

Notice to Intermediaries Regarding Effecting Transactions in Eligible Options for Eligible U.S. Persons

Under guidance issued by the U.S. Securities and Exchange Commission (“SEC”), non-U.S. options exchanges, their employees and members may, under specific circumstances, familiarize certain U.S. persons with products and services available on the non-U.S. options exchange.¹ In order to rely on the SEC Guidance, a non-U.S. options exchange, such as Borsa Italiana, is required to notify its members (i.e., Intermediaries) of certain obligations and requirements when effecting transactions for U.S. persons that result from the exchange’s familiarization efforts.

Eligible Options and Eligible U.S. Persons

An Intermediary may only effect transactions for a person located in the United States if the person is an Eligible U.S. Person and the transaction is for an Eligible Option.

An **Eligible Option** means an index option or option on an individual security traded on Borsa Italiana (i) that is not fungible or interchangeable with options traded on any market other than Borsa Italiana; (ii) for which positions issued by a clearing Intermediary of Borsa Italiana can be closed out only on Borsa Italiana; and (iii) which does not have, as a component, securities of any U.S. issuer.

An **Eligible U.S. Person** means any entity that meets the following standards: (a) it must be a “qualified institutional buyer” as defined in Rule 144A(a)(1) under the U.S. Securities Act of 1933, or an international organization excluded from the definition of “U.S. person” in Rule 902(k)(2)(vi) of Regulation S under the U.S. Securities Act of 1933; and (b) it must have had prior actual experience with traded options in the U.S. options market.

Use of SEC Registered Broker-Dealer

If an Intermediary is not registered as a broker-dealer with the SEC and plans to effect a transaction in an Eligible Option for an Eligible U.S. Person that is not a SEC-registered broker-dealer, then the Intermediary can only effect the transaction with or through a SEC-registered broker-dealer in accordance with SEC Rule 15a-6.

Direct Electronic Access

The SEC Guidance states that a non-U.S. options exchange may not provide direct market access to the facilities of the non-U.S. options exchange to any person located in the United States, whether directly or through any OTC Options Processing Service. When effecting transactions in Eligible Options for Eligible U.S. Persons, no Intermediary may provide any Eligible U.S. Person with direct electronic access to Borsa Italiana.

¹ See Class No-Action Relief for Foreign Options Markets and Their Members That Engage in Familiarization Activities, SEC Staff No-Action Letter (July 1, 2013) (“SEC Guidance”). A copy of the SEC guidance is available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/liffe-am-070113.pdf>.

Representation from Eligible U.S. persons

Before effecting a transaction in Eligible Options for an Eligible U.S. Person, an Intermediary must obtain and maintain a record from the Eligible U.S. Person, signed from an appropriate officer of the Eligible U.S. Person, attesting to the entity's status as an Eligible U.S. Person and making certain other representations. A sample letter that can be adapted for your use is provided below.

Sample Letter

[Insert name of Eligible U.S. Person entity] certifies that:

- a) it is a (i) a "qualified institutional buyer" as defined in Rule 144A 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 of the Securities Act and (ii) that it has prior actual experience in the U.S. standardized options markets (collectively, an "Eligible U.S. Person");
- b) it will only place orders for index options or options on individual securities traded on Borsa Italiana (i) which are not fungible or interchangeable with options traded on any market other than Borsa Italiana, (ii) for which positions issued by a clearing Intermediary of Borsa Italiana can be closed out only on Borsa Italiana; and (iii) which do not have, as a component, securities of any U.S. issuer ("Eligible Options");
- c) its transactions in Eligible Options will be for its own account or for the account of another Eligible U.S. Person;
- d) 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 U.S. Person;
- e) it will cause any disposition of an Eligible Option it has purchased or written to be effected only on Borsa Italiana and settled on Borsa Italiana, 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 Intermediary must be made in the designated currency;
- f) it understands that if it has a contract as a writer of an Eligible Option with an Intermediary, margin must be provided to that Intermediary in such form and amount as determined by that Intermediary, and such Intermediary, if a non-clearing Intermediary, must provide margin to its clearing Intermediary in such form and amount as determined by that clearing Intermediary; and if a clearing Intermediary, must maintain, measure, and deposit margin on such option with any relevant clearing entity, in such form and amount as determined by the clearing entity;
- g) if it is an Eligible U.S. Person acting on behalf of another Eligible U.S. Person but is not managing that other person's account, it has obtained from the other Eligible U.S. Person a written representation to the same effect as the foregoing and will provide it to the Intermediary upon demand; and
- h) it will notify the Intermediary of any change in the foregoing representations before it places another order for Eligible Options, and the foregoing representations will be deemed to be made with respect to each order it gives to the Intermediary.

[Insert Name of Eligible U.S. Person Entity]

By [Insert name of appropriate officer of Eligible U.S. Person entity]

Signature: _____

Date: