Bank will not be obliged to purchase CKH Holdings Shares or ADRs and any such purchases may be discontinued at any time in their sole discretion without notice. These activities could have the effect of preventing or delaying a decline in the market price of CKH Holdings Shares or ADRs.

Any ADR programs relating to CKH Holdings Shares will be unsponsored and established by depositary banks without the participation or consent of CKH Holdings, and none of CKH Holdings, HSBC or HSBC Bank makes any representation in respect of the establishment or maintenance of any ADR programs relating to CKH Holdings Shares.”

As a further condition to the relief being requested, the Global Markets Divisions will undertake to keep records (the “**Records**”) of the date and time at which CKH Holdings Shares and ADRs representing CKH Holdings Shares are purchased or sold, the market in which the purchase or sale is effected, the amount of CKH Holdings Shares and ADRs purchased or sold and the price of the purchase or sale, for each purchase or sale of CKH Holdings Shares and ADRs that the Global Markets Divisions make as part of their Market Activities during the Regulation M Restricted Period (this information will not include any

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<sup>7</sup> In connection with the relief requested by HSBC and HSBC Bank in this letter, please note that the Staff has previously granted substantially similar exemptive and/or no-action relief from Regulation M. See, e.g., the exemptive letters to Lloyds Banking Group plc dated October 21, 2008, April 20, 2009, November 2, 2009, September 16, 2013, March 6, 2014 and March 25, 2014; the exemptive letters to Barclays PLC dated August 7, 2007, June 16, 2008, July 31, 2013, November 7, 2013 and May 14, 2014; and the exemptive letter to UBS AG dated October 7, 2014.

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client-specific data, the disclosure of which is restricted under local law). The Global Markets Divisions will maintain the Records for a period of two years following the end of the Regulation M Restricted Period. Upon the written request of the Director of the Division of Trading and Markets, HSBC and HSBC Bank will make the Records available at the SEC's offices in Washington, D.C.

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If you have any questions or require any additional information, please do not hesitate to contact Pamela Shores in Hong Kong at 011 852 2901 5159 or Christian Felton in Hong Kong at 011 852 2901 5153. We may also be reached by email at [pam.shores@linklaters.com](mailto:pam.shores@linklaters.com) or [christian.felton@linklaters.com](mailto:christian.felton@linklaters.com). We appreciate your assistance in this matter.

Yours sincerely,



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