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AMERICA • ASIA PACIFIC • EUROPE

September 18, 2018

Brett Redfearn
Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Intent of Korea Exchange to Rely on No-Action Relief for Foreign Options Markets and Their Members That Engage in Familiarization Activities

Dear Mr. Redfearn:

At the request of our client the Korea Exchange (“KRX”), we are writing to provide you with a notification of KRX’s intent to rely on the class no-action relief issued by the Securities and Exchange Commission’s (“SEC” or “Commission”) Division of Trading and Markets (“Division”) for foreign options markets and their members that engage in familiarization activities with certain U.S.-based persons.¹

BACKGROUND

In the Class Relief, the Division took a no-action position under which a Foreign Options Market,² its Representatives³ and the Foreign Options Market’s members, could engage in activities to

¹ See LIFFE A&M and Class Relief, SEC No-Action Letter (Jul. 1, 2013) (“Class Relief”). Capitalized terms used herein and not otherwise defined have the meanings given in the Class Relief. Pursuant to the Class Relief, a Foreign Options Market is not required to apply *de novo* for similar no-action or other relief; it can file with the Division a notice of intent to rely on the Class Relief.

² The Class Relief defines a Foreign Options Market as a “non-U.S. derivatives market: (i) on which Eligible Options trade; and (ii) that is an organized exchange operated and regulated outside the United States.” KRX qualifies as a Foreign Options Market. An Eligible Option is defined in the Class Relief to mean “an index option or option on an individual security traded on a foreign options market that is not fungible or interchangeable with options traded on any market other than the foreign options market, and, accordingly, each position in an eligible option issued by a clearing member of the foreign options market can be closed out only on the foreign options market.”

³ The Class Relief defines a “Representative” as “an employee of the Foreign Options Market located inside or outside the United States who has been appointed to act as representative of the Foreign Options Market and may undertake the activities described in Section II [of the Class Relief] with respect to Eligible Broker-Dealers/Eligible Institutions [as defined below].”

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familiarize Eligible Broker-Dealers/Eligible Institutions⁴ regarding the Foreign Options Market and Eligible Options available on that market without the Division recommending enforcement to the Commission under Sections 5, 6, 15, or 17A of the Securities Exchange Act of 1934 (“Exchange Act”). Under the terms of the Class Relief, a Foreign Options Market that does not already have no-action relief from the Division, such as KRX, may rely on the Class Relief to engage in familiarization activities if it notifies the Director of the Division of its intent to do so.

More specifically, in order to make use of the Class Relief, a Foreign Options Market must send a letter, signed either by the Foreign Options Market’s chief legal officer or the Foreign Options Market’s U.S. counsel, to the Director of the Division that:

- Identifies the Foreign Options Market;
- Describes the Eligible Options for which the Foreign Options Market, its personnel, and its members seek to engage in familiarization activities with Eligible Broker-Dealers/Eligible Institutions; and
- Makes the following representations:
 - The parties will provide Commission staff promptly upon request a list of the specific equity and index options covered by the request for relief and will identify a primary listing market for each underlying equity security and index component;
 - The requesting entities have taken steps to comply with, and assure continued compliance with, each of the representations and conditions contained in the Class Relief and acknowledge that the Class Relief is only available to the requesting entities to the extent they are in compliance with each of the representations and conditions contained in the Class Relief; and
 - All subject entities covered by the Class Relief will comply with each of the representations and conditions contained in the Class Relief, including the restriction on securities of U.S. issuers.

DESCRIPTION OF KRX

KRX, headquartered in Busan, Republic of Korea, is the sole securities and futures exchange operating in the Republic of Korea, and is a Foreign Options Market, as defined in the Class Relief. KRX was formed as a result of the merger of three separate exchanges, the Korean Stock Exchange (“KSE”),

⁴ An “Eligible Broker-Dealer/Eligible Institution” (and, individually, an “Eligible Broker-Dealer” or “Eligible Institution”) is any entity that meets the following standards: (a) it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the Securities Act of 1933 (“Securities Act”), or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the Securities Act; and (b) 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. standardized options called for by Rule 9b-1 under the Exchange Act).

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the Korean Securities Dealers Automated Quotations Securities Exchange (“KOSDAQ”) and the Korean Futures Exchange (“KOFEX”), on January 27, 2005. KRX is a demutualized and consolidated exchange, in which the general meeting of shareholders is the highest decision-making body. Its board of directors executes the general meeting’s decisions. The majority of the board is comprised of outside directors in order to ensure fairness in its decision-making. KRX membership is divided into securities trading members (corporations licensed to engage in the securities business) and futures trading members (corporations licensed to engage in the futures business). Members are further categorized into clearing and non-clearing members, depending on whether or not a firm is responsible for the settlement of its transactions. KRX provides investors with efficient means to manage assets by offering a single platform where an extensive product line-up, ranging from stocks and bonds to derivatives, ETFs and ETNs can be traded. The equity market of KRX consists of:⁵

- KOSPI. The KOSPI market was launched in 1956 and is mainly used for medium to large-sized blue chip companies. It has a total market value of KRW 1,554 trillion. There are currently 787 companies listed on the KOSPI market and the transaction amount per day is KRW 6,972 billion.
- KOSDAQ market. The KOSDAQ was launched in 1996 and is mainly used for small to medium-sized venture companies and companies with potential for growth. It has a total market value of KRW 273 trillion. There are currently 1,284 companies listed on the KOSDAQ market and the transaction amount per day is KRW 5,569 billion.
- KONEX market. This market was launched in 2013 and is mainly used for initial startup, small to medium-sized venture companies. It has a total market value of KRW 7 trillion. There are currently 150 companies listed on the KONEX market and the transaction amount per day is KRW 5 billion.

KRX is a self-regulatory organization (“SRO”), similar to the SRO status of U.S. securities exchanges. The two main governmental regulatory bodies exercising oversight over KRX are the Financial Services Commission (“FSC”) and the Financial Supervisory Service (“FSS”). The FSC is primarily responsible for the establishment of key policies for the development and advancement of the securities and derivatives markets. The FSS conducts supervision and surveillance of the financial markets, including the securities and derivatives markets. The regulatory functions of the FSC and FSS are currently set forth in the Financial Investment Services and Capital Markets Act, which is one of the operative statutes governing the operations of KRX and financial investment service businesses. The FSC and the FSS maintain a close cooperative relationship through frequent contact and information sharing.

DESCRIPTION OF ELIGIBLE OPTIONS

The eligible Options that are the subject of this notification are options contracts that KRX offers or may in the future offer on (1) individual stocks that are listed and traded on the KOSPI market and the KOSDAQ market, (2) exchange traded funds, and (3) various equity indices, such as KOSPI200, Mini KOSPI200 and KOSDAQ150. The Eligible Options are not fungible or interchangeable with options

⁵ Market data below is presented as of September 13, 2018.

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traded on any market other than KRX. In addition, each position in an Eligible Options on KRX can be closed out only on KRX and is cleared by KRX.

CLASS RELIEF AND REPRESENTATIONS

In order to be able to rely on the Class Relief, KRX makes the following representations:

- KRX will provide Commission staff promptly upon request with a list of the specific equity and index options covered by the request for relief and will identify a primary listing market for each underlying equity security and index component;
- KRX has taken steps to comply with, and assure continued compliance by KRX, its Representatives and its members with, each of the representations and conditions contained in the Class Relief and acknowledges that the Class Relief is only available to the extent that KRX, its personnel and its members are in compliance with each of the representations and conditions contained in the Class Relief; and
- KRX will comply with each of the representations and conditions contained in the Class Relief, including the restriction on securities of U.S. issuers.

Pursuant to the Class Relief, KRX further represents that:

- KRX is, and shall remain to be, an organized exchange operated and regulated outside of the United States (*i.e.*, in the Republic of Korea);
- KRX does not engage in any general solicitation or general advertisements concerning Eligible Options in the United States;
- KRX does not provide direct electronic access for Eligible Options trading to persons located in the United States (including through any OTC Options Processing Service⁶ offered by KRX);
- KRX maintains on its website current information, in English, concerning its trading rules, clearance and settlement procedures, hours of operation, holidays, and other material information that would be relevant to an Eligible Broker-Dealer/Eligible Institution trading on KRX;
- With respect to the Eligible Options it intends to offer and sell in the United States, KRX has in place a market-to-market surveillance sharing agreement with the primary market for the underlying securities or other surveillance sharing arrangement (*e.g.*, an information sharing agreement between the respective regulatory authorities of KRX and the market for the underlying security) through which KRX would be able to obtain information concerning trading in the underlying securities;

⁶ The Class Relief defines an OTC Options Processing Service to mean a mechanism for submitting to a Foreign Options Market an options contract on a foreign security that has been negotiated and completed in an over-the-counter (“OTC”) transaction so that the Foreign Options Market may replace the OTC contract with an equivalent exchange-traded options contract.

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- KRX is supervised by the Korean Financial Services Commission and the Korean Financial Supervisory Service, which are both signatories to the International Organization of Securities Commission's ("IOSCO") Multilateral Memorandum of Understanding for Consultation Cooperation and the Exchange of Information;⁷
- Members or participants of KRX are obligated to provide information to or otherwise assist KRX in relation to activities carried out on the exchange, and KRX is able to provide, and would provide, information obtained from a member or participant to the Commission upon request;⁸
- KRX advises its members that, under U.S. law, members of KRX that are not registered 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;
- KRX institutes rules requiring its members, before effecting a transaction in Eligible Options with an Eligible Broker-Dealer/Eligible Institution, to obtain, and maintain from such Eligible Broker-Dealer/Eligible Institution, signed by an appropriate officer, a record of the representations set forth in Section B of the Class Relief;
- KRX advises its members that any options on securities of U.S. issuers, or on an index that includes any securities of U.S. issuers, that are traded on KRX are not available for sale to U.S. persons; and
- KRX adopts written policies and procedures to monitor for and assure compliance with the terms of the Class Relief, and will make such policies and procedures available in English promptly to the Commission staff upon request.

* * *

We look forward to answering any questions that you or the Division might have with regards to this notification of KRX's intent to rely on the Class Relief. Please feel free to contact me at (212) 839-5503 or msackheim@sidley.com or Nathan Howell at (312) 853-2655 or nhowell@sidley.com.

⁷ IOSCO, Signatories to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of information, available at <https://www.iosco.org/about/?subSection=mmou&subSection1>.

⁸ Foreign broker-dealers electing to deal with U.S. institutional investors pursuant to Rule 15a-6(a)(3) under the Exchange Act are required to provide directly to the Commission upon request or pursuant to agreements reached between any foreign securities authority and the Commission, information, documents, testimony, and assistance in taking the evidence of persons that relate to transactions pursuant to Rule 15a-6(a)(3) under the Exchange Act.

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Very truly yours,



Michael S. Sackheim

CC: Changhee Jung, President & CEO, Derivatives Market Division of KRX
Hyungun Ji, Head of Global Business Team, Derivatives Market Division of KRX
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