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Dear Sirs,

Supplemental consultation on the OTC derivatives regime for Hong Kong – proposed scope of new/expected regulated activities and regulatory oversight of systemically important players

We welcome the opportunity to provide comments on the proposed scope of new/expected regulated activities and regulatory oversight of systemically important players.

We would like to make the following comments on the supplemental consultation.

Q1. Do you have any comments or concerns about our proposals for how the initial ambit of the new Type 11 RA should be cast, and the specific activities to be excluded from its scope? If you consider additional carve-outs are needed, please elaborate with justification.

Our response:

Collateral Management related

As the initial ambit of RA 11 refers to the “advising on and dealing in OTC derivative transactions”, we wonder if an explicit carve-out would be appropriate for “agency – non clearance related” activities such as collateral management services. Obviously, providing collateral management services is very much engaged in derivative transactions, without specific exclusion, should an Authorized Institution / Licensed Corporation provides collateral management services in this regard, it may fall under the definition of RA 11. It is also suggested that such carve-out to also cover any paying agency and pricing services.

Definition of "Price Takers"

To contribute to the definition of "Price Takers" as an activity which is carved-out under RA 11, it is suggested that "Price Takers" could possibly be defined as "those who use derivatives in their ordinary course of business, without displaying any form of market making".

Q3. Do you have any comments or concerns about our proposals for how the initial ambit of the new Type 12 RA should be cast, and the specific activities to be excluded from its scope?

Our response:

Lastly, and for completeness, we note that in line with the existing approach under the Securities and Futures Ordinance, employees and officers of an entity that needs to be licensed for the new Type 12 RA will also need to be licensed for such RA if their activities constitute a "regulated function".

It is noted in the Supplemental Consultation that a new Type 12 regulated activity for persons who act as clearing agents in the OTC derivatives market. Currently, for other products such as equities, futures and options, persons who act as clearing agents are not required to be registered / licensed under the Securities and Futures Ordinance.

If employees and officers of an entity that need to be licensed for the new Type 12 RA will also need to be licensed for such RA if their activities constitute a "regulated function", will there be grandfathering arrangements similar to the launch of the Securities and Futures Ordinance in 2003?

Should HKMA and / or SFC wish to discuss any of our comments, please do not hesitate to contact

Yours faithfully,