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AMERICA • ASIA PACIFIC • EUROPE

December 21, 2020

Via Email at tradingandmarkets@sec.gov

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 the National Stock Exchange of India Ltd. 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 National Stock Exchange of India Ltd. (“NSE”), we are writing to provide you with a notification of NSE’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 As described below, this notification relates exclusively to equity index options listed on NSE.

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 familiarize

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.” NSE 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

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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 NSE, 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.

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].”

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).

DESCRIPTION OF NSE

NSE, headquartered in Mumbai, India is the largest securities and derivatives exchange operating in India in terms of trading volume, and is a Foreign Options Market, as defined in the Class Relief. NSE was granted formal approval as an exchange under the Securities Contract Regulation Act, 1956 (the “SCR Act”), in 1993 and commenced operations in 1994. NSE is regulated by the Securities and Exchange Board of India (“SEBI”). NSE has a fully-integrated business model comprising of exchange listings, trading services, clearing and settlement services, indices, market data feeds, technology solutions and financial education offerings. NSE operates four separate segments: (a) the Capital Market segment (where equities and retail debt trades are executed), (b) the Debt Market segment, (c) the Futures and Options segment, and (d) the Currency Derivative segment.

NSE oversees compliance by members and listed companies with the rules and regulations of the exchange. Membership of NSE is offered in four categories:

- (i) trading members (members who execute trades on their own account and for clients but clear and settle trades through other members);
- (ii) trading cum self-clearing members (members who execute trades and clear and settle trades on their own account and for clients);
- (iii) trading cum clearing members (members who execute trades on their own account and for clients, and who can also settle trades for themselves and other members); and
- (iv) professional clearing members (members who only clear and settle trades of clients and other members).

Membership can be applied for in any of the four segments.

NSE is a demutualized exchange, in which the ownership and management is completely divorced from the right to trade on it. NSE is a public limited company, owned by the leading institutional investors in India. Ownership, management and trading are handled by three different sets of people. NSE is primarily owned by a set of leading financial institutions, banks, insurance companies and other financial intermediaries and is managed by professionals, who do not directly or indirectly trade on NSE. This eliminates any conflict of interest and helps NSE to pursue policies and practices within a public interest framework.

NSE is a self-regulatory organization (“SRO”), similar to the SRO status of U.S. securities exchanges. The two operative statutes governing NSE and the Indian securities market are the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) and the SCR Act. The main governmental regulatory body exercising oversight over NSE is SEBI. SEBI was established by the Central Government of India under the aegis of the SEBI Act and is responsible for regulating securities and derivatives trading in India. Under the SEBI Act, SEBI is granted statutory powers to protect the interests of investors, promote the development of the securities market and regulate the securities market. The SCR Act provides for direct and indirect control of virtually all aspects of securities and derivatives trading, including the operations of exchanges. It gives the SEBI jurisdiction over NSE and allows NSE to frame its own regulations in conformity with the criteria set out in the SCR Act and the various rules and regulations of SEBI adopted from time to time.

DESCRIPTION OF ELIGIBLE OPTIONS

The Eligible Options that are the subject of this notification are options contracts that NSE offers or may in the future offer on various equity indices, such as NIFTY 50 and NIFTY Bank.⁵ The Eligible Options are not fungible or interchangeable with options traded on any market other than NSE. In addition, each position in an Eligible Options on NSE can be closed out only on NSE.

CLASS RELIEF AND REPRESENTATIONS

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

- NSE will provide Commission staff promptly upon request with a list of the specific equity index options covered by the request for relief and will identify a primary listing market for each underlying index component;
- NSE has taken steps to comply with, and assure continued compliance by NSE, 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 NSE, its personnel and its members 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.

Pursuant to the Class Relief, NSE further represents that:

- NSE is, and shall remain to be, an organized exchange operated and regulated outside of the United States (*i.e.*, in India);
- NSE does not engage in any general solicitation or general advertisements concerning Eligible Options in the United States;
- NSE 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 NSE);

⁵ A more detailed description of Options Contracts offered by NSE is available at: https://www1.nseindia.com/products/content/derivatives/equities/contract_specifitns.htm. This notification relates only to equity index options.

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.

- NSE 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 NSE;
- With respect to the Eligible Options it intends to offer and sell in the United States, NSE has in place a market-to-market surveillance sharing agreement with the primary market for the underlying index components or other surveillance sharing arrangement (e.g., an information sharing agreement between the respective regulatory authorities of NSE and the market for the underlying index components) through which NSE would be able to obtain information concerning trading in the underlying index components;
- NSE is supervised by SEBI, which is a signatory 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 NSE are obligated to provide information to or otherwise assist NSE in relation to activities carried out on the exchange, and NSE is able to provide, and would provide, information obtained from a member or participant to the Commission upon request;⁸
- NSE advises its members that, under U.S. law, members of NSE 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;
- NSE 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;
- NSE advises its members that options on securities of U.S. issuers, or on an index that includes any securities of U.S. issuers, that would be traded on NSE would not be available for sale to U.S. persons;⁹ and
- NSE 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.

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.

⁹ No such index options are currently listed for trading on NSE.

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

Very truly yours,



Michael S. Sackheim

CC: National Stock Exchange of India Ltd.
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