

# Conclusions on Further Consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules

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## I. INTRODUCTION

1. In July 2014, the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) issued a joint consultation paper (**Consultation Paper**) on proposals for implementing mandatory reporting and related record keeping obligations for OTC derivative transactions. A draft of the proposed legislation setting out these requirements, i.e. the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (**Rules**), was also attached to the Consultation Paper.
2. In November 2014, the HKMA and SFC issued a joint conclusions paper (**Conclusions Paper**) summarising the market's comments on the July consultation, and the HKMA and SFC's responses to those comments. The Conclusions Paper also consulted further on three ancillary matters (**Further Consultation**).
3. The deadline for submitting comments on the three ancillary matters was 23 December 2014. Some comments were submitted after the deadline but these were also considered.
4. We received a total of 10 written submissions from a range of respondents including industry bodies, a provider of market infrastructure and a professional body. A list of the respondents (other than those that requested to remain anonymous) is set out at [Appendix A](#) and the full text of their comments (unless requested to be withheld from publication) can be viewed on the websites of the HKMA ([www.hkma.gov.hk](http://www.hkma.gov.hk)) and the SFC ([www.sfc.hk](http://www.sfc.hk)).
5. This Paper summarises the market's feedback to the Further Consultation (including in respect of matters other than the three ancillary matters mentioned above), and the HKMA and SFC's responses to such feedback. This Paper should be read together with the July 2014 Consultation Paper and November 2014 Conclusions Paper.
6. We take this opportunity to thank everyone who took the time and effort to comment on the proposals. Your comments and suggestions have been most useful, and have helped us refine and finalise relevant aspects of the regime.

## II. EXECUTIVE SUMMARY

### A. *Background*

7. In March 2014, the Legislative Council (**LegCo**) passed the Securities and Futures (Amendment) Ordinance 2014, which introduced a regulatory framework for the OTC derivatives market in Hong Kong. Among other things, the framework allows for the implementation of mandatory reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions. It also envisages that the precise ambit of these obligations, and their related details, will be set out in rules to be made by the SFC with the HKMA's consent and after consultation with the

Financial Secretary (**FS**).

8. The new OTC derivatives regime is intended to be implemented in phases, starting with implementation of the broad framework of the regime, and introduction of mandatory reporting, and related record keeping, for a specified range of OTC derivative products. A consultation paper on this first phase was jointly issued by the HKMA and SFC in July 2014, followed by a conclusions paper published in November 2014. The Conclusions Paper also sought further views on the following three matters –
- (a) the proposed requirements for reporting valuation transaction information, including the proposed reporting timeframe, implementation timetable and approach,
  - (b) the proposed list of jurisdictions to be designated for the purposes of the masking relief, and
  - (c) the proposed list of markets and list of clearing houses to be prescribed by the FS for the purposes of the definition of “OTC derivative product”.

## ***B. Main Comments and Concerns***

9. The main comments received and our responses to these are as follows.

### **Reporting of Valuation Transaction Information**

10. We have proposed that valuation information on transactions should be reported on a daily basis. In terms of the valuation information to be reported, the Further Consultation proposed as follows –
- (a) For transactions that are cleared through a central counterparty (**CCP**), entities should report the valuation determined by the CCP.
  - (b) For non-centrally cleared transactions where the counterparties have agreed to exchange margins, entities should report the valuation that the counterparties have mutually agreed for the purposes of exchanging margin.
  - (c) For other non-centrally cleared transactions, entities should report the valuation based on the methodology that the counterparties have mutually agreed.
11. However, some respondents expressed difficulty in reporting valuations as described above, and suggested that the reporting of internal valuation should be allowed. There were also concerns that a CCP’s valuation determination may not be available to reporting entities in time for them to fulfil the reporting requirement, and that entities should instead be permitted to report such information within two days of receiving it

from the CCP (or the clearing broker). Moreover, we received a suggestion to further consult on this requirement before implementation.

12. In light of the feedback received, we plan to conduct further consultation on the details of the requirement to report valuation transaction information. We will take into consideration the comments received on this occasion when refining the proposals in this area.

### **Designation of Jurisdictions for Masking Relief**

13. The Further Consultation sought views on the proposed list of jurisdictions to be designated for the purposes of the masking relief.
14. We received suggestions to add three additional jurisdictions (i.e. Saudi Arabia, Brunei and Kuwait) to the list on the basis that the application of local privacy and confidentiality rules in these jurisdictions is uncertain. However, as no legal opinion was provided to support this view, we do not see the need to add these jurisdictions to the list. We are mindful also that masking is only intended as a temporary measure to be tolerated where necessary. The final list of jurisdictions to be designated will therefore remain the same as set out under paragraph 126 of the Conclusions Paper. These are reproduced in [Appendix B](#) for ready reference.
15. Respondents also sought clarification on the procedures for proposing additions to the designated list of jurisdictions. Given that the masking relief is intended as a temporary measure, and that it will ultimately be withdrawn in line with global efforts to remove barriers to reporting, we expect the list to be shortened over time, not lengthened. Nevertheless, if market participants consider that there are exceptional circumstances justifying an addition, they should approach the HKMA or SFC as soon as possible. Requests for additions will be closely scrutinised, and will have to be fully substantiated and supported by an independent legal opinion.
16. There was also a suggestion to do away with the designated list altogether, and to instead allow masked reporting on the basis of a legal opinion obtained from an independent legal adviser. We do not consider such an approach to be appropriate as it could create uncertainties and inconsistencies across market participants, and would also be out of line with international practice.
17. Apart from comments on the list of jurisdictions, we also received comments on other aspects of the masking relief. The first concerns our proposal to allow masking for a limited period of six months after commencement where disclosure requires the counterparty's consent and, despite reasonable efforts, such consent cannot be obtained. There was a request to extend the six-month period to one year. We do not see the need for such extension. The six-month period is already a concession and provides ample flexibility as market participants effectively have until early 2016 to secure consents from their counterparties.

18. Secondly, there was a suggestion that the Rules should include an express provision clarifying that they override any restriction on disclosure imposed by contract or by provision under Hong Kong law. We do not believe such a provision is either necessary or appropriate. We are also not aware of any restrictions under Hong Kong law that would conflict with the mandatory reporting obligations.

### **Prescriptions of Markets and Clearing Houses**

19. The Further Consultation sought views on the proposed list of stock and futures markets, and the proposed list of clearing houses, to be prescribed for the purposes of the definition of “OTC derivative product”. Products traded on such prescribed markets, and cleared through such prescribed clearing houses, will be excluded from the definition of “OTC derivative product” under the Securities and Futures Ordinance (SFO), and hence fall outside the scope of the new OTC derivatives regime.
20. We received suggestions to add a further 15 markets and clearing houses to the proposed lists, which we agree to and will incorporate. The 15 markets and clearing houses are listed under paragraph 47 below, and the final list of markets and list of clearing houses to be prescribed are set out in [Appendix C](#).
21. There were also suggestions to include US swap execution facilities and EU multilateral trading facilities. However, as these operations are more commonly used for executing OTC derivative transactions, we do not propose to include them at this stage. That said, as we gain a better understanding of activities in the OTC derivatives market (including through data collected under the mandatory reporting obligation), we can reassess the suitability of excluding products traded on such operations for the purposes of mandatory reporting.
22. A few respondents asked about the process for adding/removing markets and clearing houses to/from the prescribed lists. The lists are essentially subsidiary legislation made by the FS. Amendments to them are therefore subject to the legislative process. Market participants who wish to initiate amendments to the lists should approach either the HKMA or SFC to express their concerns. We would note however that the current lists have been compiled after extensive discussion with the industry and hence we do not expect the need for significant amendments in the near future.

### **Other Issues**

23. Apart from the three ancillary points on which further views were sought, we also received comments, and requests for clarification, on a few other aspects of the mandatory reporting and related record keeping obligations.
24. *Futures and options contracts*: Clarification was sought on the treatment of: (i) futures and options contracts that are traded “off market” but then registered on a market and cleared through a clearing house; and (ii) back-to-back transactions with clearing

brokers that represent indirect exposures to futures or options contracts. We clarify that, in both cases, so long as the futures or options contract is executed/registered on a prescribed market and cleared through a prescribed clearing house, the related “off market” and back-to-back transaction will not be subject to mandatory reporting.

25. *Definition of “affiliate”*: Respondents welcomed the HKMA and SFC’s decision to defer implementation of the fund manager reporting obligation (i.e. the obligation that authorized institutions (**AIs**) and licensed corporations (**LCs**) registered/licensed for Type 9 regulated activity (**RA**) should report transactions that they have entered into in their capacity as fund managers). However, they noted that this was not fully reflected in the revised proposals given how the obligation to report “conducted in Hong Kong” transactions was cast. We acknowledge this concern and propose to address this by amending the definition of “affiliate” so that it expressly excludes collective investment schemes.
  
26. *Timeframe for reporting “conducted in Hong Kong” transactions*: Some respondents noted that although the concession period has been extended, the systems for identifying “conducted in Hong Kong” transactions will still have to be in place by the beginning of the concession period. There were concerns that this may be difficult to achieve given that the Rules were expected to commence by the end of Q1 of 2015. Due to these concerns, they suggested that the reporting obligation not apply to “conducted in Hong Kong” transactions that are executed during the concession period. We note respondents’ concerns but remain of the view that transactions executed after the commencement of the Rules should be reported. In any case, with respect to “conducted in Hong Kong” transactions, we do not expect the final version of the Rules will be materially different from the version attached to the November 2014 Conclusions Paper. Market participants can therefore refer to that earlier draft to carry out necessary system enhancements. Moreover, the HKMA and SFC are preparing a set of Frequently Asked Questions (**FAQs**) to assist market participants’ understanding of, and compliance with, the Rules. Additionally, the HKMA is preparing a set of Supplementary Reporting Instructions (**SRIs**). Both will be published before the Rules come into effect. Drafts of the FAQs and SRIs have also been provided to the industry for comments, and to further facilitate their preparation for implementation. Moreover, subject to the legislative process, it is now expected that the Rules will come into operation around the second week of July 2015. We believe this revised implementation timetable should provide the industry with sufficient time to prepare for implementation.
  
27. *Record keeping obligations*: Respondents expressed concerns about the requirement to keep certain records in a manner that enables them to be readily accessible and searchable by reference to the relevant OTC derivative transaction and counterparty. There were also concerns about the requirement to keep records of communications leading to the execution of an OTC derivative transaction. In light of these concerns, we propose to only require records to be kept in a manner that enables them to be readily accessible, and to remove the requirement to keep records which evidence the communications and instructions that result in the transaction being executed.

28. *Reporting of UTIs:* One respondent raised concerns about the requirement to provide unique transaction identifiers (**UTI**) when reporting transactions, particularly for non-cleared trades, and suggested that UTIs be provided only in respect of trades that are cleared through a CCP. We believe the reporting of UTI is critical to assisting data analysis. Therefore, we remain of the view that it is necessary to require such reporting. We note also that in many cases the transactions will already have a UTI in the form of the Unique Swap Identifier (**USI**) used in the US, the Trade ID (**TID**) used in the European Union, or both. In such cases, we expect reporting entities to provide the USI and TID already available. For transactions where no USI or TID is available, reporting entities should endeavour to provide a transaction identifier that is bilaterally agreed between the counterparties to the transaction, and which is also both: (i) unique; and (ii) shared and paired between the counterparties concerned. We understand also that market participants are in the process of developing systems for generating such bilaterally agreed identifiers (**BAI**). At the same time, the industry as a whole is also working towards developing common standards and practices for generating transaction identifiers that are also internationally acceptable. In view of this, we propose as follows –
- (a) The submission of BAI will be optional until the end of January 2016. The submission of the USI and TID (where available) will nevertheless remain mandatory.
  - (b) From 1 February 2016 onwards, reporting entities will have to submit BAI where no USI or TID is available.
  - (c) Additionally, for transactions reported before 1 February 2016, and in respect of which no BAI was submitted at the time of reporting, a BAI may subsequently have to be supplemented.
  - (d) The HKMA may (on or after 1 February 2016) require the BAI to follow a particular format or practice. In that event, all previously submitted BAI that follow a different format or practice may have to be re-submitted.
  - (e) It should be noted that although the reporting of BAI is optional prior to 1 February 2016, market participants are nevertheless expected to exercise best endeavours in the meantime to: (i) use the time leading up to the commencement of the mandatory reporting regime and concession period to set up the necessary systems for generating and reporting BAI; (ii) agree a BAI in respect of transactions that have to be reported, even if they are unable to report the BAI immediately; and (iii) when sharing and pairing a BAI, adopt a methodology which is in line with agreed industry best practices for generating, communicating and matching transaction identifiers. Market participants should also note that where a BAI has been agreed, and irrespective of whether it has been reported, a record of it has to be kept as per the record keeping obligation.
29. Respondents also sought clarification on certain other aspects of the mandatory reporting obligation. These are discussed in greater detail in paragraphs 69 to 73 below.



### **C. *Next Steps***

30. We are in the process of finalising the Rules, which will be introduced into LegCo for negative vetting in May 2015 together with two other pieces of subsidiary legislation relevant to implementation of the first phase of the regime. Subject to the legislative process, it is expected that the mandatory reporting and related record keeping obligations for regulated entities (i.e. AIs, approved money brokers (**AMBs**), LCs and CCPs operating in Hong Kong) will take effect around the second week of July 2015.
31. Our current plan is to conduct the next two rounds of public consultation later this year. The first will focus on the proposed product expansion for the mandatory reporting obligation and revised proposal for the requirement of reporting valuation transaction information. The second will focus on the detailed proposals for implementing mandatory clearing and related record keeping obligations.

## **III. COMMENTS RECEIVED AND OUR RESPONSE**

### **A. *Reporting of Valuation Transaction Information***

32. We received various comments and suggestions on the proposed requirement to report valuation transaction information, which we discuss below.
33. For transactions that are cleared through CCPs, we proposed that reporting entities should report the valuation determined by the CCP. However, respondents noted that many market participants value transactions using internal valuation methodologies. They therefore suggested that reporting entities should be allowed to report in-house valuations for cleared transactions. A few respondents were also concerned that a CCP's valuation determination may not be available to reporting entities in time for them to report within the required timeframe. It was suggested therefore that reporting entities be allowed to report CCP valuations within two days of receiving them from the CCP or the clearing broker.
34. For non-centrally cleared transactions where the counterparties have agreed to exchange margins, respondents expressed difficulty in reporting the valuation that is mutually agreed between the counterparties for the purpose of exchanging margin. In particular, some noted that margin may not be exchanged on a daily basis and counterparties may not be able to reach agreement on valuation in time to fulfil the reporting requirement. Moreover, it was noted that margin is often determined on a portfolio basis and counterparties may not seek to agree valuations for each individual transaction. For other non-centrally cleared transactions, respondents noted that counterparties do not necessarily agree on a valuation methodology. There were suggestions therefore to allow reporting entities to use internal valuations when reporting non-centrally cleared transactions as well.
35. A few respondents stressed that any requirement to report valuation transaction information should be aligned with similar requirements in overseas jurisdictions. It

was also suggested that sufficient lead time should be provided for the industry to comply with the requirement. Furthermore, we received various suggestions on the proposed implementation timetable for this requirement. There were also suggestions to further consult the industry on the detailed requirements for reporting valuation transaction information before implementation.

36. In view of the various concerns raised, we intend to review our proposals on reporting valuation transaction information. We will also conduct further consultation on this requirement before it is implemented. The various comments and suggestions received in this latest round of consultation will also be taken into consideration when we further refine the proposals in this area.

### ***B. Designation of Jurisdictions for Masking Relief***

37. As a transitory measure, we propose to provide a masking relief which will allow reporting entities to mask certain counterparty identifying information when reporting a transaction. The relief will however apply in certain limited circumstances only, including where: (i) the disclosure is prohibited under the laws of an overseas jurisdiction, or by an authority or regulatory organization in such jurisdiction; and (ii) that jurisdiction has been designated by the SFC with the HKMA's consent. The Further Consultation sought views on the proposed list of jurisdictions to be designated for this purpose.
38. We received suggestions to add Saudi Arabia, Brunei and Kuwait to the list of designated jurisdictions on the basis that the application of local privacy and confidentiality rules is uncertain in these jurisdictions as Islamic law applies. However, no independent legal advice or opinion was provided to support this view. Consequently, we do not consider that the case for designating these jurisdictions has been made out. In this regard, we are mindful also that the masking of counterparty identifying particulars is contrary to the G20's objectives, and that masking should only be tolerated where absolutely necessary. We therefore propose to stay with the list of 18 jurisdictions set out under paragraph 126 of the Conclusions Paper and reproduced in Appendix B. The list of jurisdictions will be designated pursuant to Rule 26(3) of the Rules.
39. One respondent suggested that we should do away with the designated list altogether, and instead allow market participants to obtain and rely on a legal opinion for the purposes of satisfying themselves that a particular jurisdiction prohibits the disclosure of counterparty identifying particulars. However, as noted previously, such an approach can lead to uncertainties and inconsistencies across market participants. We therefore remain of the view that masking on the basis of a legal barrier under the laws of an overseas jurisdiction should only be permitted in respect of jurisdictions on a designated list. Such an approach would be both prudent and in line with international practice. A point to note here is that the list of jurisdictions is not intended to enable market participants to automatically mask counterparty identifying particulars when transacting with counterparties from any of those jurisdictions.

Rather, they should carry out some reasonable due diligence to ensure that barriers to disclosure still exist in the relevant jurisdiction, and that those barriers still prevent disclosure of counterparty identifying particulars in respect of the particular transaction in question. This does not entail obtaining a formal legal opinion to support masking in a particular case, but would, at a minimum, require them to keep abreast of developments that might trigger changes which effectively allow the reporting of counterparty identifying particulars in a particular case. (So, for example, if barriers in jurisdiction X cease to apply in respect of certain types of transactions, or transactions entered into after a particular date, then reporting entities that enter into such types of transactions, or transactions after such date, should no longer be submitting masked particulars.)

40. One respondent asked about the procedures for proposing additions to the designated list of jurisdictions for the masking relief. As emphasised in both the Consultation Paper and the Conclusions Paper, the masking relief is intended as a temporary/transitory measure only. Ultimately, it will be removed. The international regulatory community is exploring possible options in this regard, including setting a deadline after which masking will no longer be possible. This matter has also been raised with the Financial Stability Board (**FSB**) which has been asked to take action to help to resolve issues arising from barriers to trade reporting. In view of this, the HKMA and SFC expect the designated list of jurisdictions to be shortened over time, not lengthened. To that end, we will continue to monitor international development in this area, and look to the FSB's Thematic Peer Review on OTC Derivatives Trade Reporting when considering the list of designated jurisdictions to be maintained.
41. The above said, if market participants consider that there are exceptional circumstances which justify an addition to the list of designated jurisdictions, they may write to either the HKMA's Financial Stability Surveillance Division, or to the SFC's Supervision of Markets Division. Market participants will be expected to explain and justify the exceptional circumstances that necessitate the addition (including, if necessary, providing details of relevant transactions that are affected), and provide an independent legal opinion confirming the need for the addition. The legal opinion should also cite the particular legal provisions that prohibit the disclosure of counterparty identifying particulars, and explain why these provisions either did not previously pose a barrier or (if new) were added subsequently.
42. Market participants should note that requests to add jurisdictions to the designated list will be scrutinised closely, and will not be acceded to lightly. The HKMA and SFC will also make reference to international practice when considering such requests.
43. Apart from commenting on the proposed list of jurisdictions to be designated, market participants also took the opportunity to comment on other aspects of the masking relief.
44. First, we had previously proposed that the masking relief should also be available in cases where disclosure of counterparty identifying particulars was not possible

without the consent of the relevant counterparty and, despite reasonable efforts, such consent could not be obtained. However, this relief would only apply in respect of transactions entered into before, or within six months after, the Rules first take effect. One respondent suggested that given the heavy demands facing institutions implementing OTC derivatives reporting systems across a number of jurisdictions, along with other heavy compliance requirements across the board, the period for obtaining client consent for the purposes of masking relief be extended from six months to one year. We do not see the need for such an extension. The six-month period is already a concession and provides sufficient flexibility. Market participants have also had ample notice of the upcoming need to obtain counterparty consent where needed since this requirement was featured in the July 2014 Consultation Paper. The current expectation is that the Rules will take effect around the second week of July 2015. This means market participants will have until early 2016 to secure consents from their counterparties. We do not see a need to extend this further.

45. One respondent suggested that the Rules should include an express provision clarifying that, with respect to transactions with Hong Kong counterparties, the rules should be regarded as overriding any restriction on disclosure imposed by contract or by any legislative, regulatory or administrative provision under Hong Kong law. We do not believe such an overriding provision is either necessary or appropriate. In the case of restrictions imposed by contract, we believe it is not uncommon for standard contract terms to include a provision that permits disclosure where required by law. Where such standard provision does not exist, we believe it would be more reasonable for the counterparty to be made aware of the disclosure requirement so that an appropriate consent can be given. As for restrictions imposed by any legislative, regulatory or administrative provision under Hong Kong law, we do not believe there are any such restrictions that would be relevant in the context of reporting counterparty identifying particulars. Including such an overriding provision may therefore confuse more than clarify.

### ***C. Prescriptions of Markets and Clearing Houses***

46. As explained in the Conclusions Paper, the definition of “OTC derivative product” under section 1B of Part 1 of Schedule 1 to the SFO excludes products that are traded on a prescribed stock or futures market, and cleared through a prescribed clearing house. It follows that transactions in such excluded products would not be “OTC derivative transactions”. The Further Consultation sought views on the proposed list of stock/futures markets and proposed list of clearing houses to be prescribed for this purpose.
47. We received suggestions from an industry association to add the following markets and clearing houses to the proposed lists:

#### Markets:

- Asia Pacific Exchange Limited
- Borsa Istanbul Inc.

- BOX Options Exchange LLC
- CBOE Futures Exchange, LLC
- Dubai Mercantile Exchange Limited
- FEX Global Pty Ltd.
- International Securities Exchange, LLC
- Minneapolis Grain Exchange, Inc.
- National Stock Exchange of Australia Limited
- OneChicago, LLC
- SIM Venture Securities Exchange Ltd.
- Tel Aviv Stock Exchange Ltd.

Clearing houses:

- MAOF (Derivatives) Clearing House Ltd.
- Minneapolis Grain Exchange, Inc.
- TASE Clearing House Ltd.

48. It was submitted that the above markets and clearing houses meet the criteria set out in paragraph 131 of the Conclusions Paper, namely: (i) they operate in jurisdictions whose securities or futures regulator is a member of the International Organization of Securities Commissions; (ii) their regulatory status is comparable to that of a recognized exchange company or recognized clearing house under the SFO; and (iii) they are regulated by the relevant market regulator, banking regulator or government agency in their jurisdictions. We have considered each of the above markets and clearing houses, and agree that they should be prescribed. The final list of markets and the final list of clearing houses to be prescribed are set out in Appendix C.
49. There were also requests to add China Foreign Exchange Trading System and Shanghai Clearing House to the proposed lists. However, after further discussion with respondents, it was agreed that their inclusion may not be suitable at this stage taking into account the range of services they provide.
50. We also received suggestions to reconsider including US swap execution facilities (**SEFs**) and EU multilateral trading facilities (**MTFs**) in the proposed lists since they too could be said to meet the criteria mentioned in paragraph 48 above. As mentioned in the Conclusions Paper, we believe that SEFs and MTFs are more commonly used for executing OTC derivative transactions. Their addition to the list of markets to be prescribed could thus inadvertently narrow the scope of OTC derivative transactions beyond what is intended. In view of this, we believe the more prudent approach would be to limit the lists to the more traditional exchanges for now. Over time, as we receive data under the reporting obligation and thereby gain a better understanding of activities in the OTC derivatives market, we can reassess whether products traded through certain SEFs or MTFs should be excluded from the reporting obligation.
51. A few respondents sought clarification on the process for adding/removing markets and clearing houses to/from the prescribed lists, including the process for market participants to make recommendations, the information that market participants should provide, and the timeframe involved. It was also suggested that the process

should allow for changes to be made promptly. The lists are to be prescribed by the FS and constitute subsidiary legislation. If market participants wish to initiate any amendment, they may approach the HKMA's Financial Stability Surveillance Division, or the SFC's Supervision of Markets Division to discuss their concerns and explain the reasons for any proposed addition or removal. We would add however that the current list has been derived after extensive discussion with the industry and hence we do not expect any significant changes in the near future. As regards the timeframe, this will depend on the adequacy and completeness of information provided when requesting an amendment. Time will also need to be allowed for any consultation and for the legislative process. At a minimum, we would expect a change to require a lead time of six to eight months.

52. One respondent sought clarification on the proposed treatment of: (i) futures and options contracts which are traded 'off market' but then registered on a market and cleared through the relevant CCP; and (ii) 'back-to-back' transactions with clearing brokers that represent indirect exposures to futures or options contracts and which may arise automatically or under the terms of a contract where the broker executes a futures or options contract on the relevant market on behalf of a client but assuming a principal to principal relationship with the CCP upon clearing.
53. With respect to (i), so long as the contracts have subsequently been registered on a prescribed futures market and cleared through a prescribed clearing house (and in accordance with their respective rules), they will fall outside the definition of "OTC derivative transaction" and hence not be subject to mandatory reporting. With respect to (ii), we consider that the back-to-back transactions should be treated as part of the exchange-traded contract. Accordingly, so long as the contract is executed on a prescribed market and cleared through a prescribed clearing house, the back-to-back transaction should also fall outside the definition of "OTC derivative transaction" and hence not be subject to mandatory reporting.
54. One respondent suggested that it may be more appropriate to exclude listed derivatives from the mandatory reporting obligation by providing a definition of "listed derivatives", which is excluded from the definition of "OTC derivative product". However, in order to ensure that the term "listed derivatives" is cast appropriately and serves its purpose, it will still be necessary to specify where the derivatives are listed. The suggestion does not therefore appear to be substantially different from what is proposed under paragraphs 2(a) to (c) of Section 1B of Part 1 of Schedule 1 to the SFO. We will nevertheless keep the definition of "OTC derivative product" under review as the regime takes effect, and introduce appropriate amendments as necessary.

#### **D. Other Issues**

55. Apart from commenting on the three ancillary issues that were the subject of the Further Consultation, respondents also took the opportunity to comment on other aspects of the Rules. We set out below some of the more significant comments

received, and our responses to them.

### **Issues relating to Corporate Fund Affiliates and Fund Managers**

56. The Conclusions Paper noted that we would defer the requirement for AIs and LCs registered/licensed for Type 9 RA to report transactions that they have entered into in their capacity as fund managers (**fund manager transactions**). Respondents welcomed this change, but noted that it was not fully reflected in the revised proposals. Specifically, the obligation for AIs and LCs to report transactions conducted by them on behalf of an affiliate might still capture fund manager transactions because the definition of “affiliate” (even under the revised proposals) could cover corporate funds that are controlled by, or under the same control as, the AI/LC. We note and agree with the concerns raised. To address this, we propose to amend the definition of “affiliate” so that it expressly excludes collective investment schemes (i.e. funds).
57. Separately, and in view of the proposal to defer the reporting of fund manager transactions, one respondent asked whether the licensing requirement for fund managers could also be postponed to allow more time to prepare for the licensing applications and reporting requirements. The new Type 11 and Type 12 RAs and the amended Type 7 and Type 9 RAs are not intended to be implemented until a later stage as their introduction is contingent on changes to related rules (e.g. the Financial Resources Rules) and codes (e.g. the Code of Conduct for Persons Licensed by or Registered with the SFC). The market will be consulted before these changes are implemented, and hence there will be ample time to prepare for it.

### **Concession Period and Start Date for Reporting of Transactions that are “Conducted in Hong Kong”**

58. In the Conclusions Paper, we agreed to extend the concession period from three months to six months to allow reporting entities more time to report transactions that were still outstanding on the commencement day, and those that were executed during the concession period. Respondents noted however that extending the concession period alone did not suffice because the system capability for identifying “conducted in Hong Kong” transactions that were executed during the concession period would still have to be ready at the beginning of the concession period. They expressed concerns that they might not be able to complete the relevant system enhancement in time given that the Rules are not yet finalised and yet intended to come into effect by the end of Q1 2015. Respondents therefore requested that the reporting obligation not apply to transactions that were “conducted in Hong Kong” during the concession period.
59. After receiving the above comments, the regulators met with industry representatives with a view to better understanding the practical difficulties encountered by individual institutions. In summary, we consider that as a matter of principle, transactions executed after commencement of the Rules should generally be reported to the HKMA via the electronic reporting system developed and operated by or on behalf of

the HKMA (**HKTR**). Therefore we do not favour exempting the “conducted in Hong Kong” transactions executed during the concession period from the reporting obligation. Nonetheless, we acknowledge that some institutions may need more time to complete the necessary system enhancement before they can comply with the relevant reporting requirement. Based on the discussions in the meeting, it is believed that the industry could complete the relevant system set up within three to four months after receiving the necessary information to facilitate their system enhancement.

60. The focus of the relevant system enhancement is on identification of “conducted in Hong Kong” transactions. As we do not expect the final version of the Rules (with respect to “conducted in Hong Kong” transactions) will be materially different from the version attached to the November 2014 Conclusions Paper, relying on the version attached to the Conclusions Paper to carry out the system enhancement should be effective for the purpose. In addition, a set of draft SRIs and FAQs has also been provided to the industry for comments. These provide further guidance on the mandatory reporting obligation and will facilitate the industry to prepare for implementation. We have advised the industry through an industry association (of which the respondents expressing compliance difficulty with respect to the “conducted in Hong Kong” transactions are members) that they should start the relevant system enhancement without further delay based on the November 2014 version of the Rules. Moreover, subject to the legislative process, it is now expected that the Rules will come into operation around the second week of July 2015. We believe the revised implementation timetable should allow institutions sufficient time to complete the necessary system enhancement if they have started the work immediately or shortly after the meeting.

### **Mandatory Record Keeping Obligation**

61. With regard to the record keeping obligation, we had previously proposed (among other things) that: (i) these should include records evidencing the communications and instructions that result in the OTC derivative transactions being executed; and (ii) records should be kept in a manner that enables them to be readily accessible and (except for records of telephone conversations) readily searchable and identifiable by reference to the transaction and counterparty concerned.
62. Several respondents raised concerns about these requirements. In particular, they pointed out that in addition to audio records, there are other communication records (e.g. chat room messages, email messages, etc) that may be difficult to keep in a manner that is readily searchable and identifiable by reference to the relevant OTC derivative transaction and counterparty.
63. We agree that these are valid concerns that need to be addressed. To that end, we propose to amend the requirements described in paragraph 61 above by deleting paragraph 3 of Schedule 2 and Rule 30(b) of the Rules. In other words, reporting entities will not have to keep records of communications and instructions resulting in an OTC derivative transaction being executed, nor will they have to keep records in a



manner that renders them readily identifiable and searchable by transaction and counterparty. However, the records will still have to be readily accessible, which means they will still need to be identifiable and searchable to some extent.

64. With respect to the requirement to keep records for at least five years after the relevant transaction is terminated or reaches maturity, one respondent pointed out that this was out of step with requirements imposed by other jurisdictions where records are only required to be kept for five years from their creation. However, we do not consider it appropriate to cast the record keeping obligation by reference to when transactions are created. It is more appropriate to cast the obligation by reference to when the transaction is terminated or matures, particularly as OTC derivative transactions may have fairly long terms. We also do not believe the proposal to keep documents for five years after termination or maturity is particularly onerous given that: (i) parties to a transaction are likely to keep records for at least the duration of the transaction's lifetime and for some time thereafter – if only to protect their interests in the event of any dispute or disagreement; and (ii) we have now removed the requirement to keep records of communications and instructions leading to the transaction being executed (see preceding paragraph).

### **Reporting of UTI**

65. We had previously proposed that a UTI should be provided when reporting transactions to the HKTR. One respondent noted that for transactions that are not centrally cleared, institutions will need to establish systems to exchange UTI with counterparties before they can comply with UTI reporting requirement. It suggested that UTI should therefore only be reported in respect of trades cleared via a CCP. Since UTI is critical to data analysis, regulators must insist that it be included in every report submitted to the HKTR. We note also that the requirement to report UTI is adopted in other major jurisdictions as well, including the US and the EU.
66. One respondent enquired whether the UTI reported to the HKTR should be shared and paired with the trade counterparty. We confirm that it should. More detailed reporting requirements regarding UTIs will be set out in the SRIs.
67. We understand from further discussions with the industry that there is particular concern about providing UTIs for transactions where neither a USI nor a TID is already available. In such cases, system development is needed to enable counterparties to generate and agree on a BAI that is both: (i) unique; and (ii) shared and paired between the counterparties concerned. Market participants have therefore asked for more time to develop such systems. We note also that the industry as a whole is currently working on developing common standards and practices for generating transaction identifiers that are also internationally acceptable. In view of this, we propose to amend the UTI requirements as follows –
- (a) The submission of BAI will be optional until the end of January 2016. The submission of the USI and TID (where available) will nevertheless remain

mandatory.

- (b) The regulators will not prescribe rules on which counterparty should be the one generating the BAI. The counterparties to a transaction are free to decide this on their own. They are also free to adopt any methodology or formula for generating BAI that they consider appropriate (subject to what is said in paragraph (c) below). However, we would encourage market participants to adopt methodologies and formulae that are in line with industry best practices as ultimately the objective is to harmonise UTI standards as soon as possible.
  - (c) From 1 February 2016 onwards, reporting entities will have to submit BAI where no USI or TID is available. HKMA may require such identifiers to be in line with any practice for generating transaction identifiers that is then internationally adopted. Reporting entities should therefore keep in view any emerging international practice on generating transaction identifiers. The HKMA will also provide guidance nearer the time as to which specific practice it expects market participants to adopt.
  - (d) Additionally, for transactions reported before 1 February 2016, and in respect of which no BAI was submitted at the time of reporting, a BAI may subsequently have to be supplemented. The HKMA may also require such BAI to be in line with any practice for generating transaction identifiers that is then internationally adopted.
  - (e) In the event that the HKMA requires the BAI to follow a particular format or practice (whether on or after 1 February 2016), all previously submitted BAI that follow a different format or practice may have to be re-submitted.
  - (f) It should be noted that although the reporting of BAI is optional prior to 1 February 2016, market participants are nevertheless expected to exercise best endeavours in the meantime to: (i) use the time leading up to the commencement of the mandatory reporting regime and concession period to set up the necessary systems for generating and reporting BAI; (ii) agree a BAI in respect of transactions that have to be reported, even if they are unable to report the BAI immediately; and (iii) when sharing and pairing a BAI, adopt a methodology which is in line with agreed industry best practices for generating, communicating and matching transaction identifiers. Market participants should also note that where a BAI has been agreed, and irrespective of whether it has been reported, a record of it has to be kept as per the record keeping obligation.
68. For completeness, we note that the requirement to provide a user transaction reference is a separate requirement, which will apply from the time the Rules come into effect, and remain in place thereafter. In other words, we regard the requirement to provide UTIs (whether in the form USI, TID or BAI) and the requirement to provide user transaction references as two separate requirements falling under item 7 of Part

4 of Schedule 1 to the Rules.

### **Meaning of “Key Economic Terms”**

69. One respondent requested additional information as to what constitutes “key economic terms” in the context of “conducted in Hong Kong” transactions that are entered into on an electronic trading platform. Further guidance on “key economic terms” and the reporting requirement in respect of “conducted in Hong Kong” transactions” will be set out in the SRIs and FAQs. The draft SRIs and FAQs have been provided to the industry for comments. In brief, the key economic terms of a transaction are stated in the column under the title “Reporting Requirement” in each product template in the HKTR’s Administration and Interface Development Guide, which can be obtained from the HKTR website: <https://hktr.hkma.gov.hk/>.

### **Timetable for Issuance of SRIs and FAQs**

70. Some respondents enquired about the timeline for issuing the requirements / implementation examples (including but not limited to those relating to the treatment of “conducted in Hong Kong” transactions), by means of the SRIs and FAQs. The regulators recognise the importance of these documents to the industry for preparation of systems and procedures for reporting. Recently a set of draft SRIs and FAQs were provided to the industry for comments. We aim to finalise these documents shortly after the issue of this paper. The SRIs and FAQs will take effect at the same time as the Rules.

### **Calculation of Notional Amount for the Purpose of Determining Whether a Person Should be Regarded as an Exempt Person**

71. In relation to Rule 3 (meaning of exempt person) of the Rules, one respondent sought confirmation as to whether, for a multi-branch entity, the calculation of notional amount for the purpose of determining whether the entity should be regarded as an exempt person is based only on transactions booked in its Hong Kong branch. We confirm that this will be the case for an AI incorporated outside Hong Kong (by virtue of Subrule 3(3)). However, for other prescribed persons incorporated in Hong Kong (e.g. a locally-incorporated AI, AMB or LC), the notional amounts of all outstanding derivative transactions within the product class will also include transactions booked in their overseas branch(es).

### **Client Clearing Transactions**

72. One respondent noted the Conclusions Paper mentions that for a centrally cleared transaction involving a clearing service provider, either the CCP or the clearing service provider may be treated as the reporting entity’s “counterparty” for reporting purposes. The respondent sought clarification as to whether the “counterparty” should be: (a) the CCP, where an agency clearing model (i.e. the clearing service provider only acts as the agent but not the true counterparty of the trade created for central

clearing) is used; and (b) the clearing service provider, where a principal to principal clearing model (i.e. the clearing service provider will become the counterparty of a trade between itself and its client and another trade between itself and the CCP) is used. We confirm that this is correct.

73. When the HKMA implemented the interim reporting requirement on licensed banks in 2013, it noted that the interim reporting requirement was a set of “simplified” requirements for transition to the mandatory reporting regime. For avoidance of doubt, the reporting requirement in relation to centrally cleared transactions under the interim reporting requirement will be superseded when the mandatory reporting regime is implemented. The HKMA will formally notify the affected institutions of the transitional arrangement.

#### **IV. CONCLUDING REMARKS AND NEXT STEPS**

74. We are grateful for the many comments and suggestions submitted in response to the Further Consultation. We also appreciate the other comments that were raised, particularly those that have resulted in further changes to the Rules to better reflect the policy intent.
75. As indicated previously, the OTC derivatives regime will be implemented in phases. The HKMA and SFC are currently working on implementing the first phase which entails implementing the broad framework of the new regime, and the introduction of mandatory reporting for a specified range of OTC derivative products. This will require the passage of the following three pieces of subsidiary legislation.
- (a) *The Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015* – This notice will bring into effect provisions of the Amendment Ordinance relating to mandatory reporting and related record keeping, as well as the general framework for the regime.
  - (b) *The Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice* – This notice will set out the list of markets and list of clearing houses proposed to be prescribed (as discussed in paragraphs 46 to 54 above). It will effectively refine the scope of the term “OTC derivative product” under the SFO, and hence of the OTC derivatives regime itself. This is to ensure that the new regime does not capture products that are traded on traditional exchanges and cleared through a CCP.
  - (c) The Rules – These will set out the details of the mandatory reporting and related record keeping obligations. Attached at [Appendix D](#) is the latest version of the Rules. It includes the few further amendments discussed in this paper (i.e. amendments to the definition of “affiliate”, and amendments to Rule 30 and Schedule 2 in respect of the record keeping obligation), as well as a number of drafting changes to better reflect the policy intent. The mark-ups (which only appear on the English version of this paper) show changes since

the version attached in the November 2014 Conclusions Paper.

76. The above pieces of subsidiary legislation are currently intended to be introduced into LegCo for negative vetting in May 2015. Subject to the legislative process, it is hoped that the mandatory reporting and related record keeping obligations for regulated entities (i.e. AIs, AMBs, LCs and CCPs operating in Hong Kong) will take effect around the second week of July 2015. The list of jurisdictions to be designated for the purposes of masking relief will be published in the Hong Kong Government Gazette nearer the time.
77. In the meantime, the HKMA and SFC are also working on developing the detailed rules for the next phase of implementation.
  - (a) First, we are working on extending the mandatory reporting obligation to cover all types of interest rate derivatives and foreign exchange derivatives not covered in the first phase, as well as all other classes of OTC derivative products. We currently plan to consult the market on this extension in late Q2/early Q3 of 2015. The consultation will also discuss our revised proposals for reporting valuation transaction information.
  - (b) Secondly, we are working on developing the detailed requirements for mandatory clearing and related record keeping in respect of dealer-to-dealer transactions. Our current plan is to consult the market on these requirements later this year.
78. We will continue to maintain a close dialogue with the industry as the reform efforts progress. We will also provide further details of the implementation timetable for other aspects of the regime in subsequent consultations and give market participants sufficient lead time to prepare for new requirements.

## **APPENDIX A – LIST OF RESPONDENTS**

(in alphabetical order)

1. Alternative Investment Management Association
2. Depository Trust and Clearing Corporation
3. Global Foreign Exchange Division (of the Global Financial Markets Association)
4. Hong Kong Association of Banks, The
5. Hong Kong Investment Funds Association
6. ICI Global
7. International Swaps and Derivatives Association, Inc.
8. Law Society of Hong Kong, The
9. Anonymous – one respondent requested that its identity and contents of its submission not be published
10. Anonymous – one respondent requested that its identity not be published

**APPENDIX B – LIST OF JURISDICTIONS TO BE DESIGNATED (UNDER  
RULE 26(3)) FOR PURPOSES OF THE MASKING RELIEF**

(in alphabetical order)

1. Algeria
2. Argentina
3. Austria
4. Bahrain
5. Belgium
6. France
7. Hungary
8. India
9. Indonesia
10. Israel
11. Luxembourg
12. Pakistan
13. People's Republic of China
14. Samoa
15. Singapore
16. South Korea
17. Switzerland
18. Taiwan

## **APPENDIX C – REVISED LISTS OF PROPOSED MARKETS AND CLEARING HOUSES TO BE PRESCRIBED**

### **Proposed list of stock and futures markets to be prescribed**

1. Athens Exchange Derivatives Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
2. Athens Exchange Securities Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
3. Baden-Wuerttembergische Wertpapierbörse (Regulierter Markt) operated by Börse Stuttgart AG
4. Bolsa de Madrid operated by Sociedad Rectora de la Bolsa de Valores de Madrid, S.A., Sociedad Unipersonal
5. Bourse de Luxembourg operated by Société de la Bourse de Luxembourg S.A.
6. Budapesti Értéktőzsde (Budapest Stock Exchange) operated by Budapesti Értéktőzsde Zártkörűen Működő Részvénytársaság
7. Electronic Bond Market operated by Borsa Italiana S.p.A.
8. Electronic Open-end Funds and ETC Market operated by Borsa Italiana S.p.A.
9. Electronic Share Market operated by Borsa Italiana S.p.A.
10. Eurex Deutschland operated by Eurex Frankfurt AG
11. Euronext Brussels Derivatives operated by Euronext Brussels N.V./S.A.
12. Euronext Brussels operated by Euronext Brussels N.V./S.A.
13. Euronext Lisbon operated by Euronext Lisbon – Sociedad Gestora de Mercados Regulamentados, S.A.
14. Euronext Paris operated by Euronext Paris S.A.
15. European Energy Exchange operated by European Energy



Exchange AG

16. Frankfurter Wertpapierbörse (Regulierter Markt) operated by Deutsche Börse AG
17. Frankfurter Wertpapierbörse Xetra (Regulierter Markt) operated by Deutsche Börse AG
18. Italian Derivatives Market operated by Borsa Italiana S.p.A.
19. London Stock Exchange Derivatives Market operated by London Stock Exchange plc
20. London Stock Exchange – Regulated Market operated by London Stock Exchange plc
21. Market for Investment Vehicles (MIV) operated by Borsa Italiana S.p.A.
22. MEFF Exchange operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
23. MEFF – Segmento Derivados Energía operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
24. Mercado Continuo Español operated by Sociedad Rectora de la Bolsa de Valores de Madrid, S.A., Sociedad Unipersonal
25. NASDAQ OMX Copenhagen A/S operated by NASDAQ OMX Copenhagen A/S
26. NASDAQ OMX Helsinki (Arvopaperipörssi) operated by NASDAQ OMX Helsinki Ltd.
27. NASDAQ OMX Stockholm AB operated by NASDAQ OMX Stockholm AB
28. NYSE Euronext – Euronext Amsterdam operated by Euronext Amsterdam N.V.
29. Oslo Axess operated by Oslo Børs ASA
30. Oslo Børs ASA operated by Oslo Børs ASA

31. Securitised Derivatives Market operated by Borsa Italiana S.p.A.
32. The London International Financial Futures and Options Exchange (LIFFE) operated by LIFFE Administration and Management
33. Warsaw Stock Exchange/Bonds/Catalyst/Main Market operated by Warsaw Stock Exchange S.A.
34. Warsaw Stock Exchange/Commodity Derivatives operated by Warsaw Stock Exchange S.A.
35. Warsaw Stock Exchange/Equities/Main Market operated by Warsaw Stock Exchange S.A.
36. Warsaw Stock Exchange/ETPs operated by Warsaw Stock Exchange S.A.
37. Warsaw Stock Exchange/Financial Derivatives operated by Warsaw Stock Exchange S.A.
38. Wiener Börse AG Amtlicher Handel (Official Market) operated by Wiener Börse AG
39. Wiener Börse AG Geregelter Freiverkehr (Second Regulated Market) operated by Wiener Börse AG
40. Any stock markets or futures markets operated by the following market operators—
  - (a) Asia Pacific Exchange Limited;
  - (b) ASX Limited;
  - (c) Australian Securities Exchange Limited;
  - (d) BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros;
  - (e) Board of Trade of the City of Chicago, Inc.;
  - (f) Borsa Istanbul Inc.;
  - (g) BOX Options Exchange LLC;

- (h) BSE Ltd.;
- (i) Bursa Malaysia Derivatives Berhad;
- (j) Bursa Malaysia Securities Berhad;
- (k) CBOE Futures Exchange, LLC;
- (l) Chicago Board Options Exchange, Incorporated;
- (m) Chicago Mercantile Exchange, Inc.;
- (n) China Financial Futures Exchange;
- (o) Commodity Exchange, Inc.;
- (p) Dalian Commodity Exchange;
- (q) Dubai Mercantile Exchange Limited;
- (r) Eurex Zürich AG;
- (s) Euronext UK Markets Limited;
- (t) FEX Global Pty Ltd.;
- (u) GreTai Securities Market;
- (v) ICE Futures Canada, Inc.;
- (w) ICE Futures Europe Limited;
- (x) ICE Futures U.S., Inc.;
- (y) Indonesian Stock Exchange;
- (z) International Securities Exchange, LLC;
- (za) JSE Limited;
- (zb) Korea Exchange, Inc.;
- (zc) Mercado Mexicano de Derivados, S.A. de C.V.;
- (zd) Minneapolis Grain Exchange, Inc.;
- (ze) Montréal Exchange Inc.;

- (zf) Multi Commodity Exchange of India Limited;
- (zg) Nagoya Stock Exchange, Inc.;
- (zh) NASDAQ OMX PHLX LLC;
- (zi) National Commodity & Derivatives Exchange Limited;
- (zj) National Stock Exchange of Australia Limited;
- (zk) National Stock Exchange of India Limited;
- (zl) New York Mercantile Exchange, Inc.;
- (zm) New York Stock Exchange LLC;
- (zn) New Zealand Exchange Limited;
- (zo) NYSE Arca, Inc.;
- (zp) NYSE MKT LLC;
- (zq) OJSC Moscow Exchange MICEX-RTS;
- (zr) OneChicago, LLC;
- (zs) Osaka Exchange, Inc.;
- (zt) Shanghai Futures Exchange;
- (zu) Shanghai Stock Exchange;
- (zv) Shenzhen Stock Exchange;
- (zw) SIM Venture Securities Exchange Ltd.;
- (zx) Singapore Exchange Derivatives Trading Limited;
- (zy) Singapore Exchange Securities Trading Limited;
- (zz) SIX Structured Products Exchange Ltd.;
- (zza) SIX Swiss Exchange Ltd.;
- (zzb) Tel Aviv Stock Exchange Ltd.;
- (zzc) Thailand Futures Exchange Public Company Limited;

- (zsd) The London Metal Exchange Limited;
- (zse) The NASDAQ Stock Market LLC;
- (zsf) The Philippine Stock Exchange, Inc.;
- (zsg) The Stock Exchange of Thailand;
- (zsh) The Taiwan Futures Exchange Corporation;
- (zsi) Tokyo Commodity Exchange, Inc.;
- (zsj) Tokyo Financial Exchange Inc.;
- (zsk) Tokyo Stock Exchange, Inc.;
- (zsl) TSX Inc.;
- (zsm) Turkish Derivatives Exchange;
- (zsn) Zhengzhou Commodity Exchange.

**Proposed list of clearing houses to be prescribed**

1. Asigna, Compensación y Liquidación
2. ASX Clear (Futures) Pty Limited
3. ASX Clear Pty Limited
4. Athens Exchange Clearing House S.A.
5. BME Clearing S.A.
6. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
7. Bursa Malaysia Derivatives Clearing Berhad
8. Bursa Malaysia Securities Clearing Sdn. Bhd.
9. Canadian Derivatives Clearing Corporation
10. Cassa di Compensazione e Garanzia S.p.A.

11. CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)
12. CDS Clearing and Depository Services Inc.
13. Chicago Mercantile Exchange, Inc.
14. China Financial Futures Exchange
15. China Securities Depository and Clearing Corporation Limited
16. CJSC JSCB National Clearing Centre
17. Dalian Commodity Exchange
18. Eurex Clearing AG
19. European Central Counterparty N.V.
20. European Commodity Clearing AG
21. GreTai Securities Market
22. ICE Clear Canada, Inc.
23. ICE Clear Europe Limited
24. ICE Clear U.S., Inc.
25. India Clearing Corporation Limited
26. Indonesian Clearing and Guarantee Corporation
27. Istanbul Clearing, Settlement and Custody Bank Inc. (Takasbank)
28. Japan Commodity Clearing House Co., Ltd.
29. Japan Securities Clearing Corporation
30. JSE Clear (Pty) Ltd.
31. KDPW\_CCP S.A.
32. KELER Central Counterparty Ltd.
33. Korea Exchange, Inc.

34. LCH.Clearnet Limited
35. LCH.Clearnet S.A.
36. LME Clear Ltd.
37. MAOF (Derivatives) Clearing House Ltd.
38. Minneapolis Grain Exchange, Inc.
39. Multi Commodity Exchange of India Limited
40. NASDAQ OMX Clearing AB
41. National Securities Clearing Corporation
42. National Securities Clearing Corporation Limited
43. New Zealand Clearing Limited
44. Oslo Clearing ASA
45. Securities Clearing Corporation of the Philippines
46. Shanghai Futures Exchange
47. Singapore Exchange Derivatives Clearing Limited
48. SIX SIS AG
49. SIX X-Clear Ltd.
50. Sociedad de Gestión de los Sistemas de Registro,  
Compensación y Liquidación de Valores, S.A., Sociedad  
Unipersonal
51. TASE Clearing House Ltd.
52. Thailand Clearing House Co., Ltd.
53. The Central Depository (Pte) Limited
54. The Options Clearing Corporation
55. The Taiwan Depository & Clearing Corporation
56. The Taiwan Futures Exchange Corporation

57. Tokyo Financial Exchange Inc.
58. Zhengzhou Commodity Exchange



# APPENDIX D – SECURITIES AND FUTURES (OTC DERIVATIVE TRANSACTIONS – REPORTING AND RECORD KEEPING OBLIGATIONS) RULES

## Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules

(Made by the Securities and Futures Commission under sections 101L~~(1)~~ and 101P~~(1)~~ of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary)

### Part 1

#### Preliminary

#### 1. Commencement

- (1) Subject to subrule (2), these Rules come into operation on ~~201~~ 10 July 2015.
- (2) ~~The following rules come into operation~~ Rule 15 comes into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette—
  - ~~(a) rule 14;~~
  - ~~(b) rule 2, valuation transaction information;~~
  - ~~(c) rule 25;~~
  - ~~(d) item 6 of Schedule 2.~~

#### 2. Interpretation

In these Rules—

**affiliate** (聯屬公司), in relation to a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker, means a corporation that is in the same group of companies as the person, **except a corporation that is a collective investment scheme**;

**ATS-CCP** (自動化交易服務中央對手方) means a person authorized under section 95(2) of the Ordinance to provide automated trading services, but only when the person is—

- (a) ~~performing~~ providing services that it is authorized to provide; and
- (b) acting in its capacity as a central counterparty;

**electronic reporting system** (電子匯報系統) means the electronic system operated by or on behalf of the Monetary Authority for submitting and receiving reports on specified OTC derivative transactions for the purposes of these Rules and section 101B of the Ordinance;

**exempt person** (獲豁免人士) has the meaning given by rule 3;

**local branch** (本地分行), in relation to a **prescribed person that is** an authorized financial institution incorporated outside Hong Kong, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155) except that it includes its principal place of business in Hong Kong;

**outstanding** (未完結), in relation to an **OTC derivative** transaction on a particular day, means the transaction has not, as at that day, matured or been terminated;

**product class** (產品類別) means a class of OTC derivative transactions specified in column 2 of Part 2 of Schedule 1;

**product class specification day** (產品類別指明日期), in relation to a product class, means the day specified in column 3 of Part 2 of Schedule 1;

**product type** (產品類型) means a type of OTC derivative transaction within a product class, specified in column 3 of Part 3 of Schedule 1;

**product type specification day** (產品類型指明日期), in relation to a product type, means the day specified in column 4 of Part 3 of Schedule 1;

**RCH** (認可結算所) means a person that is a recognized clearing house, but only when the person is acting in its capacity as a central counterparty;

**regulated prescribed person** (受規管訂明人士), in relation to a product type, means the following prescribed persons—

- (a) a licensed corporation that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (b) an authorized financial institution that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (c) an approved money broker that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (d) an RCH;
- (e) an ATS-CCP;

**specified OTC derivative transaction** (指明場外衍生工具交易) has the meaning given by section 101A of the Ordinance;

**starting day** (開始日期), in relation to a specified OTC derivative transaction to which a regulated prescribed person is a counterparty, means the later of—

- (a) the product type specification day for the product type to which the transaction belongs; and
- (b) the day on which the person ~~became~~ becomes a regulated prescribed person in relation to the product type;

**subsequent event** (其後事件), in relation to a specified OTC derivative transaction, means an event that occurs after ~~at~~ the transaction ~~in an OTC derivative product is~~ was entered into, and which affects the ~~product, the terms or~~ terms and conditions on which the transaction was entered into or the persons involved in entering into the transaction;

**terminated** (被終止), in relation to an OTC derivative transaction, means the transaction is terminated in accordance with the terms ~~or~~ and conditions of the transaction or by agreement between the counterparties to the transaction, before the transaction matures;

**transaction information** (交易資料), in relation to a specified OTC derivative transaction, means the information and particulars specified in Part 4 of Schedule 2~~1~~ relating to ~~a~~ ~~specified OTC derivative~~ the transaction (including information and particulars relating to a subsequent event ~~and valuation transaction information~~), and the persons involved in the transaction, which must be submitted to the Monetary Authority for complying with the reporting obligation~~s~~.

~~valuation transaction information ( ) means the information and particulars specified in item 6 of Schedule 2.~~

3. ~~Meaning of~~ **When prescribed person to be regarded as exempt person**

- (1) Subject to subrule (4), for the purposes of rules ~~9(1)(a),~~ 10(1)(a), 11(1)(a), 12(1)(a) and ~~13(1)(a),~~ a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker, is to be regarded as an exempt person ~~(~~being~~)~~ in relation to a specified OTC derivative transaction within a product class ~~and to which the person is a counterparty,~~ if the person satisfies ~~all of~~ the requirements in subrule (2).
- (2) The requirements are that, on or at any time after the product class specification day—
  - (a) the sum of the notional amounts of all outstanding OTC derivative transactions within the product class (whether or not the transactions are specified OTC derivative transactions) to which the prescribed person is a counterparty, does not exceed US\$30 million;
  - (b) rule ~~9(1)(b),~~ 10(1)(b), 11(1)(b), 12(1)(c) or ~~13(1)(b)~~ (as applicable) does not apply to the prescribed person in relation to a specified OTC derivative transaction within the product class; **and**
  - (c) if the prescribed person is an authorized financial institution incorporated outside Hong Kong, rule ~~12(1)(b)~~ does not apply to the person in relation to a specified OTC derivative transaction within the product class.
- (3) For the purposes of subrule (2)(a), a prescribed person that is an authorized financial institution incorporated outside Hong Kong is **to be** regarded as ~~being~~ a counterparty to an OTC derivative transaction if the person is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch of the person.
- (4) Despite subrule (1), a prescribed person that is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155), is not to be regarded as an exempt person for the purposes of ~~rules 10~~ rule 11(1)(a) or ~~12(1)(a)~~ (as applicable) in relation to a specified OTC derivative transaction within a product class if, ~~on the day on which these Rules commence~~ **person is taken to have submitted the transaction information for a specified OTC derivative transaction within the product class under rule 22(6).**
  - ~~(a) the person has a specified OTC derivative transaction within the product class which is still outstanding; and~~
  - ~~(b) in respect of the transaction, the person submitted to the Monetary Authority transaction information (or information which in the opinion of the Monetary Authority is substantially similar to transaction information) before the day on which these Rules commence.~~
- (5) A prescribed person that ceases to satisfy ~~any of the requirements~~ **a requirement** in subrule (2)—
  - (a) is not eligible to be regarded as an exempt person in relation to any other specified OTC derivative transaction within the same product class; and
  - (b) is to be regarded as becoming a regulated prescribed person **in relation to a product type within the product class** on the day on which the person ceases to satisfy the requirement.

4. ~~Circumstances in which~~ **When prescribed person to be regarded as ~~conducting~~having conducted transaction in Hong Kong on behalf of affiliate**

- (1) For the purposes of rules ~~9(1)(b),~~ 10(1)(b), 11(1)(b), 12(1)(c) and ~~13(1)(b),~~ ~~the circumstances in which~~ a prescribed person is **to be** regarded as having conducted a specified OTC derivative transaction in Hong Kong on behalf of an affiliate of the ~~prescribed person are that~~ ~~if~~—
  - (a) the affiliate is a counterparty to the transaction; and

- (b) one of the individuals who made the decision for the affiliate to enter into the transaction—
    - (i) acted in his or her capacity as a trader; and
    - (ii) was employed or engaged by the ~~prescribed~~ person to perform his or her duties predominantly in Hong Kong.
- (2) Subrule (1) applies to a prescribed person in relation to a specified OTC derivative transaction even if the transaction was conducted wholly or partially outside Hong Kong.

**5. Persons specified as prescribed persons for reporting obligation**

For the purposes of paragraph (a)(iv) of the definition of *prescribed person* ~~([↔](#))~~ in section 101A of the Ordinance, the following persons are specified as being subject to the reporting obligation—

- (a) an RCH;
- (b) an ATS-CCP.

**6. Persons specified as prescribed persons for record keeping obligation**

For the purposes of paragraph (d)(iv) of the definition of *prescribed person* ~~([↔](#))~~ in section 101A of the Ordinance, the persons specified as being subject to the record keeping obligation are the persons specified under rule 5 as being subject to the reporting obligation.

**7. Transactions that are specified OTC derivative transactions for purposes of reporting obligation**

For the purposes of paragraph (a) of the definition of *specified OTC derivative transaction* ~~([↔](#))~~ in section 101A of the Ordinance, an OTC derivative transaction in a product type ~~specified in column 3 of Part 3 of Schedule 1~~ is specified for the purposes of the reporting obligation.

**8. Transactions that are specified OTC derivative transactions for purposes of record keeping obligation**

For the purposes of paragraph (d) of the definition of *specified OTC derivative transaction* ~~([↔](#))~~ in section 101A of the Ordinance, an OTC derivative transaction in a product type ~~specified in column 3 of Part 3 of Schedule 1~~ is specified for the purposes of the record keeping obligation.

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**Part 2**

**Reporting Obligation**

**Division 1—~~Specified OTC Derivative Transactions to be Reported~~ Reporting by Prescribed Persons**

~~159. Prescribed persons to report all transaction events~~ **When reporting obligation arises**

- ~~(1) A prescribed person that is required by rule 9, 10, 11, 12, 13, or 14~~ **or 15** to report a specified OTC derivative transaction to the Monetary Authority must report the

transaction to the Monetary Authority in accordance with rule ~~19~~20 in each of the circumstances specified in subrule (2).

(2) The circumstances are—

(a) when rule ~~9~~10, 11, 12, 13, ~~or~~ 14 or 15 first begins to apply to the prescribed person in relation to the **specified OTC derivative** transaction; and

(b) **if applicable, each time** ~~when~~ a subsequent event occurs while the transaction is still outstanding.

**910. ~~Transactions to be reported~~Reporting by licensed corporations**

(1) A prescribed person that is a licensed corporation must report a specified OTC derivative transaction to the Monetary Authority if the person—

(a) subject to subrule (3), is a counterparty to the transaction; or

(b) ~~subject to rule 17, in the circumstances specified in rule 4,~~ conducted the transaction in Hong Kong on behalf of an affiliate of the person **within the meaning of rule 4(1).**

(2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.

(3) Subrule (1)(a) does not apply to **a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.**

**1011. ~~Transactions to be reported~~Reporting by authorized financial institutions incorporated in Hong Kong**

(1) A prescribed person that is an authorized financial institution incorporated in Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—

(a) subject to subrule (3), is a counterparty to the transaction; or

(b) ~~subject to rule 17, in the circumstances specified in rule 4,~~ conducted the transaction in Hong Kong on behalf of an affiliate of the person **within the meaning of rule 4(1).**

(2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.

(3) Subrule (1)(a) does not apply to **a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.**

**1112. ~~Transactions to be reported~~Reporting by authorized financial institutions incorporated outside Hong Kong**

(1) A prescribed person that is an authorized financial institution incorporated outside Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—

(a) subject to subrule (3), is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch of the person;

(b) is a counterparty to the transaction and—

(i) the transaction is recorded in the form of an entry in the books of—

(A) the principal place of business outside Hong Kong of the person; or

(B) a branch (other than a local branch) of the person; and

(ii) one of the individuals who made the decision for the person to enter into the transaction—

- (A) acted in his or her capacity as a trader; and
  - (B) was employed or engaged by the person to perform his or her duties predominantly in Hong Kong; or
  - (c) ~~subject to rule 17, in the circumstances specified in rule 4,~~ conducted the transaction in Hong Kong on behalf of an affiliate of the person **within the meaning of rule 4(1)**.
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
  - (3) Subrule (1)(a) does not apply to **a prescribed person that is an exempt person in relation to the specified OTC derivative transaction**.

**~~1213. Transactions to be reported~~Reporting by approved money brokers**

- (1) A prescribed person that is an approved money broker must report a specified OTC derivative transaction to the Monetary Authority if the person—
  - (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) ~~subject to rule 17, in the circumstances specified in rule 4,~~ conducted the transaction in Hong Kong on behalf of an affiliate of the person **within the meaning of rule 4(1)**.
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to **a prescribed person that is an exempt person in relation to the specified OTC derivative transaction**.

**~~1314. Transactions to be reported~~Reporting by RCHs**

- (1) A prescribed person that is an RCH must report a specified OTC derivative transaction to the Monetary Authority if the person is a counterparty to the transaction.
- (2) The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

**~~1415. Transactions to be reported~~Reporting by ATS-CCPs**

- (1) A prescribed person that is an ATS-CCP must report a specified OTC derivative transaction to the Monetary Authority if the person is a counterparty to the transaction and the other counterparty **to the transaction** is a company.
- (2) The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

**~~15. Prescribed persons to report all transaction events~~**

- ~~(1) A prescribed person that is required by rule 9, 10, 11, 12, 13 or 14 to report a specified OTC derivative transaction to the Monetary Authority must report the transaction to the Monetary Authority in accordance with rule 19 in each of the circumstances specified in subrule (2).~~
- ~~(2) The circumstances are—~~
  - ~~(a) when rule 9, 10, 11, 12, 13 or 14 first begins to apply to the prescribed person in relation to the transaction; and~~
  - ~~(b) when a subsequent event occurs while the transaction is still outstanding.~~

**16. ~~Prescribed persons to report~~ Reporting obligation applies even if counterparty, or transaction entered into, outside Hong Kong**

For the purposes of ~~rules 9, 10, 11, 12, 13 and 14~~ this Division, a prescribed person must report a specified OTC derivative transaction to the Monetary Authority even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into wholly or partially outside Hong Kong.

**Division 2—Circumstances in which ~~Requirement to Report does not Apply~~ Reporting Obligation is Taken to ~~be~~ Complied with**

**17. Licensed corporations, authorized financial institutions or approved money brokers taken to have reported entering into of transaction if affiliate has reported**

- (1) If a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker ~~taken to~~ is required by rule 10(1)(b), 11(1)(b), 12(1)(c) or 13(1)(b) to report ~~if affiliate reports~~ a specified OTC derivative transaction to the Monetary Authority in a circumstance specified in rule 9(2)(a), the person is taken to have complied with the reporting obligation in that circumstance if the person satisfies the requirement in subrule (2).
- (2) The requirement is that the prescribed person has received, in good faith, a written confirmation from the affiliate of the person on whose behalf the person conducted the specified OTC derivative transaction in Hong Kong that the affiliate has reported the entering into of the transaction to the Monetary Authority (whether directly or indirectly) in accordance with rule 20 (as that rule applies to the person in relation to the circumstance).

**18. Licensed corporations, authorized financial institutions or approved money brokers taken to have reported subsequent event if affiliate has reported**

- (1) If a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is required by rule ~~9(1)(b),~~ 10(1)(b), 11(1)(b), 12(1)(c) or ~~13(1)(b)~~ to report a specified OTC derivative transaction to the Monetary Authority in a circumstance specified in rule ~~159(2)(a) or~~ (b), the person is taken to have complied with the ~~requirement to report the transaction~~ reporting obligation in that circumstance if the ~~person satisfies the~~ requirement in subrule (2) ~~is satisfied~~.
- (2) The requirement is that the ~~person's affiliate has confirmed to the~~ prescribed person has received, in good faith, a written confirmation from the affiliate of the person on whose behalf the person conducted the specified OTC derivative transaction in Hong Kong that the affiliate has reported the ~~transaction~~ subsequent event to the Monetary Authority (whether directly or indirectly) in accordance with rule ~~1920~~ (as ~~that rule 19~~ applies to the person in relation to the circumstance).

**Division 3—Reporting to Monetary Authority**

**~~1819.~~ Interpretation of ~~this~~ Division 3**

In this Division—

*concession period* (延緩期), in relation to a specified OTC derivative transaction in a product type that is required to be reported by a prescribed person that—

- (a) ~~a person that~~ is a regulated prescribed person in relation to the product type on the product type specification day, means the period of 6 months beginning on the product type specification day; and

- (b) ~~a person that~~ becomes a regulated prescribed person **in relation to the product type** within 6 months after the product type specification day, means the period beginning on the day on which the person becomes a regulated prescribed person and ending on the day that is 6 months after the product type specification day;

**grace period (寬限期)**, in relation to **a specified OTC derivative transaction in a product type that is required to be reported by a prescribed person that—**

- (a) ~~a person that~~ is a regulated prescribed person **in relation to the product type** on the product type specification day, means the period of 9 months beginning on the product type specification day;
- (b) ~~a person that~~ becomes a regulated prescribed person **in relation to the product type** within 6 months after the product type specification day, means the period beginning on the day on which the person becomes a regulated prescribed person and ending on the day that is 9 months after the product type specification day; and
- (c) ~~a person that~~ becomes a regulated prescribed person **in relation to the product type** more than 6 months after the product type specification day, means the period of 3 months beginning on the day on which the person becomes a regulated prescribed person.

**1920. Transaction information to be submitted to Monetary Authority in accordance with this Division**

A prescribed person that is required by rule ~~159~~(1) to report a specified OTC derivative transaction to the Monetary Authority must submit the transaction information **for the transaction** to the Monetary Authority in accordance with this Division.

**2021. Reporting ~~to be via Monetary Authority's~~ by means of electronic reporting system**

- (1) ~~A report~~**The transaction information for a specified OTC derivative transaction** that is required to be submitted to the Monetary Authority under these Rules is to be regarded as duly submitted only if it is submitted—
  - (a) by means of the electronic reporting system; and
  - (b) in accordance with the directions and instructions referred to in subrule (2).
- (2) The Monetary Authority must publish, in the manner the Monetary Authority considers appropriate, directions and instructions for the use of the electronic reporting system and the submission of **the transaction information for a specified OTC derivative transaction** by means of the system.

**2122. Reporting outstanding transactions and transactions entered into during concession period**

- (1) Subject to subrules (5) and (6), a **prescribed** person referred to in subrule (2) and to ~~whom~~**which** the requirement in subrule (3) applies must submit the transaction information ~~referred to in subrule (4)~~**for a specified OTC derivative transaction** to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to **a prescribed person that—**
  - (a) ~~a person that~~ is a regulated prescribed person **in relation to the product type to which the specified OTC derivative transaction belongs** on the product type specification day; ~~and~~**or**
  - (b) ~~a person that~~ becomes a regulated prescribed person **in relation to the product type to which the specified OTC derivative transaction belongs** within 6 months after the product type specification day.



- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction—
  - (a) that is still outstanding on the first day of the grace period; or
  - (b) that is entered into during the concession period.
- (4) The transaction information **for a specified OTC derivative transaction** referred to in subrule (1) is—
  - (a) if the transaction information is submitted during the concession period, the transaction information as at a ~~time~~ day which is not earlier than 2 business days before the ~~time it~~ day on which the transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the ~~specified OTC derivative~~ transaction was entered into; or
  - (b) if the transaction information is submitted after the concession period, the transaction information comprising—
    - (i) the transaction information as at the end of the concession period, reflecting the net effect of all subsequent events that have occurred since the ~~specified OTC derivative~~ transaction was entered into; and
    - (ii) in chronological order, the transaction information for each subsequent event that has occurred since the end of the concession period until a day ~~that~~ which is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) A prescribed person is not required to submit the transaction information ~~to the Monetary Authority~~ for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period **to the Monetary Authority**.
- (6) A prescribed person that is an authorized financial institution is taken to have submitted the transaction information for a specified OTC derivative transaction referred to in subrule (3)(a) to the Monetary Authority under subrule (1) on the day on which these Rules commence if—
  - (a) the person is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155); and
  - (b) before the day on which these Rules commence, the person **has** submitted ~~to the Monetary Authority~~ the transaction information (or information **and particulars** which in the opinion of the Monetary Authority ~~is~~ **are** substantially similar to the transaction information) for the transaction **to the Monetary Authority**.

**2223. Reporting outstanding transactions where no ~~entitlement to~~ concession period**

- (1) Subject to subrule (5), a **prescribed** person referred to in subrule (2) and to ~~whom~~ which the requirement in subrule (3) applies must submit the transaction information ~~referred to in subrule (4)~~ **for a specified OTC derivative transaction** to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to a **prescribed** person **that** becomes a regulated prescribed person **in relation to the product type to which the specified OTC derivative transaction belongs** more than 6 months after the product type specification day.
- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction that is still outstanding on the **first** day ~~on which~~ of the ~~person becomes a regulated prescribed person~~ **grace period**.
- (4) The transaction information **for a specified OTC derivative transaction** referred to in subrule (1) is the transaction information comprising—

- (a) the transaction information as at the first day ~~on which of~~ the ~~person becomes a regulated prescribed person~~ grace period, reflecting the net effect of all subsequent events that have occurred since the ~~specified OTC derivative~~ transaction was entered into; and
  - (b) in chronological order, the transaction information for each subsequent event that has occurred since the first day ~~on which of~~ the ~~person became a regulated prescribed person~~ grace period until a day ~~that~~ which is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) A prescribed person is not required to submit the transaction information ~~to the Monetary Authority~~ for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period **to the Monetary Authority**.

**2324. Reporting transactions entered into after concession period, or where no ~~entitlement to~~ concession period**

- (1) A **prescribed** person referred to in subrule (2) and to ~~whom~~ which the requirement in subrule (3) applies must submit the transaction information **for a specified OTC derivative transaction** to the Monetary Authority within 2 business days after ~~a specified OTC derivative~~ **the** transaction is entered into.
- (2) Subrule (1) applies to **a prescribed person that—**
  - ~~(a) a person referred to in rule 21(2); and~~
  - ~~(b) a person referred to in rule 22(2);~~
  - (a) **is a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs on the product type specification day;**
  - (b) **becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs within 6 months after the product type specification day; or**
  - (c) **becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs more than 6 months after the product type specification day.**
- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction—
  - (a) for a **prescribed** person referred to in subrule (2)(a) **or (b)**, that is entered into after the end of the concession period; or
  - (b) for a **prescribed** person referred to in subrule (2)(~~b~~c), that is entered into on or after the first day ~~on which of~~ the ~~person becomes a regulated prescribed person~~ grace period.

**2425. Reporting subsequent events**

- (1) Subject to subrules (2), ~~and (3) and (4)~~, a prescribed person that has submitted, or is required to submit, the transaction information **for a specified OTC derivative transaction** to the Monetary Authority in accordance with rule ~~21, 22, 23 or 2324~~ (including a **prescribed** person that has submitted the transaction information for a specified OTC derivative transaction **to the Monetary Authority** despite rule ~~2122(5) or 2223(5)~~) must submit the transaction information for a subsequent event to the Monetary Authority within 2 business days after the event occurs.
- (2) If a prescribed person submitted the transaction information for one, or more than one, subsequent event **to the Monetary Authority** under rule ~~2122(4) or 2223(4)~~, subrule (1)

applies to the person only in relation to a subsequent event that occurs after the last subsequent event that was included in the submission.

- (3) If a prescribed person is required to submit the transaction information for a subsequent event to the Monetary Authority under subrule (1), and more than one subsequent event occurs on the same day, the person is only required to submit the transaction information once for that day provided that the **transaction** information submitted incorporates all of the subsequent events that occurred on that day.
- (4) Subrule (1) does not require a ~~prescribed~~ person to submit ~~to the Monetary Authority~~ the transaction information for a subsequent event that has occurred ~~in respect of a specified OTC derivative transaction that has not matured or been terminated if the~~ **after the day on which the person**
  - ~~(a) has ceased~~ **ceases** to be a ~~regulated~~ prescribed person; ~~and.~~
  - ~~(b) has notified the Monetary Authority, by means of the electronic reporting system, that this subrule applies to the person in relation to the transaction.~~

## ~~25. Submitting valuation transaction information~~

~~A regulated prescribed person must submit the valuation transaction information for a specified OTC derivative transaction to the Monetary Authority for every day on which the transaction is still outstanding, within 2 business days after the day to which the valuation transaction information relates.~~

## 26. Submitting counterparty identifying particulars in certain circumstances

- (1) A prescribed person that ~~is required to submit~~ **submits** the transaction information for a specified OTC derivative transaction to the Monetary Authority **in accordance with rule 22, 23 or 24 (including a prescribed person that submits the transaction information for a specified OTC derivative transaction to the Monetary Authority despite rule 22(5) or 23(5))** may submit counterparty masking particulars instead of counterparty identifying particulars in relation to a counterparty to the transaction (other than the ~~prescribed~~ person) if—
  - (a) both of the following requirements are satisfied—
    - (i) the submission of the counterparty identifying particulars is prohibited under the laws of, or by an authority or regulatory organization in, a jurisdiction;
    - (ii) the jurisdiction referred to in subparagraph (i) is a jurisdiction designated by the Commission in accordance with subrule (3); or
  - (b) both of the following requirements are satisfied—
    - (i) the transaction is entered into before the day which is 6 months after the day on which these Rules commence;
    - (ii) the counterparty consent limitation applies to the person in relation to the transaction.
- (2) A prescribed person that has submitted counterparty masking particulars under subrule (1) must submit counterparty identifying particulars **in relation to the counterparty to the transaction** within the following period, unless the ~~specified OTC derivative~~ transaction has matured or been terminated by the last day of the period—
  - (a) if the person submitted the counterparty masking particulars under subrule (1)(a) and the prohibition referred to in subrule (1)(a)(i) ceases to apply to the transaction—
    - (i) unless subparagraph (ii) applies, 3 months after the day on which the Commission revokes the designation of the jurisdiction under subrule (4); or

- (ii) if the counterparty consent limitation applies to the person in relation to the transaction on the last day of the period referred to in subparagraph (i), 1 month after the day on which the counterparty consent limitation ceases to apply to the person **in relation to the transaction**;
  - (b) if the person submitted the counterparty masking particulars under subrule (1)(b), 1 month after the day on which the counterparty consent limitation ceases to apply to the person in relation to the transaction.
- (3) For the purposes of subrule (1)(a)(ii), the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any jurisdiction outside Hong Kong if the Commission is satisfied that it is likely that the laws of, or an authority or regulatory organization in, that jurisdiction would prohibit the submission of **the** counterparty identifying particulars in relation to a counterparty to a specified OTC derivative transaction.
  - (4) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a jurisdiction made under subrule (3).
  - (5) A notice published in the Gazette by the Commission under subrule (3) or (4) is not subsidiary legislation.
  - (6) In this rule—

**counterparty consent limitation** (對手方的同意限制), in relation to a prescribed person, means the person cannot submit counterparty identifying particulars for a specified OTC derivative transaction because the person is required to obtain consent from a counterparty to the transaction (other than the ~~prescribed~~ person) to the submission of the particulars and, despite reasonable efforts, the person has been unable to obtain consent from the counterparty;

**counterparty identifying particulars** (識別對手方身分的詳情) means the transaction information referred to in item 3, 8(e), ~~or~~ 9(d) or 9(e) (as applicable) **in Part 4** of Schedule ~~2~~**1** for a specified OTC derivative transaction from which the identity of a counterparty to the transaction may be ascertained;

**counterparty masking particulars** (掩蓋對手方身分的詳情) means the particulars of a counterparty to a specified OTC derivative transaction which describe the counterparty in a way which prevents the ascertainment of the identity of the counterparty.

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## Part 3

### Record Keeping Obligation

#### 27. Prescribed persons to keep records in relation to transactions

A prescribed person must, in relation to a specified OTC derivative transaction, keep the records specified in rule 29(1) in the manner specified in rule 30~~(1)~~, **for until no earlier than 5 years after the ~~period specified in rule 31~~ transaction has matured or been terminated.**

#### 28. Prescribed persons to keep records even if counterparty, or transaction entered into, **or conducted**, outside Hong Kong

Rule 27 applies to a specified OTC derivative transaction even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into **or conducted** wholly or partially outside Hong Kong.

**29. Records to be kept by prescribed persons**

(1) The records that a prescribed person must keep in relation to a specified OTC derivative transaction are—

- (a) records sufficient to demonstrate that the person has complied with ~~rules 9, 10, 11, 12, 13 or 14 (as applicable) and 15~~ **rule 9**;
- (b) without limiting paragraph (a)—
  - (i) the records specified in Schedule ~~32~~ relating to the transaction; and
  - (ii) if the person engaged an agent to report the transaction to the Monetary Authority on its behalf—
    - (A) records relating to the agreement between the person and ~~the~~ **the** agent; and
    - (B) records sufficient to demonstrate that the person monitored the reporting by the agent;
- (c) if rule ~~9, 10, 11, 12 or 13~~ **10, 11, 12 or 13** (as applicable) does not apply to the person in relation to the transaction because the person is an exempt person **in relation to the transaction**—
  - (i) the records specified in Schedule ~~32~~ relating to the transaction; and
  - (ii) records sufficient to demonstrate that the person satisfied the requirements in rule 3(2) at the time the person would, but for rule 3, have been required to report the transaction to the Monetary Authority, including records of any calculation performed for the purpose of ascertaining whether the person satisfied the requirement in rule 3(2)(a);
- (d) if rule 17 **or 18** applies to the person in relation to the transaction (the ~~person's~~ **person's** affiliate **of the person** has reported the **entering into of the** transaction **or the subsequent event** to the Monetary Authority), the confirmation received from the affiliate; and
- (e) if rule ~~21~~ **22**(5) or ~~22~~ **23**(5) applies to the person in relation to the transaction (the transaction has matured or been terminated before the end of the grace period), the records specified in Schedule ~~32~~ relating to the transaction.

(2) In this rule—

**grace period** (寬限期) has the meaning given by rule 19.

**30. Manner in which records to be kept**

A prescribed person must, **in relation to a specified OTC derivative transaction**, keep the records specified in rule 29(1) —

- ~~(a) in a manner that enables the records to be readily accessible, and~~
- ~~(b) except in the case of a record of a telephone conversation, in a manner that enables the records to be readily searchable and identifiable by reference to the specified OTC derivative transaction and the counterparty to the transaction.~~

~~**31. Period for which records to be kept**~~

~~A prescribed person must keep the records specified in rule 29 for not less than 5 years after the specified OTC derivative transaction has matured or been terminated.~~

## Part 4

### Subsidiaries Specified by Monetary Authority under Section 101B(5) or 101E(5) of Ordinance—Reporting and Record Keeping Obligations

#### ~~3231.~~ **3231. Interpretation of this Part 4**

In this Part—

*cessation day* (終止日期), in relation to a specified subsidiary, means the day notified by the Monetary Authority to the authorized financial institution **incorporated in Hong Kong** of which it is a subsidiary as the day on which the specification of the subsidiary is to cease to have effect for the purposes of section 101B(3) or 101E(3) (as applicable) of the Ordinance;

*effective day* (生效日期), in relation to a specified subsidiary, means the later of—

- (a) the day on which the Monetary Authority's written notice under section 101B(5) or 101E(5) (as applicable) of the Ordinance is given to the authorized financial institution **incorporated in Hong Kong** of which it is a subsidiary; and
- (b) the day specified in the notice referred to in paragraph (a) as the day on which the specification of the subsidiary is to take effect for the purposes of section 101B(3) or 101E(3) (as applicable) of the Ordinance;

*specified subsidiary* (指明附屬公司), in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

- (a) in relation to the reporting obligation, a subsidiary specified by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance; and
- (b) in relation to the record keeping obligation, a subsidiary specified by the Monetary Authority under section 101E(5) of the Ordinance for the purposes of section 101E(3) of the Ordinance.

#### ~~3332.~~ **3332. Reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified ~~subsidiary~~ subsidiaries**

- (1) Subject to subrule (6), for the purposes of section 101B(3) of the Ordinance, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a specified subsidiary of the institution complies with the requirement in subrule (2).
- (2) The requirement referred to in subrule (1) is that, subject to the modifications specified in subrule (5), the specified subsidiary complies with rules ~~10 and 15~~ **9 and 11** in relation to a specified OTC derivative transaction to which it is a counterparty, as if it were an authorized financial institution incorporated in Hong Kong to which rule ~~10~~ **11**(1)(a) applies.
- (3) For the purposes of section 101E(3) of the Ordinance, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a specified subsidiary of the institution complies with the requirement in subrule (4).

- (4) The requirement referred to in subrule (3) is that, subject to the modifications specified in subrule (5), the specified subsidiary complies with rule 27 in relation to a specified OTC derivative transaction to which it is a counterparty, as if it were an authorized financial institution incorporated in Hong Kong to which ~~that~~ rule ~~27~~ applies.
- (5) The modifications referred to in subrules (2) and (4) are—
- (a) a reference to a **prescribed person that is a regulated prescribed person**, or to a prescribed person that is an authorized financial institution incorporated in Hong Kong (other than an **institution that is an exempt person in relation to a specified OTC derivative transaction**), is to be construed as a reference to a specified subsidiary;
  - (b) a reference to a day on which a **prescribed** person is or becomes a regulated prescribed person is to be construed in relation to a specified subsidiary as a reference to the effective day; and
  - (c) a reference to a day on which a person ceases to be a ~~regulated~~ prescribed person is to be construed in relation to a specified subsidiary as a reference to the cessation day.
- (6) This rule is not to be construed as requiring an authorized financial institution incorporated in Hong Kong to ensure that a specified subsidiary **of the institution** complies with rule ~~159~~ in relation to a specified OTC derivative transaction to which the subsidiary is a counterparty, if rule ~~1011~~(1)(b) requires the ~~authorized financial~~ institution to report the same transaction to the Monetary Authority.

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## Schedule 1

[~~rules~~rr. 2, 7, ~~&~~8 & 26]

### **Specified OTC Derivative Transactions and Transaction Information to ~~which these Rules Apply~~ be Submitted to Monetary Authority**

#### Part 1

#### Interpretation

##### 1. Interpretation

In this Schedule—

**interest rate swap** (掉期息率) means an OTC derivative transaction under the terms ~~or~~and conditions of which—

- (a) the 2 counterparties to the transaction agree to exchange interest rate cash flows ~~(payments)~~ at specified intervals while the transaction is still outstanding; and
- (b) the payments are to be calculated by reference to—
  - (i) a notional amount that is denominated in a single currency; and
  - (ii) agreed interest rates or interest rate indexes;

**non-deliverable forward** (不交收遠期) means an OTC derivative transaction under the terms ~~or~~and conditions of which the 2 counterparties to the transaction agree that—

- (a) 1 counterparty is to purchase from the other counterparty a notional amount of a currency ~~(the reference currency)~~ for settlement on a single date in the future ~~(the value date)~~;
- (b) on settlement of the transaction, the purchase is to be settled—
  - (i) on a net cash payment basis (without physical delivery of the reference currency); and
  - (ii) in an agreed currency ~~(the settlement currency)~~ that is not the same currency as the reference currency; and
- (c) the amount to be paid by 1 counterparty to the other counterparty is the difference between the values of the notional amount of the reference currency, denominated in the settlement currency, calculated using—
  - (i) an agreed currency exchange rate (whether express or implied); and
  - (ii) a market currency exchange rate (as determined in accordance with the terms ~~or~~ and conditions of the transaction) that is prevailing on an agreed future date ~~(the fixing date)~~;

**payments** (付款), in relation to an OTC derivative transaction that is an interest rate swap, means the interest rate cash flows referred to in paragraph (a) of the definition of **interest rate swap** in this section;

**reference currency** (參考貨幣), in relation to an OTC derivative transaction that is a non-deliverable forward, means the currency referred to in paragraph (a) of the definition of **non-deliverable forward** in this section;

**settlement currency** (交收貨幣), in relation to an OTC derivative transaction that is a non-deliverable forward, means the agreed currency referred to in paragraph (b)(ii) of the definition of **non-deliverable forward** in this section;

**specified currency** (指明貨幣) means a currency that is specified by the Monetary Authority by notice published in the Gazette ~~(a specified currency notice)~~;

**specified floating interest rate index** (指明浮動息率指數) means a floating interest rate index specified by the Monetary Authority by notice published in the Gazette ~~(a specified floating interest rate index notice)~~.

## 2. Monetary Authority notices not subsidiary legislation

~~A specified~~ The following notices published in the Gazette are not subsidiary legislation—

- (a) a notice by which the Monetary Authority specifies a currency ~~notice and a specified~~ for the purposes of this Schedule;
- (b) a notice by which the Monetary Authority specifies a floating interest rate index ~~notice are not subsidiary legislation~~ for the purposes of this Schedule.

## Part 2

### Specified Product Classes

Column 1 Item	Column 2 Product class	Column 3 Product class specification day
1.	Interest rate swap	<del>The day referred to in rule 1(1).10</del> July 2015
2.	Non-deliverable forward	<del>The day referred to in rule 1(1).10</del>



Column 1	Column 2	Column 3
Item	Product class	Product class specification day July 2015

### Part 3

#### Specified Product Types

Column 1	Column 2	Column 3	Column 4
Item	Product class	Product type	Product type specification day
1.	Interest rate swap	The payments are <b>to be</b> calculated by reference to— (a) a fixed interest rate applied to a notional amount that is denominated in a specified currency; and (b) a specified floating interest rate index applied to the same notional amount.	<del>The day referred to in rule 1(1).</del> 10 July 2015
2.	Interest rate swap	The payments are <b>to be</b> calculated by reference to— (a) a specified floating interest rate index applied to a notional amount that is denominated in a specified currency; and  (b) another specified floating interest rate index applied to the same notional amount.	<del>The day referred to in rule 1(1).</del> 10 July 2015
3.	Non-deliverable forward	The reference currency is a specified currency and the settlement currency is a specified currency.	<del>The day referred to in rule 1(1).</del> 10 July 2015

~~[rules 2 & 26]~~

~~Schedule 2~~

## Part 4

### Transaction Information ~~and Particulars~~ to be Submitted to Monetary Authority

1. The product class and product type to which the specified OTC derivative transaction belongs.
2. The dates on which the specified OTC derivative transaction—
  - (a) was entered into;
  - (b) starts or otherwise becomes effective; and
  - (c) matures.
3. Particulars of the counterparties to the specified OTC derivative transaction.
4. Information relating to the confirmation of the specified OTC derivative transaction, including particulars of—
  - (a) the platform through which, or the manner in which, the transaction was confirmed; and
  - (b) any identifying reference assigned to the transaction by the platform.
5. Information relating to the clearing of the specified OTC derivative transaction, including particulars of—
  - (a) whether the transaction was, or is intended to be, cleared through a central counterparty;
  - (b) **if applicable**, the central counterparty through which the transaction was ~~cleared~~, or is intended to be, cleared; and
  - (c) ~~any~~ **the** client clearing services provider (**if any**) involved in, or intended to be involved in, clearing the transaction.
- ~~6. Information relating to the valuation of the specified OTC derivative transaction, including particulars of—
  - (a) the basis on which the transaction is valued, including whether the transaction is valued on a mark-to-market basis or a mark-to-model basis;
  - (b) when the transaction was last valued and the value on that date; and
  - (c) the currency in which the value referred to in paragraph (b) is denominated.~~
76. Information relating to a subsequent event (being a type of subsequent event for which information may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule ~~2021~~(2)), including particulars of—
  - (a) the date on which the event occurred;
  - (b) the type of the event;
  - (c) the changes to any of the matters referred to in any other item ~~of~~ **in** this ~~Schedule~~ **Part** as a result of the event;
  - (d) the outstanding notional amount after the event; and

- (e) the currency in which the outstanding notional amount is denominated.

~~107.~~ The identifying references assigned to the specified OTC derivative transaction (being types of references that may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 20(2)).

- 8. If the specified OTC derivative transaction is an interest rate swap, particulars of—
  - (a) the notional amount;
  - (b) the currency in which the notional amount is denominated;
  - (c) the currency in which the payments are to be made, if it is not the same currency as the currency referred to in paragraph (b);
  - (d) each agreed interest rate or interest rate index, including the tenor and spread (if applicable); and
  - (e) for each agreed interest rate or interest rate index, the counterparty **to the transaction** that has agreed to pay that rate or index.
  
- 9. If the specified OTC derivative transaction is a non-deliverable forward, particulars of—
  - (a) the reference currency;
  - (b) the settlement currency;
  - (c) the notional amount of the reference currency—
    - (i) denominated in the reference currency; and
    - (ii) denominated in the settlement currency;
  - (d) the counterparty **to the transaction** that is the purchaser of the reference currency;
  - (e) the counterparty **to the transaction** from ~~whom~~**which** the reference currency is to be purchased;
  - (f) the agreed currency exchange rate;
  - (g) the fixing date, **being the date referred to in paragraph (c)(ii) of the definition of *non-deliverable forward* in section 1 of Part 1 of this Schedule;** and
  - (h) the value date, **being the date referred to in paragraph (a) of the definition of *non-deliverable forward* in section 1 of Part 1 of this Schedule.**

~~10.~~ The identifying references assigned to the specified OTC derivative transaction (being types of references that may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 20(2)).

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## Schedule 32

[~~rule~~. 29]

### Records to be Kept by Prescribed Persons

- 1. Records evidencing the existence and purpose of the specified OTC derivative transaction, including all agreements relating to the transaction.

2. Records showing particulars of the execution of the specified OTC derivative transaction, including orders, ledgers and confirmations of the transaction.
- ~~3. Records evidencing the communications and instructions that resulted in the specified OTC derivative transaction being executed.~~
43. Records showing particulars of the terms ~~or~~and conditions of the specified OTC derivative transaction, including particulars relating to all payments and margin requirements relating to the transaction.
54. Records sufficient to demonstrate that the transaction information submitted to the Monetary Authority under Division 3 of Part 2 ~~of these Rules~~ was accurate.

Chief Executive Officer,  
Securities and Futures Commission

~~2014~~2015

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