Exchange Notice

Derivatives – Product Information 04/20

Derivatives: Nordic Equity Options and Index Options in the U.S. and requirements on Exchange Members

On 1 July 2013, the Division of Trading and Markets of the U.S. Securities and Exchange Commission (the “SEC”) provided a class-no-action relief (https://www.sec.gov/divisions/marketreg/mr-noaction/2013/liffe-am-070113.pdf) (the “Class No-Action Relief”) to all foreign options markets, and their members and representatives to, subject to certain conditions, familiarize certain registered broker-dealers and large financial institutions in the United States (“Eligible Broker-Dealers/Eligible Institutions” and individually “Eligible Broker-Dealer” or “Eligible Institution”, as defined below) with certain options traded on their markets (“Eligible Options”, as defined below).

As of 15 January 2020, Nasdaq Stockholm AB (“the Exchange” or “Nasdaq Stockholm”) has joined the Class No-Action Relief, which allows for Exchange members to enter into transactions in Eligible Options with or on behalf of Eligible Broker-Dealers or Eligible Institutions in the United States.

In order to utilise the Class No-Action Relief, the relevant Exchange member shall comply with all terms and conditions set forth in the Class No-Action Relief, which are also included in this Exchange Notice. For the avoidance of doubt, a person located in the United States is not allowed Direct Electronic Access in relation to Eligible Options.

Definition of an Eligible Broker-Dealer or Eligible Institution

As set out in the Class No-Action Relief, an Eligible Broker-Dealer or Eligible Institution is an entity that meets any of 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 (the “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 U.S. Securities Exchange Act of 1934 (the “Exchange Act”)).

Requirements on Exchange members that wish to engage in familiarization activities in the United States

As informed in regulatory notices on 2 and 18 December 2019, the Exchange has, effective 15 January 2020, amended i.a. Section 1.1.13 of the Exchange Rules of Nasdaq Derivatives Markets to include the following:
“If an Exchange Member takes advantage of the U.S. Securities and Exchange Commission’s 1 July 2013 Class No-Action Relief to enter into transactions in Eligible Options with or on behalf of Eligible Broker-Dealers or Eligible Institutions (as defined in the Class No-Action Relief) in the United States with specified equity options or equity index options, it shall comply with all terms and conditions set forth in the Class No-Action Relief, including obtaining and maintaining a record of the representations set forth in the Class No-Action Relief.”

Consequently, the Exchange member shall not familiarize with Eligible Options any client located in the United States that is not an Eligible Broker-Dealer or Eligible Institution. An Exchange member may familiarize with Eligible Options any client located in the United States that is an Eligible Broker-Dealer or Eligible Institution, subject conditions set forth in the Class No-Action Relief, which are also included in this Exchange Notice.

All Exchange members are advised that, under U.S. law, members of a foreign options market (i.e. the Exchange, 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. All Exchange members are also advised 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 the Exchange are not available for sale to U.S. persons.

Eligible Options comprise of certain single stock options and index options. The most recent list of Eligible Options, as amended from time to time, is available on the Exchange’s website:

Before entering into transactions with or on behalf of their Eligible Broker-Dealer or Eligible Institution client, the Exchange member must obtain and maintain a record of representations from such client, as prescribed in the Class No-Action Relief and as set out below. The representations must be signed by an appropriate officer of the Eligible Broker-Dealer or Eligible Institution. A template for obtaining the representations set forth in the Class No-Action Relief is attached to this Exchange Notice and is also available on the Exchange’s website:

Representation from the Eligible Broker-Dealer or Eligible Institution

Before entering into transactions with or on behalf of their Eligible Broker-Dealer or Eligible Institution client, the Exchange member must obtain and maintain a record of the following representations from such client, as prescribed in the Class No-Action Relief:

1. Its name and address
2. 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 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;

3. 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;

4. 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;

5. It will cause any disposition of an Eligible Option it has purchased or written to be effected only on Nasdaq Stockholm and settled on Nasdaq Clearing AB, 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 Exchange member must be made in the designated currency;

6. It understands that if it has a contract as a writer of an Eligible Option with an Exchange member, margin must be provided to that Exchange member in such form and amount as determined by that Exchange member, and such Exchange member, if a non-clearing member of Nasdaq Clearing AB, must provide margin to its clearing member; and if a clearing member of Nasdaq Clearing AB, must maintain, measure, and deposit margin on such Eligible Option with Nasdaq Clearing AB in such form and amount as determined by Nasdaq Clearing AB;

7. 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 Exchange member upon demand;

8. It will notify the Exchange 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 Exchange Member; and

9. It agrees that the Exchange member may provide Nasdaq Stockholm with information in relation to activities carried out on Nasdaq Stockholm upon request, in accordance with the conditions of the Class No-Action Relief.

Additional SEC requirements

The Class No-Action Relief requires the Exchange to comply with and assure compliance with each of the representations and conditions contained in the Class No-Action Relief. Furthermore, the Class No-Action Relief...
Relief requires that the Exchange is able and willing to provide relevant information concerning the Exchange members to the SEC on request.

For further information of this Exchange Notice, please contact your Nasdaq representative below.

Nasdaq Derivatives Markets

Tomas Körberg
Product Manager, Equity Derivatives
Phone +46 8 405 6883

Niklas Ramstedt
Senior Associate General Counsel
Phone +46 8 405 6112