

# **Consultation conclusions and further consultation on introducing mandatory clearing and expanding mandatory reporting**

**February 2016**



**HONG KONG MONETARY AUTHORITY**  
**香港金融管理局**



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

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## INTRODUCTION

1. In September 2015, the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) issued a joint consultation paper (**Consultation Paper**) on introducing mandatory clearing and expanding mandatory reporting. Drafts of the proposed subsidiary legislation (i.e. rules) setting out these requirements were also attached to the Consultation Paper, namely –
  - (a) the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (**Clearing Rules**); and
  - (b) the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (**Reporting Rules**), marked up to show our proposed changes for implementing the next phase of mandatory reporting (**Expanded Reporting Rules**).
2. The deadline for submitting comments on the draft Rules and the consultation was 31 October 2015, except that comments on the data fields to be completed could be submitted by 30 November 2015. Some comments were submitted after the deadline but these were also taken into consideration in preparing this Conclusions Paper.
3. We received a total of 23 written submissions from 18 respondents. These included 7 submissions that focused specifically on the proposed data fields set out in Appendix D to the Consultation Paper. Respondents included industry bodies, financial institutions, providers 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 (<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>).
4. This Conclusions Paper summarises the comments received to the Consultation Paper (other than comments on the data fields set out in Appendix D), and the HKMA and SFC's responses to such comments and our conclusions. This Paper should be read together with the Consultation Paper and the comments received. Our responses to comments on the proposed data field will be discussed in a separate conclusions paper to be issued shortly.
5. The English version of the Conclusions Paper also attaches revised drafts of the Clearing Rules and the Expanded Reporting Rules at **Appendix B** and **Appendix C**. The revised drafts incorporate changes made in light of the comments received – these are marked up in Appendix B, and marked up and highlighted in Appendix C. Some drafting changes have also been made for better clarity.
6. We take this opportunity to thank everyone who took the time and effort to comment on the proposals and the draft Rules. Your comments and suggestions have been most useful, and have helped us refine and finalise relevant aspects of our proposals and the Rules.

## EXECUTIVE SUMMARY

7. The paragraphs below summarise the key comments and concerns raised during the consultation, and our responses to these.

### Introducing mandatory clearing for certain IRS (phase 1 clearing)

#### Products to be subject to mandatory clearing

8. There was broad support for the proposed clearing determination process and the product scope for phase 1 clearing. A number of concerns centred round whether a sufficient number of central counterparties (**CCP**) will be designated by the time phase 1 clearing is implemented. We do not foresee that there will be a lack of designated CCPs. We will also be mindful of the timeline for implementing phase 1 clearing when processing applications for CCP designation. However, as an added measure, we will defer commencement of the Clearing Rules by a few months to 1 September 2016 (subject to the legislative process).
9. It was suggested that our phase 1 clearing should not “front run” clearing obligations under the European Market Infrastructure Regulation (**EMIR**). Our proposed timeline for phase 1 clearing should not result in any “front running” and hence we do not see this as an issue.
10. Respondents also asked about future changes to the specified floating rate indexes and specified tenors. We confirm that changes will be subject to consultation, and that the industry will be given time to make necessary arrangements.

#### Casting of dealer-to-dealer transactions

11. There was broad support for the proposal to limit phase 1 clearing to dealer-to-dealer transactions only. However, there were concerns about the difficulties in establishing if a counterparty is a “financial services provider”. We appreciate the industry’s difficulties and have therefore amended this concept so that it refers to a list of specific entities, which list will be published by notice in the Gazette. Our proposed list is set out at **Appendix D** to this paper. We welcome comments on the same **by 29 February 2016**. Please refer to paragraph 79 below for details on how submissions should be made, and how information submitted may be used and published. Moreover, no clearing threshold will apply in respect of financial services providers.

#### Clearing threshold

12. There was broad support for our proposal to have multiple clearing thresholds with each set by reference to a 3-month calculation period. Respondents also generally supported our proposed threshold level (i.e. US\$20 billion) and our proposed formula for calculating if this threshold level had been reached.
13. A few respondents suggested that the US\$20 billion threshold should not include deliverable FX swaps as they were similar to deliverable FX forwards which we had proposed to exclude from the threshold calculation. We agree

and have amended Rule 2 of the draft Clearing Rules to reflect this – see new definition for “deliverable FX swap : and revised definition of “outstanding trade”.

14. There were suggestions to exclude various other transactions from the threshold calculation also, e.g. transactions not mandated for clearing, intra-group and intra-company transactions, and transactions entered into by end-users for hedging commercial risks. We disagree. The purpose of the threshold calculation is to help identify who are the most active dealers in the OTC derivatives market. This cannot be achieved if such transactions are disregarded.
15. We were asked to clarify if the threshold calculation is to be done on the basis of “gross notional” without netting. We confirm that it is.
16. There were concerns about the practical difficulties and administrative burden of our proposal to apply two thresholds for prescribed persons that are incorporated overseas – one in respect of their positions globally and the other in respect of positions they have booked in Hong Kong. In view of the industry’s concerns, we have amended this so that: (i) for prescribed persons incorporated overseas, we will now only look at positions they have booked in Hong Kong; and (ii) for prescribed persons incorporated in Hong Kong, we will continue to look at their positions globally.
17. There was a request that we extend the time gap between the end of one calculation period and the start of the next, from 6 months to 12 months. However, there is no compelling reason to do so. It would also mean any new local dealer will only be covered after an extended period.
18. Additionally, and in response to the industry’s concerns, we have now provided for an exit mechanism whereby prescribed persons may cease to be subject to the clearing obligation if: (i) their relevant outstanding positions are below 70% of the clearing threshold (i.e. below US\$14 billion); and (ii) have been below that level (as at month-end) for 12 consecutive months. Such persons will cease to be subject to mandatory clearing if they notify the HKMA or SFC (as appropriate) of the fall in their positions, specifying the 12-month period in question, and their outstanding positions as at the end of each month during that period. Their relevant outstanding positions must still be below this level at the time of notification. Although the 12-month requirement may seem excessive, we believe it is necessary given that the exit mechanism is intended for cases where there is a permanent change in the entity’s trading profile or business model. The exit mechanism is reflected in Rule 6 of the draft Clearing Rules.

#### **Complying with the clearing obligation**

19. There was a request that regulators maintain a list of prescribed persons who have crossed the clearing threshold. We do not see the need for such a list. Prescribed persons should be well aware of their obligations under the Clearing Rules and have no difficulty in providing timely and accurate confirmations as to whether they have reached the clearing threshold or not.
20. There were concerns about the T+1 timeframe for clearing transactions and it was suggested that more time be given to terminate trades that are not cleared within this timeframe, or alternatively to treat such trades as

exceptions. We do not see a need to extend the timeframe or give any other form of relief in respect of it. Such a relief would also defeat the objective of specifying a timeframe in the legislation. We are also not aware of other major jurisdictions having provided for such relief.

21. It was also suggested that the T+1 timeframe does not take into account different holiday schedules around the world, particularly in jurisdictions where designated CCPs are based, or where their back office functions are located. We disagree. We understand that most CCPs do not simply follow the holiday schedule in their home jurisdiction, but rather operate on business days of the currency they clear. As for back office functions, we expect prescribed persons to have made appropriate arrangements for holiday cover if they have outsourced these to jurisdictions outside Hong Kong.

#### **Exemptions from the clearing obligation**

22. There was broad support for the intra-group exemption, although there was also a request that we do away with the notification requirement. We are unable to do this as the notification is a means of ensuring that the exemption is properly used. Clarification was also sought in respect of the wording used to describe this exemption. We have provided such clarification in paragraph 110 below.
23. There was broad support for the jurisdiction-based exemption as well. Respondents did however request that the 10% limit (applicable to positions in all exempt jurisdictions combined) be removed. It was also requested that the 5% limit (applicable to positions in each of the exempt jurisdictions individually) be applied more leniently so that a person's exceeding of the limit in respect of one jurisdiction does not invalidate the exemption for all jurisdictions. As this exemption is intended for limited purposes, we believe both the 5% and 10% limits are necessary. It is equally important that compliance with these limits be monitored closely. We therefore do not propose any change in this regard.
24. In addition to the exemptions proposed, we received suggestions to include three further exemptions – one for transactions resulting from trade compression; the second for firms whose exposures are relatively small; and the last for transactions resulting from post-trade risk reduction services.
  - (a) Given the risk mitigation benefits of trade compression, we agree that it should be encouraged and have therefore provided for such an exemption under Rule 10 of the draft Clearing Rules. The exemption will however only apply where the original transactions were not subject to mandatory clearing. Additionally, and to prevent abuse, the exemption will only apply in respect of multilateral trade compression cycles (i.e. bilateral trade compression is not covered), and where the trade compression is conducted by a third party.
  - (b) As regards the request to exempt firms whose exposure is relatively small, we do not consider this to be necessary given that the clearing obligation is only triggered if the counterparty is a large player (i.e. a prescribed person who has crossed the US\$20 billion threshold) or a financial services provider (which will be persons that are major players in the OTC derivatives market).

- (c) Lastly, as regards the request to exempt transactions resulting from post-trade risk reduction services, we consider that such an exemption would be too broad, vague and susceptible to abuse. We therefore do not consider it to be appropriate.

### **Substituted compliance**

25. Respondents fully supported our proposed framework for substituted compliance. Concerns and comments mainly centred round the “stricter rule” approach. We have considered these but remain of the view that the “stricter rule” approach is necessary and appropriate. There was also a request to add one more jurisdiction to the list of comparable jurisdictions. However, we prefer to keep the list unchanged for now.

### **Clearing related record keeping requirements**

26. We received a few comments on the record keeping requirements. One respondent commented that the requirements were redundant and requested that they be removed. We disagree. The requirements are necessary to demonstrate compliance with the clearing obligation. Their inclusion is also consistent with the approach taken for mandatory reporting.
27. One respondent sought clarification on how the record keeping requirements would apply in respect of transactions of an overseas authorized institution (AI) or overseas approved money broker (AMB) that are booked outside Hong Kong, and thus not subject to mandatory clearing. We confirm that there is no express record keeping requirement in such cases. We expect also that such transactions will not be recorded in the AI or AMB’s Hong Kong book – that will suffice to demonstrate that they are not subject to the clearing obligation.

### **Designation and regulation of CCPs**

28. In terms of the designation and regulation of CCPs, respondents urged regulators to ensure that there are sufficient designated CCPs when phase 1 clearing is implemented. We appreciate this concern and will be mindful of the implementation timeline when processing applications for CCP designation. In any case, as we will now be deferring implementation of phase 1 clearing to 1 September 2016, this should provide added assurance to the industry.
29. Two respondents raised concerns about our proposal to defer implementation of the amendments to the definition of “market contract”. We have since discussed our proposal with them further and both have indicated that they agree to the deferral. That said, we appreciate the need to confer a degree of insolvency override protections to CCPs that are authorized ATS providers. The SFC is accordingly looking into how the legislation should be amended in this regard, and will consult the market on the same in due course.

### **Expanding mandatory reporting to other product classes (phase 2 reporting)**

#### **Expanded product scope**

30. Respondents raised a number of concerns and comments about the expanded product scope including that it was difficult to determine what was in

scope under phase 2 reporting, and that FX security conversions and certain transactions with retail customers should be excluded.

31. We clarify that only transactions in the five key asset classes (i.e. interest rate derivatives, FX derivatives, equity derivatives, credit derivatives and commodity derivatives) will be reportable under phase 2. On FX security conversions, we agree that these should be excluded. We have accordingly reflected this in the revised draft of the Expanded Reporting Rules – see Rules 7 and 8. As for transactions with retail customers, we see no basis for treating transactions differently depending on whether the counterparty is a retail customer or not. The reporting obligation is in any event imposed on the reporting entity only and not the retail customer. We therefore remain of the view that such transactions should be reported. Further guidance on these and other matters pertaining to the product scope will be provided in a set of Frequently Asked Questions (**FAQ**) that will be published on both the HKMA's and SFC's respective websites, as well as in the HKMA's Supplementary Reporting Instructions (**SRI**) on reporting via the Hong Kong Trade Repository (**HKTR**).
32. Separately, respondents suggested that the expanded scope should be implemented in phases by product class so that reporting entities have sufficient time to put systems in place. We are concerned that staggering implementation by product class will unreasonably delay implementation of phase 2 reporting. As an alternative, and in view of the industry's concerns, we will defer implementation of phase 2 reporting by about 12 months from enactment (instead of 6 months as previously proposed). Accordingly, subject to the legislative process, we now expect phase 2 reporting to commence on 1 July 2017.

#### **Implications of removing “product class” and “product type”**

33. Respondents raised concerns about our proposal to maintain the trigger level for the exempt person relief at US\$30 million but apply it to all product classes collectively (instead of applying it on a per product class basis as is the case under phase 1 reporting). Respondents felt this would unfairly penalise participants with relatively low levels of exposures who are unlikely to contribute to systemic risk in the market.
34. We disagree. The exempt person relief is designed for small inactive players (e.g. those who enter into OTC derivative transactions only intermittently or for commercial hedging purposes). Such entities are unlikely to have outstanding positions in a wide range of OTC derivative transactions. We therefore remain of the view that the US\$30 million limit should stay unchanged and apply across all product classes collectively.
35. Separately, respondents generally supported our proposal to remove the concession period and defer commencement, although there were requests for a longer deferral period. As noted in paragraph 32 above, the deferral period will now be extended. There was also general support for our proposal to have a single grace period per reporting entity, which would apply across all product classes.

### **Transaction information to be reported under phase 2 reporting**

36. The scope of transaction information to be submitted is to be expanded under phase 2 reporting, and we have proposed using a different approach to identifying the information to be reported. Most respondents supported the new approach, although one was concerned that specifying the data fields by notice in the Gazette might result in misinterpretation or incorrect application. We disagree. We believe what is important is to ensure that regulators have provided sufficient guidance on how the data fields are to be interpreted and completed. We will do this through appropriate FAQ and the SRI.
37. Several respondents also emphasised the need to give the industry prior notice and sufficient lead time before implementing any changes to the list of data fields to be completed. We confirm that we will do so.
38. In terms of the categories of information to be reported, concerns were raised in respect of items 6 and 9(e) of Schedule 1 to the draft Expanded Reporting Rules, i.e. information relating to the documentation used for the transaction, and information as to whether the clearing obligation applies. In view of the concerns raised, we have deleted item 6 and amended item 9(e) (now item 8(e)) for better clarity. Further guidance will also be provided in the FAQ and SRI.
39. Our responses to comments on the proposed data fields set out in Appendix D to the Consultation Paper will be discussed in a separate conclusions paper to be issued shortly, and so we do not discuss these here.

### **Reporting of valuation transaction information**

40. On the reporting of valuation transaction information, some respondents suggested that this be reported by the CCP in the case of transactions that are centrally cleared. They noted that some market participants do not currently have systems that store CCP valuations. Given that phase 2 reporting is now proposed to be deferred to 1 July 2017, market participants should have ample time to develop the necessary systems for storing and reporting CCP valuations.
41. On the valuation of non-centrally cleared transactions, respondents suggested that our proposal to report agreed valuations be deferred until an industry-wide framework for agreeing margin is in place. As margin requirements and associated risk mitigation standards are scheduled to be implemented by Q3 2016 while phase 2 reporting is not expected to be implemented until July 2017, we do not see the need for any deferral as suggested.
42. There were also suggestions to allow the reporting of internal and third party valuations. We confirm that third party valuations will be acceptable provided they are agreed to by both counterparties and calculated on a mark-to-market or mark-to-model basis. For internal valuations, this will be permitted in the very limited and exceptional situation where the counterparties are unable to agree on the valuation in a timely manner, and whether or not the transaction is subject to margin requirements. However, once consensus is reached agreed valuations must be provided going forward. We would emphasise however that we expect this relief to be used sparingly. We also expect parties

to reach consensus promptly and in line with dispute resolution processes which they must put in place.

43. A few respondents requested that we permit the submission of previous day valuations where there are difficulties in obtaining a valuation, e.g. if the counterparty fails to provide daily valuations to the reporting entity for certain packaged, bespoke or exotic transactions, or if the latest valuation figures are simply not available. We confirm that it is acceptable to use the previous day valuation in cases where the latest valuation is not readily available provided that the counterparties have already agreed the manner in which valuation is to be derived.

### **Backloading requirement**

44. We received many comments about the difficulties of backloading information under the expanded scope in respect of transactions reported under phase 1 reporting. It is critical that data stored in the HKTR is as complete as possible. It is therefore not possible to simply do away with this requirement completely. However, to lessen the burden, we will amend the Reporting Rules so that for transactions reported under phase 1 reporting, the backloading requirement will not apply if the transaction is due to mature within one year of the implementation of phase 2 reporting. Additionally, the information backloaded must reflect the net effect of all life-cycle events (i.e. “subsequent events” in the Reporting Rules) as at the day of reporting, or up to 2 days before then.
45. The backloading requirement for transactions reported under phase 1 is now set out in new Rule 25B of the draft Expanded Reporting Rules, which applies to both transactions that the reporting entity was a counterparty to, and those that it has conducted in Hong Kong. Paragraph 162 below explains in more detail how Rule 25B will operate.
46. For transactions that were not reportable under phase 1 reporting, the backloading requirement will apply similarly to how it applied when phase 1 reporting was implemented, including that: (i) backloading will only apply in respect of transactions to which the reporting entity is counterparty, not those that it has conducted in Hong Kong; and (ii) there will be a 3-month grace period to backload and transactions maturing within the grace period will not need to be backloaded.
47. A further issue raised in the context of backloading concerned the masking of counterparty particulars in respect of historical transactions (i.e. transactions entered into before phase 2 reporting commences) where consent to disclose has not been obtained. We confirm that masking in such circumstances will only be permitted for transactions entered into before 10 January 2016.

### **Other issues relating to mandatory reporting**

48. A few other issues were raised in connection with phase 2 reporting, which we clarify/address below.
  - (a) If the market on which a product is traded becomes a prescribed market, transactions in those products may cease to be “OTC derivative transactions” as defined in the SFO if the product in question: (i) is a securities or futures contract; and (ii) is cleared through a prescribed clearing house. If it is, the previously reported

transaction will cease to be an “OTC derivative transaction” and obligations to report future life-cycle events and daily valuations will cease to apply. It will however be necessary to use the HKTR’s “quit” function to indicate this change.

- (b) We intend to commence Rule 15 of the Reporting Rules from 1 September 2016. CCPs that are authorized ATS providers (**ATS-CCP**) will become subject to mandatory reporting from that day. However, as phase 2 reporting will not yet be implemented at that time, they will only be required to report transactions and transaction information falling within the narrower product scope and information scope applicable under phase 1 reporting. They will become subject to the wider product scope and information scope only when phase 2 reporting is implemented (currently aimed for 1 July 2017).
- (c) We are still considering to what extent data reported to the HKTR should be published and how. We remain of the view however that any disclosure should initially be on an aggregate basis only. We will monitor international regulatory development in this area before finalizing our approach.
- (d) One respondent enquired how the reporting obligation would apply to fund managers executing transactions for segregated accounts. We confirm that if the fund manager is counterparty to the transaction, then (even though it may be entering into the transaction in connection with a segregated account) it will still be subject to reporting unless it qualifies for the exempt person relief. It should be noted however that the criteria for triggering this relief will be applied at the fund manager level (i.e. looking at its own and all segregated accounts collectively) and not at the segregated account level.

#### **Mandatory record keeping requirement**

- 49. There was general support for the mandatory record keeping requirement to cover the expanded product scope. We will proceed on that basis, and FX security conversions will be carved out so that the product scope for mandatory reporting and mandatory record keeping under phase 2 are the same.
- 50. One respondent requested that the record keeping requirement not be imposed on ATS-CCPs because they are unlikely to report any trades other than those received from their clearing members, or to be subject to exemptions. We believe the need to demonstrate compliance with the reporting obligation applies equally across all reporting entities. We therefore do not see the need to make the suggested change.

#### **Next steps and way forward**

- 51. We are working towards tabling the draft Clearing Rules and draft Expanded Reporting Rules before the Legislative Council in February 2016 for negative vetting. Subject to the legislative process, we expect –
  - (a) phase 1 clearing to be implemented on 1 September 2016, which means the first transactions to potentially be subject to mandatory clearing will be those entered into on or after 1 July 2017;

- (b) Rule 15 of the Reporting Rules to be implemented at the same time as phase 1 clearing, i.e. on 1 September 2016; and
- (c) phase 2 reporting to be implemented on 1 July 2017.

## COMMENTS AND CONCLUSIONS ON MANDATORY CLEARING

### A. Products to be subject to mandatory clearing

#### Clearing determination process

52. There was broad support for our clearing determination process and the factors that it embodies. Some respondents raised concerns about the availability of sufficient designated central counterparties (**CCP**) to provide clearing services, and suggested that the clearing determination process should make clear that a product will only be subject to mandatory clearing if at least two designated CCPs offer services to clear it. As we believe major global CCPs will be seeking designation for the purposes of mandatory clearing in Hong Kong, we do not foresee availability of sufficient CCPs as being an issue. We therefore intend to stay with the clearing determination process set out in the Consultation Paper. That said, to ensure there is sufficient time to review multiple applications for CCP designation, we will defer commencement of the Clearing Rules by a few months. We will now aim to implement those rules on 1 September 2016 (subject of course to completion of the legislative process).

#### Types of IRS to be subject to clearing

53. The Consultation Paper proposed that, for the first phase of mandatory clearing (**phase 1 clearing**), we would only focus on certain standardised interest rate swaps (**IRS**) entered into between major dealers. Specifically, we proposed to cover only fixed-to-floating swaps, basis swaps and overnight index swaps (**OIS**), and provided they are plain vanilla, i.e. bear features in terms of currency, floating rate index and tenor that meet certain criteria as set out in the Consultation Paper. Such IRS are standardised enough for central clearing and are supported by an adequate number of CCPs.
54. We received broad support for the types of swaps to be covered under phase 1 clearing. One respondent suggested that our clearing obligation should also cover variable notional swaps and forward rate agreements. However, given the broad support for our original proposal, we do not propose to extend the coverage further at this stage. We will however monitor activity levels in product types that are not subject to clearing in Hong Kong but subject to clearing in other jurisdictions, for signs of regulatory arbitrage that might undermine the G20 commitments.
55. A few respondents sought clarification on the scope of IRS products subject to mandatory clearing. Our responses to the queries are set out below –
- (a) *Swaption*: A swaption is merely an option to enter into a swap transaction, and not itself a swap transaction. As such, it should not fall within the definition of IRS under our Clearing Rules. It is therefore not subject to phase 1 clearing.
  - (b) *IRS entered into pursuant to the physical exercise of a swaption*: Such an IRS will fall within the definition of IRS under our Clearing Rules and

therefore be subject to phase 1 clearing if its features (in terms of currency, floating rate index and tenor) meet the specified criteria.

- (c) *IRS that becomes subject to mandatory clearing as a result of an amendment to its original terms or the occurrence of certain life cycle events:* Amendments to an IRS transaction may or may not result in a new transaction. Much will depend on the nature and scope of the amendment. A simple amendment should not normally result in a new transaction but an amendment that substantially changes the terms and conditions of the transaction would. Entities should adopt a pragmatic approach when assessing if an amendment results in a new transaction.
- (d) *IRS that forms part of a larger, complex or packaged structure:* When an IRS transaction is combined with other separate transactions to make up a larger, complex or packaged structure, the IRS transaction will be caught by our clearing requirements. However, if the larger, complex or packaged structure is a single transaction with different components and one of the components is similar to an IRS, we do not intend to require the single transaction to be broken down into its individual components and subject the component which is similar to an IRS to central clearing. Also, if the larger, complex or packaged structure is in fact an embedded derivative, i.e. a simple instrument (e.g. shares, bonds, notes) with the IRS being merely an embedded feature that makes the structure a “structured product” (as defined in the Securities and Futures Ordinance, **SFO**), the structure itself falls outside the scope of “OTC derivative product” (as defined in the SFO). The IRS transaction, being only an embedded feature of the structure, will not be subject to mandatory clearing.
- (e) *IRS created as a result of novation due to restructuring of a corporate group:* An IRS transaction that stems from novation will be subject to clearing if its features (in terms of currency, floating rate index and tenor) meet the specified criteria. As these features are likely to be the same for both the original transaction and the new transaction resulting from the novation, it follows that if the original transaction was subject to clearing, the new transaction will be subject to clearing also. Additionally, the new transaction may still be subject to clearing even if the old one was not. For example, the old transaction may be an historical transaction, executed prior to the prescribed day for any calculation period. However, the new transaction may be executed after the relevant prescribed day and hence subject to clearing.

For better transparency and easy reference, we will clarify the above points in a set of Frequently Asked Questions (**FAQ**) that will be published on both the HKMA's and SFC's respective websites.

### **HKD denominated IRS**

- 56. Although most respondents agreed that HKD is a systemically important currency for Hong Kong, some respondents noted that including HKD denominated IRS in phase 1 clearing may pose difficulties as not many regional CCPs provide services for clearing such IRS. They further noted that there should be at least two designated CCPs which are actively clearing HKD

denominated IRS before we subject HKD denominated IRS to mandatory clearing.

57. As mentioned in paragraph 52 above, we believe the major global CCPs (including some that provide services for HKD denominated IRS) are likely to apply to become designated CCPs. In view of this, we do not foresee that there will be a lack of designated CCPs providing services for clearing HKD denominated IRS when phase 1 clearing is implemented. We would also add that we are mindful of the need to ensure that sufficient CCPs are designated when phase 1 clearing comes into effect, and will therefore process applications for CCP designation with the implementation timeline in mind. Our intention to defer implementation of phase 1 clearing until 1 September 2016 should also provide further assurance in this regard. We accordingly remain of the view that HKD denominated IRS should be subject to phase 1 clearing.

### **IRS denominated in G4 currencies**

58. One respondent commented that there is insufficient liquidity in IRS denominated in EUR, JPY and GBP in Hong Kong to warrant their inclusion in phase 1 clearing, and that we should therefore only mandate USD denominated IRS. However, the majority of other respondents agreed with our proposal to include the G4 currencies for international consistency.
59. Some respondents were concerned that there may not be sufficient designated CCPs providing central clearing for IRS transactions in the G4 currencies when phase 1 clearing is implemented. As discussed in paragraph 57 above, we do not foresee that there will be a lack of designated CCPs, and will process applications with the implementation timeline in mind.
60. Some respondents commented that the timing for implementing phase 1 clearing should take into account clearing obligations under EMIR, i.e. that the Hong Kong clearing obligations should not “front run” the clearing obligations under EMIR.
61. We do not believe that there should be any “front running” issue as raised by respondents. As noted in paragraph 52 above, we are aiming to implement phase 1 clearing on 1 September 2016 (subject of course to completion of the legislative process). On that basis, the first calculation period will be from 1 September to 30 November 2016 at the earliest, and the first prescribed day will fall 7 months thereafter, i.e. on 1 July 2017. Only transactions entered into on or after that day will be subject to phase 1 clearing. In contrast, we understand that the clearing obligations under EMIR will likely commence in June 2016 and December 2016 respectively for the first two categories of counterparties under the EMIR clearing obligation.

### **Specified floating rate indexes for IRS**

62. There were no objections to the proposed floating rate index criterion for IRS. In respect of the Tables under Schedule 1 of the draft Clearing Rules, we were asked to clarify whether, the reference to the EURIBOR includes EURIBOR-Telerate and EURIBOR-Reuters and the reference to HIBOR includes HIBOR-HKAB and HIBOR-HIBOR. We confirm that it does.
63. We were also asked to clarify whether HIBOR-ISDC is included for the purposes of HIBOR. We take this opportunity to clarify that references to the

floating rate indexes include all valid quoting sources. This will be clarified in the FAQ. That said, we do not expect HIBOR-ISDC will be used as it is no longer maintained by the International Swap and Derivatives Association.

64. One respondent commented that EUR on LIBOR and JPY on TONA should also be included. As these indexes are not included by other major jurisdictions, we propose, for international consistency, not to include them either.
65. One respondent asked how the list of indexes would evolve over time. We confirm that changes will be subject to consultation, and that the industry will be given time to make necessary arrangements before changes are implemented.

### **Proposed coverage of OIS**

66. We received support from some respondents and comments from others on our proposal to include OIS. Overall, there was no strong objection. Respondents' key concern was the availability of designated CCPs to clear OIS, and one respondent also noted that there is a limited market for OIS. As mentioned above, we do not foresee that there will be a lack of designated CCPs. Moreover, we have only proposed covering OIS denominated in USD, EUR and GBP. Again, this is for international consistency since most major markets have mandated clearing for OIS in these currencies only.

### **Specified tenors for IRS**

67. On our proposed maximum tenor for IRS, one respondent agreed noting that it was reasonable and ought to capture the bulk of the trading volume. However, some respondents commented that the range of tenors should mirror those proposed under the EMIR, noting that this would avoid the need to develop multiple systems and also reduce the risks and costs associated with multiple systems. However, as our regime does not prohibit voluntary clearing, it is open to market participants to voluntarily clear other transactions to avoid developing multiple systems. We therefore do not see a need to change the range of tenors.
68. One respondent asked how the tenors listed in the consultation paper would evolve over time. We confirm that any change to the range of tenors will be subject to consultation and the industry will be given time to make necessary arrangements before any change is implemented.

### **NDF not mandated for phase 1 clearing**

69. The Consultation Paper noted that we did not propose to include non-deliverable forwards (**NDF**) in phase 1 clearing. There was full support for this, and so we will proceed accordingly.

## **B. Casting of dealer-to-dealer transactions**

70. The Consultation Paper noted that we intend to implement our mandatory clearing requirements in phases, starting first with only dealer-to-dealer transactions. There was broad support for this proposal but some respondents also asked for more specifics on the timeline and scope of future phases. As this will, in large part, depend on global developments, we are unable to

provide more specifics at this time. In any event, we will be consulting the market before introducing any future phases, and so the industry will have an opportunity to comment on the proposed timeline and scope of these.

71. A few respondents noted that when we extend the clearing obligation to a larger group of market participants, we should provide a longer lead time for those less active market participants. This is our intention. We will also be consulting the market before introducing any such extension.
72. The Consultation Paper proposed that, in order for the clearing obligation to apply, at least one of the counterparties must be a “prescribed person”, and the other must be either a “prescribed person” or a “financial services provider”. We also proposed that both must have crossed the relevant clearing threshold, and that reporting entities could rely on confirmations from their counterparties as to whether the criteria have been met. Respondents raised various concerns about this proposal including that it may be difficult to establish if their counterparties have met these criteria. Our responses to these concerns are discussed below.

#### **Revised approach to identifying “financial services provider”**

73. Respondents raised concerns about the proposed definition for “financial services provider”, noting that it would be difficult to establish if an overseas counterparty falls within the scope of that definition, and that consequently prescribed persons would have to seek written confirmations from all of their counterparties even though phase 1 clearing is intended to focus only on major dealers. At the same time, obtaining accurate and timely written confirmations from overseas counterparties as to their regulatory status and average position could be challenging operationally as such counterparties may not be familiar with Hong Kong clearing requirements.
74. Respondents thus suggested that we either remove the concept of financial services providers or prescribe a list of persons that are to be regarded as financial services providers. Some requested that we consider referring to the list of registered Swap Dealers under the Dodd-Frank Act, or to the list of Category 1 entities under the EMIR clearing obligation.
75. We do not consider it feasible to do away with the concept of financial services providers given that we only intend to cover dealer-to-dealer transactions in phase 1 clearing, and that these would include transactions with overseas dealers.
76. However, in light of the industry’s feedback, we have revised the definition of “financial services provider” so that it refers only to entities on a list prescribed by the SFC, with the HKMA’s consent, and published in the Government Gazette. No clearing threshold will apply in respect of financial services providers. Prescribed persons will therefore only need to check the list to confirm if their counterparty is a financial services provider. The revised definition is reflected in Rules 2 and 3 of the draft Clearing Rules.
77. In compiling the list of financial services providers, we propose, as a starting point, to refer to the list of global systemically important banks published by the Financial Stability Board in November 2015, and the list of dealer groups which undertook to the OTC Derivatives Supervisors Group to work collaboratively with central counterparties, infrastructure providers and global

supervisors to continue to make structural improvements to the global OTC derivatives markets. Only entities that are on one or both of these lists, or members of a group that is on one or both of these lists, will be prescribed. We will also consider if they (or any other entity within their group) are members of any of the largest IRS CCPs based in the U.S., Europe, Japan, Australia, Singapore or Hong Kong. The list will be updated from time to time, as appropriate, in line with global developments and other changes in the derivatives market.

78. A point to note is that the list of financial services providers may include persons who are also prescribed persons incorporated overseas. This is necessary because such prescribed persons (e.g. overseas AIs) whose Hong Kong positions have not reached the clearing threshold will not themselves be subject to the clearing obligation. However, if they enter into transactions with another prescribed person that has reached the clearing threshold, that other prescribed person should still be required to clear the transaction if it otherwise meets the clearing criteria and the overseas prescribed person is a major dealer.
79. The initial proposed list of financial services providers is attached at **Appendix D** to this Conclusions Paper. We take this opportunity to clarify that the list of financial services providers may be amended from time to time in light of changes in the market. However, we will consult the market on such future changes before they are implemented. We welcome comments on the proposed list attached at Appendix D. Comments on the proposed list should be submitted in writing by one of the following methods and by 29 February 2016.

By online submission

at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>

By email to: [fss@hkma.gov.hk](mailto:fss@hkma.gov.hk) or [otcconsult@sfc.hk](mailto:otcconsult@sfc.hk)

By fax to: (852) 2878 7297 or (852) 2521 7917

By post to one of the following:

|                                              |                                          |
|----------------------------------------------|------------------------------------------|
| Financial Stability Surveillance<br>Division | Supervision of Markets Division          |
| Hong Kong Monetary Authority                 | The Securities and Futures<br>Commission |
| 55/F Two International Finance<br>Centre     | 35/F Cheung Kong Center                  |
| 8 Finance Street, Central                    | 2 Queen's Road Central                   |
| Hong Kong                                    | Hong Kong                                |

80. Any person wishing to submit comments on behalf of any organization should provide details of the organization whose views they represent. **Please note that the names of commentators and the contents of their submissions may be published by the HKMA and / or SFC on their respective websites and in other documents to be published by them. In this connection, please read the Personal Information Collection Statement attached to the Consultation Paper. You may not wish your name and / or submission to be published by the HKMA and / or SFC. If this is the case,**

**please state that you wish your name and / or submission to be withheld from publication when you make your submission**

**C. Clearing threshold**

81. There was broad support for our proposal to have multiple clearing thresholds and to set each by reference to a calculation period. Respondents also generally supported our proposed formula for calculating the “average position” (i.e. the position that is to be measured against the clearing threshold). On our proposal that only future transactions should be subject to mandatory clearing, only two respondents (both CCPs) disagreed and suggested that we incorporate back-loading or front-loading requirements. We do not think this is necessary because the costs will outweigh the benefits. Other comments regarding the clearing threshold are discussed below.

**OTC derivative transactions to be included in threshold calculation**

82. The Consultation Paper noted that we would take into account a person’s entire portfolio of outstanding OTC derivative transactions, minus only deliverable FX forwards, when determining whether a person has crossed the clearing threshold. Some respondents suggested that certain other types of transactions should also be excluded from the threshold calculation, namely: deliverable FX swaps; transactions in OTC derivatives that are not mandated for clearing; intra-group and intra-company transactions; transactions entered into by end-users for hedging commercial risks; and transactions in all exchange-traded derivatives.
83. In the case of deliverable FX swaps, it was suggested that these be excluded because they are similar in nature to deliverable FX forwards. We agree that deliverable FX forwards are similar to deliverable FX swaps, and hence agree that they should be excluded also. We have amended the draft Clearing Rules accordingly – see Rule 2 where a definition has been added for “deliverable FX swap” and the definition of “outstanding trade” has been revised to exclude deliverable FX swap.
84. In the case of transactions in OTC derivatives that are not mandated for clearing, it was suggested that these should be excluded so as to rationally connect the threshold with the clearing obligation. Respondents were concerned that by including transactions that are not subject to clearing, an entity with a large number of outstanding OTC derivative transactions in, for example, equity derivatives but only a handful of IRS would still have to clear the IRS if its equity derivative transactions bring it over the threshold. We do not see a need to connect the threshold with the clearing obligation as suggested. The purpose of the clearing threshold is to help identify who are the most active dealers as only their transactions will be caught under phase 1 clearing. This cannot be achieved by only looking at positions in products that are subject to clearing. For the same reasons, we do not consider it appropriate to exclude intra-group and intra-company transactions, or transactions entered into by end-users for hedging commercial risks.
85. As for exchange-traded derivatives, their inclusion/exclusion from the threshold calculation will depend on whether they come within the definition of “OTC derivative product” (as defined under the SFO) or not. If they do, they will be included. If they do not, they will be excluded. If a particular exchange-traded derivative is included in the threshold calculation, and a market

participant wants it to be excluded, the appropriate approach would be to request that the particular overseas market and clearing house on which that product is traded and subsequently cleared be added to the list of prescribed overseas markets and clearing houses set out in the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice (Cap 571AM) which was made under section 392A of the SFO.

86. We were also asked to confirm whether the threshold calculation should be done on the basis of “gross notional” without netting. We confirm that it should and we will clarify this point in the FAQ.

#### **Threshold variations for different participants**

87. Respondents raised various concerns about the proposal to have two thresholds for prescribed persons incorporated overseas. They noted that periodically aggregating trades from all over the world is an extensive exercise that would place an additional burden on overseas incorporated entities. Moreover, the proposed threshold for global positions (i.e. US\$1 trillion) was viewed as a relatively easy threshold for an overseas incorporated prescribed person to reach, compared to the threshold for local positions (i.e. US\$20 billion). This would mean an overseas incorporated prescribed person with a large global position but only minimal trading activity in Hong Kong would still have to comply with the clearing obligation here.
88. Taking into account the industry's feedback (and given that, as discussed above, we will no longer have a clearing threshold for financial services providers), we have removed the clearing threshold for global positions. There will be a single clearing threshold which will be measured against the following –
- (a) in the case of a locally incorporated prescribed person, all of its outstanding positions; and
  - (b) in the case of an overseas incorporated prescribed person, only those of its outstanding positions which are booked in the books of its Hong Kong branch.
89. Following from the above, an overseas incorporated prescribed person which is active globally but not locally will not be subject to the clearing obligation in Hong Kong. However, as discussed in paragraph 78 above, its transactions may still be subject to mandatory clearing if it is specified as a financial services provider.
90. Our revised clearing thresholds for the first few calculation periods are reflected in the revised table in Schedule 2 of the draft Clearing Rules.

#### **Proposed threshold level**

91. We received broad support for our proposed threshold level of US\$20 billion. Respondents asked for more information about the timeframe for lowering the clearing threshold in the future, and for an opportunity to be consulted before the new threshold becomes effective.
92. We propose to keep the clearing threshold at the same level for the next two years. We will consult the market before lowering the clearing threshold. An

estimated timeframe will also be provided nearer the time so as to give market participants adequate time to set up their systems and complete the documentation and on-boarding exercise for accessing clearing facilities.

### **Calculation period**

93. Some respondents proposed that the gap between the end of one calculation period and start of the next be extended from 6 months to 12 months. Taking into account that we have removed the clearing threshold for global positions, we believe that a gap of 6 months between calculation periods is not unduly burdensome. A 6-month gap is also appropriate to ensure that any new local dealer will be covered within a reasonable time under phase 1 clearing.
94. In future phases, we may extend the time period between each calculation period as appropriate and necessary, taking into account any revised clearing threshold proposed at that time and the scope of market participants covered.

### **Exit mechanism**

95. In the Consultation Paper, we proposed that once a person crosses the threshold for a particular calculation period, it will thereafter always be regarded as having crossed the threshold even if its positions in OTC derivative transactions subsequently fall below that same threshold or the threshold for a later calculation period.
96. While respondents generally appreciated the reasons for not having a mechanism for exiting the clearing obligation, some respondents requested that we consider having one for situations where there is permanent change in an entity's trading profile or business model. It was also suggested that the clearing threshold might be reached due to an unusual level of activity, which is demonstrated as not being the norm over a longer period.
97. We believe it is reasonable to allow a person to exit if there is a permanent change in its business model or trading profile and its positions do not pose systemic risk concern. We have therefore revised the draft Clearing Rules to provide for an exit mechanism – see Rule 6.
98. The proposed exit mechanism works as follows –
  - (a) A prescribed person's outstanding positions (as at month-end) must be below US\$14 billion (i.e. below 70% of the US\$20 billion clearing threshold) for a period of 12 consecutive months. In determining this, we will look at the person's outstanding positions as at the last day of each month within the 12-month period. For locally incorporated prescribed persons, we will look at their outstanding positions in all OTC derivative transactions (other than deliverable FX forwards and deliverable FX swaps). For overseas incorporated prescribed persons, we will only look at their outstanding positions in all OTC derivative transactions (other than deliverable FX forwards and deliverable FX swaps) recorded in the books of their Hong Kong branch.
  - (b) If a prescribed person reaches the US\$14 billion level and maintains it for 12 consecutive months as described in paragraph (a) above, it may

notify the relevant regulator by filing an exit notice confirming this and specifying the 12-month period and the person's relevant positions on the last day of each month during the 12-month period. Only if such an exit notice is given will the prescribed person no longer be regarded as having reached the clearing threshold and thus released from the clearing obligation. The person's relevant positions must also still be below US\$14 billion at the time of giving the exit notice.

- (c) If the prescribed person subsequently reaches the clearing threshold again, then it will be subject to the clearing obligation again. The methodology for calculating whether a person has reached the clearing threshold again will be the same as that for a prescribed person that has reached the clearing threshold for the first time.

- 99. To clarify, although the proposed Clearing Rules allow for the possibility that a prescribed person who has exited the clearing obligation may become subject to it again, in reality, we do not expect such situations to arise as the exit mechanism is intended and designed for persons who have permanently changed their business model or trading profile. In any case, we will monitor the filing of exit notices and take appropriate action to stem any abuse.

#### **D. Complying with the clearing obligation**

##### **Responsibilities of a prescribed person – matters to be checked**

- 100. Similar to requests for a list of financial services providers, we also received requests for regulators to maintain a list of prescribed persons that have reached the clearing threshold. To facilitate this, it was also suggested that prescribed persons be required to notify regulators if they have reached the clearing threshold.
- 101. We do not believe it is necessary for regulators to maintain such a list. Unlike financial services providers, prescribed persons should be fully aware of their obligations under the Clearing Rules. They will also in any event need to maintain current information on their outstanding OTC derivative positions for proper risk management purposes. They should therefore have no difficulty in providing timely and accurate confirmations as to whether they have reached the clearing threshold or not. Accordingly, we do not propose to introduce any changes in this regard. We will however keep this matter under review, and revisit the issue of publishing such a list in future if necessary, particularly when we extend the clearing obligation to cover a larger group of persons.

##### **Responsibilities of a prescribed person – ensuring transaction is cleared**

- 102. The Consultation Paper noted that we expect a prescribed person to terminate a transaction that remains uncleared within the T+1 timeframe. We received comments from respondents requesting us to treat trades which are not cleared and are not subsequently unwound as exceptions that are reportable to the regulators. Other respondents suggested that a longer period of time be given to terminate uncleared trades.
- 103. We have considered the comments received but do not agree with the proposal to treat uncleared transactions as exceptions, or to provide a longer

time for unwinding. Such an approach would defeat the purpose of having a T+1 timeframe, which we consider to be a reasonable period for completing any clearing or (if necessary) any unwinding. We are also not aware of any other major jurisdiction that grants an exception relief in such circumstances. We therefore intend to retain the T+1 timeframe requirement without any qualification.

#### **Timeline for complying with clearing obligation**

104. Some respondents requested that the T+1 timeframe for clearing be extended, and that the scope of “business day” be broadened to take into account the fact that there are different holiday schedules around the world. Some suggested to tie “business day” to the business day of the jurisdiction where the CCP is based. Some explained that they need more time because their back office providing clearing services may not be located in Hong Kong.
105. We understand that the clearing obligation in other major jurisdictions requires transactions to be cleared within the same business day. Our proposals are therefore already more generous in that we allow one extra day to cater for the time-zone differences. In addition, we understand that most CCPs do not follow the holiday schedule of the jurisdiction in which they are based. Rather, they operate on a business day of the currency that they clear. As for back office support being provided from outside Hong Kong, we would expect prescribed persons to make appropriate arrangements for holiday cover if they outsource such functions to another jurisdiction. For all these reasons, we believe our proposed timeframe of T+1 is appropriate and that there is no need to change the definition of “business day”.

#### **Clearing obligation in respect of specified subsidiaries of locally incorporated Als**

106. We received full support for our proposal not to specify any subsidiaries at this stage for ease of implementation of phase 1 clearing. We will therefore proceed on this basis.

#### **E. Exemptions from the clearing obligation**

107. The Consultation Paper proposed two exemptions, i.e. an intra-group exemption and a jurisdiction-based exemption. One respondent proposed that we consider having a permanent exemption for small firms whose exposure are relatively small. We do not believe this is necessary as our proposals for mandatory clearing already build in a threshold concept, which necessarily means persons with small exposures will not be caught. Moreover, the threshold is set at a fairly high level as the objective of phase 1 clearing is to catch dealer-to-dealer transactions only. We will however revisit this issue at a later stage when we expand mandatory clearing in subsequent phases to cover a larger group of market participants.

#### **Intra-group exemption**

108. We received broad support for introducing an intra-group exemption. Respondents however requested that the notification requirement be removed since regulators would already have access to sufficient information about the transactions by virtue of the reporting and record keeping obligations.

109. The notification requirement provides a means of ensuring that the intra-group exemption is properly used. Moreover, information collected under the reporting obligation cannot, on its own, suffice to establish the necessary intra-group relation. We also do not consider the notification requirement to be particularly burdensome given that multiple affiliates can be covered by a single notice. For all of these reasons, we do not propose to remove the notification requirement.
110. Separately, we were asked to clarify the meaning of *“risk evaluation, measurement and control procedures which are centrally overseen and managed within the group of companies to which they belong”* used in the draft Clearing Rules. The intention is that the intra-affiliate exemption should only apply in respect of affiliates whose risk management functions (i.e. risk evaluation, measurement and control) are carried out centrally together at the group level, and not in silos on an individual entity level. We will cover this point in the FAQ.

### **Jurisdiction-based exemption**

111. We received broad support for having a jurisdiction-based exemption. However, respondents noted that tracking the 5% limit in respect of each jurisdiction might be a complex exercise, and requested that crossing the 5% limit for one jurisdiction not affect the validity of the exemption for trades booked in other jurisdictions. There were also requests to remove the 10% limit for all jurisdictions collectively given that there was already a 5% limit per jurisdiction.
112. The jurisdiction-based exemption is primarily aimed at addressing concerns about conflicting obligations that may apply to “small” branches of a prescribed person operating in closed markets. It is also only intended to apply if the transactions of the “small” branches are not significant enough to be of systemic concern, either on their own or when added together with other such “small” branches. For this reason, both the 5% and 10% limits are necessary. It is also equally important that compliance with these limits be monitored closely to ensure that the exemption is used only for the purposes intended. Accordingly, we do not propose to make any change to our proposal on this.

### **Exemption for transactions resulting from multilateral trade compression**

113. We received broad support for our proposal not to restrict de-clearing and trade compression. Respondents also suggested that the rules include an express exemption for trades that result from trade compression.
114. We recognize that there is benefit in using trade compression as a risk mitigation tool. We also note that some major jurisdictions have included provisions whereby trades resulting from multilateral trade compression would be exempted from clearing in certain circumstances.
115. We accordingly propose to include a similar exemption in our legislation – see Rule 10 of the draft Clearing Rules. Rule 10 exempts transactions that are created or amended as a result of a multilateral trade compression cycle, but only if the original transactions were not themselves subject to the clearing requirements (e.g. because they were entered into before the relevant prescribed day). Additionally, to ensure that the exemption is not abused, we propose that the exemption should only apply where the trade compression

cycle is between more than two participants (i.e. not conducted on a bilateral basis only) and carried out by a third party rather than by the participating counterparties themselves.

116. Separately, we also received a request that certain transactions resulting from post-trade risk reduction services (referred to as component transactions) should not be subject to the clearing obligation. The respondent requested that any class of derivatives that is entered into to reduce systemic risk and portfolio risk between two counterparties and which do not change the overall market risk for the counterparties should be exempted from the clearing obligation. However, we consider that such an exemption would be too broad and vague. It would also be more susceptible to abuse. We therefore do not propose to include such an exemption at this stage. We will however monitor market development, and fine tune our exemptions over time, as necessary and appropriate.

## **F. Substituted Compliance**

117. We received full support for our proposed substituted compliance framework. Respondents also appreciated the pragmatic and constructive approach of building on the work of the OTC Derivatives Regulators Group (**ODRG**) in identifying the initial list of comparable jurisdictions for purposes of substituted compliance. Clarification was sought as to whether a prescribed person who is seeking to rely on substituted compliance had to give any notification of this to the regulators. We confirm that no such notification is needed.
118. We did however receive comments on our proposal to implement substituted compliance using the “stricter rule” approach. Respondents commented that this would reduce the benefit of substituted compliance, as “stricter rule”, together with the requirement to clear through a designated CCP, would mean that prescribed persons need to check if the particular trade is indeed cleared in a comparable jurisdiction and through a designated CCP. It was suggested that we should focus on the equivalence of the clearing obligation in the foreign jurisdictions rather than applying a “stricter rule” approach.
119. We have considered the comments made and feel that our proposed “stricter rule” approach is appropriate. The equivalence assessment suggested by some respondents would require a more granular rule-by-rule comparison of the laws of a foreign jurisdiction with those of Hong Kong. This approach would likely be complex and time consuming. The “stricter rule” approach allows for a more flexible and outcomes-based approach. We believe that overall, our substituted compliance regime will make it administratively easier for market participants.
120. Respondents were generally supportive of our proposed list of comparable jurisdictions. We received a request to include an additional jurisdiction to the list. In this regard, the Consultation Paper noted our rationale for including only jurisdictions of members of the ODRG in our initial list. Accordingly, we would prefer to keep the list unchanged. However, we do expect the list of comparable jurisdictions to grow over time.
121. We will continue to observe developments in other jurisdictions. As more jurisdictions finalise their regimes for substituted compliance or equivalence determination, we will consider whether any change is needed to our substituted compliance framework or to our list of comparable jurisdictions.

## **G. Clearing related record keeping requirements**

122. We received comments from respondents that the time period for record keeping should be shortened to less than 5 years after the maturity or termination of the transaction. One respondent suggested that the record keeping requirement is redundant and imposes additional costs. We maintain however that the record keeping requirements are necessary to demonstrate compliance with the clearing obligation. Their inclusion is also consistent with the approach taken in respect of mandatory reporting (where we have imposed a similar requirement to maintain records for 5 years). We therefore do not propose any change in this regard.
123. Separately, one respondent sought clarification on the interplay between Rule 5(4) (i.e. Rule 6(1)(a)(ii) under the revised draft Clearing Rules) and the record keeping requirements, i.e. whether transactions of an overseas AI or overseas AMB that are booked outside Hong Kong (and hence not subject to the clearing obligation) are still subject to the record keeping requirements. We confirm that there is no express record keeping requirement in such cases because it will in any event be possible to ascertain whether the transaction qualifies under Rule 6 by looking at the AI or AMB's Hong Kong books (i.e. if the transaction is entered in the Hong Kong book, Rule 6 should not apply). We will clarify this point in the FAQ for avoidance of doubt.

## **H. Designation and regulation of CCPs**

124. Respondents supported our proposed processes for granting or revoking a CCP designation, and our proposal to implement only the clearing leg of the extended definition of ATS at this stage. We will therefore proceed on this basis.

### **CCP designation and implementation timeline**

125. Respondents were however concerned whether CCPs would be designated in time for implementation of phase 1 clearing. Some respondents requested that we consider designating CCPs in advance of implementation, particularly as substituted compliance is also dependent on the availability of designated CCPs. Another respondent suggested that there be at least two designated CCPs before the commencement of phase 1 clearing.
126. We appreciate the industry's concerns. As mentioned earlier, we are mindful of the need to ensure that sufficient CCPs are designated when phase 1 clearing comes into effect, and will therefore process applications with the implementation timeline in mind. Our intention to defer implementation of phase 1 clearing until 1 September 2016 should also provide further assurance in this regard.

### **Insolvency override protections for certain ATS providers**

127. Two respondents, both CCPs, disagreed with our proposal to defer implementation of the changes to the definition of "market contract" to cover CCPs that are authorized ATS providers and designated CCPs. We have since had further discussions with the two respondents to clarify our concerns about implementing the change, i.e. about the possible ambiguities and uncertainties that might arise in terms of how the insolvency override

provisions apply in respect of overseas CCPs that risk manage on a portfolio basis. Subsequent to these discussions, both respondents agreed with our proposed deferral.

128. The above said, we appreciate that there is a need to confer a degree of insolvency override protection to CCPs that are authorized ATS providers. The SFC is looking into this matter and will consult the market before any legislative amendments are put forward.

## **COMMENTS AND CONCLUSIONS ON MANDATORY REPORTING**

### **A. Expanded product scope**

129. The first phase of mandatory reporting (**phase 1 reporting**) only covers certain IRS and NDF. The next phase (**phase 2 reporting**) is intended to cover other asset classes as well so as to align with the regulatory reform objectives of the G20 commitments.

#### **Ambit of the product scope under phase 2 reporting**

130. One respondent expressed concerns about the difficulty in determining what is in scope under phase 2 reporting given how the definition of “OTC derivative product” in Schedule 1 to the SFO is cast. We received a suggestion to list and publish all reportable products, and their respective asset classes, based on the ISDA taxonomies.
131. As for the product scope under phase 2 reporting, our intention is to capture OTC derivative transactions that fall within the five key asset classes, namely interest rate derivatives, FX derivatives, equity derivatives, credit derivatives and commodity derivatives. This will be reflected in the data fields to be specified by the HKMA by notice in the Gazette as reflected in Rule 2A(2) of the draft Expanded Reporting Rules. The data fields will be specified by reference to specific asset classes, and (as reflected in Appendix D to the Consultation Paper) only the five key classes are proposed to be specified at this stage. Rule 2A(3) already indicates that data fields are to be specified by reference to a particular class or description of OTC derivative transactions. However, for better clarity, we have now also echoed this in Rule 2A(1)(b)(ii). Further guidance on the product scope for phase 2 reporting will be provided in the FAQ and the HKMA's SRI.
132. A few respondents noted that our reportable products should be aligned with those currently reportable in other jurisdictions. We would like to reiterate that our policy intention is to cover the five key asset classes for mandatory reporting. This is also the main focus of the global reform initiatives on OTC derivatives.

#### **Scope of FX derivatives**

133. There were concerns about the lack of explicit guidance as to what constitutes an OTC derivative for FX, and clarification was sought as to whether it

captured all FX forwards (including FX security conversions<sup>1</sup>), FX NDFs, FX swaps and FX options, in all currencies. We also received a request to exclude FX spot transactions from the scope of mandatory reporting.

134. We confirm that all FX forwards, FX NDFs, FX swaps and FX options should generally be caught unless they can be shown to fall within one of the exemptions from the definition of OTC derivative product. As for FX spot transactions, these are already excluded from the definition of “OTC derivative product” under the SFO by virtue of subsections (2)(g) and (4) of section 1B of Schedule 1 to the SFO.
135. Regarding FX security conversion transactions, we understand that it is common for market participants to enter into such transactions to facilitate the purchase or sale of foreign securities. We note also that these transactions serve a very specific purpose and, but for the settlement cycle of the relevant securities transaction, would essentially be FX spot contracts. Their inclusion under mandatory reporting is therefore of minimal value. Other major jurisdictions (including the US, Australia and Singapore) have also excluded such transactions from mandatory reporting. For all of these reasons, we agree that they should be excluded from mandatory reporting. We have accordingly amended Rules 7 and 8 of the Reporting Rules to make clear that the reporting and related record keeping obligations do not apply to such transactions. FX security conversions are described as “excluded currency contracts” in the Reporting Rules, and defined under Rule 2. To prevent abuse, we have put a T+7 days cap on the settlement period for such FX contracts.

### **Reporting transactions with retail customers**

136. One respondent noted that the reporting requirement on “conducted in Hong Kong” transactions may capture certain transactions between banks and their retail clients. They were concerned that information thus reported may be of limited value to regulators (since the retail client's identity may be masked), but nevertheless increase the reporting burden for banks. They suggested providing a relief for the reporting of such transactions until the time Hong Kong persons become subject to the reporting obligation.
137. We would like to clarify that the obligation to report lies with the relevant reporting entity, regardless of the nature of the other counterparty (i.e. whether it is a retail client or not). We see no basis for drawing a distinction based on the nature of the counterparty. In addition, the retail client's identity may not need to be masked. Therefore, we do not think it is necessary or appropriate to provide the relief suggested.

### **Staggering implementation**

138. There were suggestions to stagger implementation of the expanded product scope by asset class, with a 6-month gap between asset classes. One respondent also noted that CCPs will require sufficient time to put systems in

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<sup>1</sup> FX security conversions refer to the purchase or sale of a foreign currency for the sole purpose of effecting a purchase or sale of a security denominated in a foreign currency, when the settlement period for such FX transaction is within the settlement cycle for such security (which cycle could in some cases be as long as T+7 days and hence exceed the settlement period for spot transactions in such foreign currency).

place for reporting the expanded product scope.

139. While we appreciate respondents' desire for a more cautious approach to implementation, we are concerned that a staggered approach will unreasonably delay full implementation of mandatory reporting in Hong Kong, particularly as most market participants are unlikely to be active in all five key asset classes. As an alternative, we propose to defer the commencement of phase 2 reporting to 1 July 2017 (which is over 12 months from the day of enactment, instead of 6 months as previously proposed). This will allow an extended period for setting up and testing necessary systems and system connections.

## **B. Implications of removing “product class” and “product type”**

### **“Exempt Person” Relief**

140. In the Consultation Paper, we proposed that the “exempt person” relief be extended to cover the whole spectrum of OTC derivative products and no longer apply on a product class basis. We also proposed to keep the US\$30 million limit unchanged. Some respondents commented that this would unfairly penalise participants with relatively low levels of exposures who are unlikely to contribute to systemic risk in the market. They suggested that the increase in the range of products subject to the threshold should be matched by an appropriate increase in the US\$30 million limit.
141. As noted in the Consultation Paper, any increase in the limit will need to be achieved by keeping the existing US\$30 million per product class limit and introducing an additional higher limit in respect of all (or a combination of) product classes. However, the “exempt person” relief was designed for small players who are not active in the OTC derivatives market (e.g. those who enter into OTC derivative transactions only intermittently or for commercial hedging purposes). Such entities are unlikely to have outstanding positions in a wide range of OTC derivative transactions. Any introduction of such additional threshold will therefore be of limited value, while rendering the rules and their implementation far more complex. We therefore remain of the view that the US\$30 million limit should stay unchanged and apply across all product classes collectively.

### **Removal of concession period and deferral of commencement**

142. There was general support for our proposal to remove the concession period, and simply defer the commencement of phase 2 reporting by 6 months from the time the amended rules are enacted. However, some respondents suggested a longer deferral period, ranging from 12 to 18 months. As the deferral is a one-off concession, we are agreeable to extending it further. We now propose to defer the commencement of phase 2 reporting by over 12 months from the day the amended rules are enacted. Consequently, subject to the legislative process, it is expected that the rule amendments for phase 2 reporting will be enacted in April 2016, and take effect on 1 July 2017.

### **Single grace period per reporting entity**

143. Respondents were generally supportive of our proposal to provide a single grace period for backloading per reporting entity under phase 2 that applies across all asset classes and product types. Separately, one respondent

sought confirmation that phase 2 reporting would begin after both the finalised rules and data fields have been published. We confirm that this will be the case.

### **C. Transaction information to be reported under phase 2 reporting**

#### **Approach to defining transaction information to be reported**

144. In the Consultation Paper, we proposed that –

- (a) the Reporting Rules should only set out, in broad terms, the categories of information that have to be reported, and
- (b) the specific data fields to be completed in respect of each category should be published separately by notice in the Gazette.

145. While most respondents supported this proposal, one raised concerns about the non-statutory nature of the Gazette notice, noting that it could result in misinterpretation or incorrect application. Several respondents further emphasised the importance of giving the industry prior notice and sufficient lead time before implementing any changes to the data fields. They also requested that any changes should be subject to industry consultation.

146. Given the technical and complex nature of the data fields, we remain of the view that it is more appropriate to specify them by Gazette notice rather than in the legislation itself. We also do not see that participants' understanding or interpretation is affected by where the data fields are set out. The important thing is to provide sufficient guidance on how the data fields are to be interpreted and completed, and we will do this through the FAQ and SRI. We appreciate and agree that it is crucial to keep the industry informed of any changes to the data fields. Market participants may rest assured that we will consult the industry on any proposed changes before implementation and provide sufficient lead time to comply.

#### **Proposed categories of transaction information**

147. With regard to the categories of information to be reported (i.e. the categories set out in Schedule 1 to the draft Expanded Reporting Rules), a few respondents expressed difficulty in reporting information relating to the master agreement and supplementary materials as required by item 6 of Schedule 1. They noted that significant effort would be needed to generate such information from their internal systems. Respondents also queried if the reporting of such information would bring regulatory benefits, noting that similar requirements were not imposed by other major jurisdictions. In light of respondents' feedback, we agree that the costs of reporting such information may outweigh the benefits. We have accordingly deleted item 6 from Schedule 1.

148. One respondent also raised concerns about item 9(e) of Schedule 1 (now item 8(e)), noting that it may not have information to determine whether the other party to the transaction is subject to the clearing obligation. We clarify that the requirement is for the reporting entity, whether for itself or the trade party on whose behalf the reporting entity reports, to indicate whether the transaction itself is subject to mandatory clearing under Hong Kong law. This is something that the reporting entity (or the person on whose behalf it is reporting the

transaction) would necessarily know. In the context of a transaction to which a CCP is party, since that transaction itself is the cleared transaction, it would not be further subject to central clearing. Moreover, CCPs are not prescribed persons for the purpose of mandatory clearing or financial services providers, and so transactions entered into with them would not be subject to mandatory clearing. Therefore, in the case where a CCP is the counterparty to the reportable transaction, the field “clearing exemption” could be left blank when the CCP reports the transaction information to the HKTR. We have modified item 9(e) (now item 8(e)) of Schedule 1 for better clarity. We will also include appropriate clarification in the FAQ and SRI for industry’s reference.

149. There were also concerns about the operational complexities of submitting PDF files to the HKTR. Given the bespoke nature of some OTC derivative transactions, it is important to allow greater flexibility in terms of how transaction details are reported to the HKTR. The intention is that, when reporting such transactions, the HKTR templates should be relied on as far as possible. PDF files should only be used to the extent that information required to be entered in a data field cannot be entered because of technical limitations (e.g. a figure relating to the transaction requires more digits or decimal places than the HKTR template provides for; or a particular feature of the transaction has more than two legs, but the HKTR template provides for two legs only). The list of data fields will be finalized shortly and published when we issue our consultation conclusions on Appendix D to the Consultation Paper. The list will also be formally gazette well before the commencement of phase 2 reporting. We would like to point out that the list is intended to be comprehensive, and will be updated from time to time as necessary. Reporting entities should take note of any update. Where necessary, we will consult the market before introducing any updates, and give advance notice of implementation timelines to ensure reporting entities have sufficient time to prepare. Reporting entities may also wish to refer to the HKTR’s Administration and Interface Development Guide (**AIDG**), which will provide technical specifications in relation to the reporting to the HKTR (e.g. data fields that are optional for reporting, possible values of the data fields, etc). The AIDG will be revised from time to time, as necessary, to reflect any updates to the list of data fields. Further guidance on the use of PDF files to report transaction information will also be provided in the FAQ and SRI.

#### **Proposed data fields to be completed**

150. We received a range of useful comments on the proposed data fields set out at Appendix D of the Consultation Paper. There was also a request for more clarification on how structured transactions should be reported given that there is no common method or convention to which reporting entities can adhere. We are considering these issues, and will address them in a separate conclusions paper which we aim to issue shortly.

### **D. Reporting of valuation transaction information**

#### **Centrally cleared transactions**

151. Some respondents suggested that where transactions are centrally cleared, the obligation to report CCP valuations should be placed solely on the CCP so as to avoid duplicate reporting. There were also concerns that some market participants do not currently have systems that store CCP valuations, thus making it practically difficult for them to report CCP valuations. We have

considered the practice in other jurisdictions and remain of the view that CCP valuations should be reported in the case of centrally cleared transactions as this will provide a useful and comparable reference for regulators to perform data analysis. Additionally, given that commencement of phase 2 reporting is proposed to be deferred to 1 July 2017 (as discussed under paragraphs 139 and 142 above), we believe market participants will have sufficient time to develop the necessary systems for storing and reporting CCP valuations. We therefore do not propose any amendment to this requirement.

#### **Non-centrally cleared transactions**

152. In the case of non-centrally cleared transactions where the parties have agreed to exchange margin, respondents suggested that our proposed requirement to report a mutually agreed valuation should not be implemented yet. Some respondents suggested waiting until an industry-wide framework for agreeing margin is in place, while others suggested waiting until the final implementation of rules for margin for non-centrally cleared derivatives. There were also suggestions of allowing the reporting of internal or third party valuations
153. We note that margin requirements and associated risk mitigation standards are scheduled to be implemented by Q3 2016, while phase 2 reporting is now proposed to commence around mid-2017. There should therefore be sufficient lead time for the industry to prepare for implementation of valuation reporting. With the implementation of margin requirements, the exchange and settlement of collateral for non-centrally cleared transaction subject to margin will have to be completed on a timely basis. It will be critical for counterparties to agree valuation promptly to facilitate the margining process. They should therefore be able to report valuations on a timely basis. Further guidance will be provided in the FAQ and SRI.
154. There was also a suggestion to allow the reporting of valuations provided by independent third parties in the case of non-centrally cleared transactions (regardless of whether the counterparties have agreed to exchange margin or not). We confirm that the reporting of valuation provided by a third party will also be acceptable. However, such third party valuation must still be mutually agreed between the parties, and be calculated on a mark-to-model or mark-to-market basis. Reporting entities will remain responsible for ensuring this.
155. We also take this opportunity to clarify that the requirement to report mutually agreed valuations will be reflected in the SRI which, per Rule 21(1) of the Reporting Rules, must be complied with when reporting via the HKTR.
156. Some respondents asked whether, in cases where the counterparties are unable to agree valuations within the 2 business day timeframe, it would be possible for reporting entities to first report their internal valuation and then report agreed valuations when these were agreed.
157. In general, we expect reporting entities to be able to agree valuations with their counterparties in a timely manner, and whether or not the transaction is subject to margin requirement. However, in exceptional circumstances where this is not possible, we will accept internal valuations to be reported within the 2 business day timeframe so as to comply with the reporting requirements. However, once consensus is reached, we expect entities to submit agreed valuations going forward. We would however emphasise that: (i) although

disputes in valuation are not uncommon, the new best practice seeks to reduce this type of occurrence; and (ii) we expect counterparties to have established effective processes for resolving disputes in a timely manner and to follow these to arrive at a consensus on valuations when there is a dispute.

### **Submitting previous day's valuations**

158. In the Consultation Paper, we noted that the previous day's valuations could be submitted in situations where the transaction involves an overseas currency and it is a public holiday in that overseas jurisdiction. We also invited views on whether there are other cases where it may be necessary to submit previous day valuations. We received requests to allow the submission of previous day valuations where there are difficulties in obtaining a valuation, e.g. if the counterparty fails to provide daily valuations to the reporting entity for certain packaged, bespoke or exotic transactions, or if the latest valuation figures are simply not available. We confirm that previous day valuation figures may be submitted in such cases provided that the counterparties have already agreed the manner in which valuation is to be derived. Further guidance will be provided in the FAQ for better clarity.

## **E. Backloading Requirement**

### **Backloading requirement for transactions reported under phase 1**

159. The Consultation Paper noted our proposal to require the backloading of historical transactions within a three month grace period. In the case of transactions that were reportable under phase 1 reporting, we proposed that reporting entities should backload the expanded information scope, and that this should apply in respect of both transactions to which the reporting entity is a counterparty and those that it has conducted in Hong Kong on behalf of an affiliate or (in the case of an overseas AI) its head office or a branch outside Hong Kong.
160. We received many comments and suggestions with regard to the backloading requirement. Several respondents expressed concerns about the difficulties and complexities involved in backloading the expanded information scope, particularly in the case of "conducted in Hong Kong" transactions. There was also a suggestion not to require such backloading if the transactions were due to mature within a short period after implementation. A few respondents further suggested that where reported transactions had undergone life-cycle events, any backloading of the expanded information scope should be based on the latest position as at the backloading date rather than as set out in paragraph 203(f)(iii) of the Consultation Paper.
161. It is important that the data stored in the HKTR is as complete as possible. To that end, we believe it is crucial to require reporting entities to backload the expanded information scope, both in respect of reported transactions to which they are a counterparty, and reported transactions that they conducted in Hong Kong on behalf of an affiliate or (in the case of an overseas AI) its head office or a branch outside Hong Kong. That said, we appreciate that the requirement to backload the expanded information scope may be of limited value in the case of transactions that are due to mature shortly after phase 2 reporting is implemented. In view of this, and given the industry's concerns and suggestions, we have amended the backloading requirement for transactions reported under phase 1 so that the obligation to backload the

expanded information scope does not apply to transactions which mature within a year after implementation.

162. The backloading requirement in respect of transactions reported under phase 1 is now set out separately under Rule 25B of the draft Expanded Reporting Rules. We have also expanded it slightly for better specificity and clarity. Essentially, for such transactions—
- (a) If they are due to expire within one year of the implementation of phase 2 reporting, reporting entities will not have to backload the expanded information scope. They will however have to continue reporting life-cycle events (on the basis of the narrower information scope required under phase 1) on a T+2 basis. They will also have to report daily valuation information within two business days once phase 2 reporting comes into effect. This is now reflected in Rule 25B(3).
  - (b) If they are not due to expire within one year of the implementation of phase 2 reporting, reporting entities will have to backload the expanded information scope. This will have to be completed before the end of the grace period, and the information backloaded must reflect the position as at the day of reporting (or up to 2 days before that day), i.e. it must reflect the net effect of all life-cycle events occurring up to that day. Until the time of such backloading, they will have to continue reporting life-cycle events (on the basis of the narrower information scope required under phase 1) on a T+2 basis. They will also have to report daily valuation information within two business days once phase 2 reporting comes into effect. This is now reflected in Rule 25B(5).
  - (c) For transactions that were originally intended to mature within a year of implementing phase 2 reporting but whose term was subsequently extended so that it matures beyond the one year period, reporting entities will also have to backload the expanded information scope. However, the deadline for completing this will be the later of: (i) the end of the grace period; and (ii) 2 business days following the change in the maturity date. Again, the information backloaded must reflect the position as at the day of reporting (or up to 2 days before that day), i.e. it must reflect the net effect of all life-cycle events occurring up to that day. Until the time of such backloading, they will have to continue reporting life-cycle events (on the basis of the narrower information scope required under phase 1) on a T+2 basis. They will also have to report daily valuation information within two business days once phase 2 reporting comes into effect. This is now reflected in Rule 25B(7).

Further guidance on the operation of Rule 25B will be provided in the FAQ and SRI.

#### **Backloading requirement for transactions not reportable under phase 1**

163. For transactions that were not reportable under phase 1 reporting, the backloading requirement will apply similarly to how it applied when phase 1 reporting was implemented, i.e.: (i) there will be a 3-month grace period to complete all backloading and transactions maturing within the grace period will not need to be backloaded; (ii) when backloading a transaction, reporting entities will have to reflect its position as at the commencement of the grace period; and (iii) life-cycle events occurring after commencement and up to the

day of backloading must be reflected individually and chronologically. Additionally, after backloading is completed, life-cycle events and daily valuations will have to be reported within two business days of the event or valuation (as the case may be).

164. We also take this opportunity to confirm that, for transactions not reportable under phase 1 reporting, the backloading requirement will only apply in respect of outstanding transactions to which the reporting entity is a counterparty, i.e. it will not apply to outstanding transactions that it has conducted in Hong Kong on behalf of an affiliate or (in the case of an overseas AI) its head office or a branch outside Hong Kong. For avoidance of doubt, backloading requirement in respect of transactions not reportable under phase 1 should cover the expanded scope of transaction information.

#### **Masking counterparty identifying particulars when backloading**

165. A few respondents suggested that we should allow masking of counterparty identifying particulars for historical transactions to the extent that counterparty consent has not been obtained. As noted in the Consultation Paper, the masking relief in respect of transactions that require counterparty consent has always been intended as a one-off relief, applicable only to transactions entered into on or before 9 January 2016. This firm deadline has been made clear from the outset. We therefore expect that, for transactions entered into after 9 January 2016, market participants will have taken necessary steps to ensure that the necessary counterparty consent is, or will be, obtained. In other words, the 9 January 2016 deadline will not be extended further under phase 2 reporting. Accordingly, when backloading historical transactions, masking on the basis of inability to obtain counterparty consent will not be possible for transactions entered into after 9 January 2016.
166. We also take this opportunity to clarify the limitations of the masking relief available where there is a blocking statute. This relief only applies if: (i) the submission of counterparty identifying particulars is prohibited under the laws of, or by an authority or regulatory organization in, an overseas jurisdiction; and (ii) the jurisdiction in question is on the list of jurisdictions designated by the SFC with the HKMA's consent. Both (i) and (ii) must be satisfied, i.e. it is not enough to simply rely on the fact that the jurisdiction in question is on the list of designated jurisdictions. Market participants 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. Accordingly, if reporting entities have previously reported transactions without masking counterparty identifying particulars, we will expect them to be able to continue doing so going forward.

#### **F. Other Issues relating to mandatory reporting**

##### **Products subsequently becoming tradable on prescribed market**

167. One respondent sought clarification on how the reporting obligation would apply in respect of transactions in products that are traded on a market that subsequently becomes a prescribed market under section 392A of the SFO. Products that: (i) are securities or futures contracts; (ii) traded on a market that is, or has become, a prescribed market; and (iii) cleared through a clearing house that is, or has become, a prescribed clearing house, are not "OTC

derivative products”, and thus not subject to mandatory reporting. All three criteria must be satisfied for the product to fall outside the definition of “OTC derivative product” and thus not be subject to reporting. Hence, for example, if the product becomes tradable on a prescribed market but is not cleared through a prescribed clearing house, it continues to be an “OTC derivative product” and the reporting obligation continues to apply.

168. If all three criteria are met, then the reporting obligation will cease. In other words, even though transactions in such products were previously reported to the HKTR, it will no longer be necessary to report subsequent events (life-cycle events) or daily valuation information in respect of them. Reporting entities will however need to use the HKTR’s “quit” function to indicate that the transaction in question will no longer be updated. For better transparency and easy reference, we will also clarify these matters in the FAQ and SRI.

#### **Application of mandatory reporting to ATS-CCPs**

169. With the implementation of mandatory clearing, it will be possible to bring Rule 15 of the draft Expanded Reporting Rules into effect. Rule 15 extends the mandatory reporting obligation to CCPs that are authorized to provide ATS for clearing OTC derivative products (**ATS-CCP**). It was not possible to commence this provision previously because the powers to enable the SFC to confer ATS-CCP status were not yet effective. However, this will no longer be the case once mandatory clearing commences.
170. In terms of the precise timing for implementing Rule 15, we have considered whether this should tally with commencement of phase 1 clearing or phase 2 reporting. For the following reasons, we believe it is more appropriate to tally implementation of Rule 15 with implementation of phase 1 clearing.
- (a) The SFC will require ATS-CCPs to provide information about their transactions with clearing members incorporated in Hong Kong after they have been authorized. It will be inefficient to require ATS-CCPs to build a separate reporting system for that purpose.
  - (b) It will allow ATS-CCPs to ease into the reporting obligation more gradually as they will initially be subject to phase 1 reporting only, under which the product scope and information scope are narrower. They will only be subject to the wider reporting obligation when phase 2 reporting commences.
  - (c) Implementation by 1 September 2016 will still give CCPs who are intending to seek designated CCP status sufficient time to set up the necessary systems and system connection to the HKTR. Indeed, in considering applications for CCP designation, one of the factors that will be considered is the CCP’s readiness to comply with mandatory reporting obligations.
  - (d) As noted in paragraphs 139 and 142 above, implementation of phase 2 reporting will now be deferred such that (subject to the legislative process) it does not commence until 1 July 2017. We do not consider it necessary or appropriate to similarly defer implementation of Rule 15. Such an approach would also result in an unlevel playing field as between ATS-CCPs and recognized clearing houses because it will

mean the latter are subject to mandatory reporting for a prolonged period during which ATS-CCPs are not.

- (e) Deferring implementation of Rule 15 until implementation of phase 2 reporting will also unnecessarily delay the collection of transaction information through the HKTR for data analysis.

### **Publication of transaction information reported to the HKTR**

- 171. One respondent suggested that data reported to the HKTR should be published in a usable format to improve transparency. We are considering possible mechanisms for the public disclosure of data reported to the HKTR. Any such public disclosure will initially be on an aggregate basis only. We will also closely monitor international regulatory development in this area before finalizing our approach in this regard.

### **Reporting obligations of fund managers**

- 172. We also received a request to clarify the application of the reporting obligation to fund managers when certain OTC derivative transactions are executed for segregated accounts (i.e. they are not funds or collective investment scheme). The respondent also sought clarification as to whether any threshold would apply in such cases.
- 173. The reporting obligation will only apply to fund managers if: (i) they are an AI, AMB or LC; and (ii) they are a counterparty to the transaction or have conducted it in Hong Kong on behalf of an affiliate. If the transaction is executed on behalf of a third party (i.e. the third party is the counterparty to the transaction and not the fund manager), and the third party is not an affiliate of the fund manager (within the meaning of the Reporting Rules), the reporting obligation will not apply. However, if the fund manager is counterparty to the transaction (even though it may be entering into the transaction in connection with a segregated account), the reporting obligation will apply unless the exempt person relief applies in respect of the fund manager. It should be noted however that applicability of this relief will be assessed at the fund manager level and not at the segregated account level.

## **G. Mandatory record keeping obligation**

- 174. There was general support for the proposal to expand the record keeping obligation so that it applies in respect of the expanded product scope but otherwise remains unchanged. We will accordingly proceed on that basis. For avoidance of doubt, we clarify that the product scope for record keeping will be the same as the product scope for mandatory reporting under phase 2, i.e. FX security conversions will be excluded. This is reflected in Rule 8 of the draft Expanded Reporting Rules.
- 175. Additionally, one respondent commented that the requirement under Rule 29(1)(a) (i.e. to keep records sufficient to demonstrate that the person has complied with the reporting obligation) should not apply to ATS-CCPs, because it is unlikely for them to report any trades other than those received from their clearing members, or to be subject to any exemptions. We believe it is important to ensure that adequate records are maintained as evidence of a person's compliance, with the reporting obligation. This applies equally to ATS-CCPs and other reporting entities. Therefore, we do not intend to make any

change to this proposal.

## CONCLUDING REMARKS AND NEXT STEPS

176. We are grateful for the many comments and suggestions submitted in response to the Consultation Paper. These have been critical to our refinement of the draft Clearing Rules and draft Expanded Reporting Rules as discussed in this Conclusions Paper. We are still refining our proposals on the data fields to be completed when reporting to the HKTR, and aim to issue a separate conclusions paper on this shortly. **In the meantime, we welcome comments on the proposed list of financial services providers by 29 February 2016.**
177. We aim to table the revised Rules before the Legislative Council for negative vetting in February 2016. Subject to the legislative process, we aim for the next stage of the regime to be implemented as follows –
- (a) The Clearing Rules will come into effect on 1 September 2016. The first calculation period will thus be 1 September 2016 to 30 November 2016 and the first prescribed day will be 1 July 2017.
  - (b) Rule 15 of the Reporting Rules will come into effect on 1 September 2016. ATS-CCPs will thus become subject to phase 1 reporting from that time.
  - (c) The amendments to the Reporting Rules to implement phase 2 reporting will come into effect on 1 July 2017. All prescribed persons (including recognized clearing houses and ATS-CCPs) will become subject to phase 2 reporting from that day.
178. Going forward, we will continue to maintain a close dialogue with the industry in connection with implementation of the Clearing Rules and Expanded Reporting Rules as described above.

## **APPENDIX A – List of Respondents**

(in alphabetical order)

1. Australia and New Zealand Banking Group Limited
2. Asia Securities Industry & Financial Markets Association
3. CME Group Inc.
4. Depository Trust and Clearing Corporation
5. Deutsche Bank AG
6. DTC Association, The
7. Futures Industry Association Asia
8. Global Foreign Exchange Division (of the Global Financial Markets Association)
9. Hong Kong Association of Banks, The
10. Hong Kong Association of Online Brokers Limited, The
11. Hong Kong Investment Funds Association
12. International Swaps and Derivatives Association, Inc.
13. Law Society of Hong Kong, The
14. LCH.Clearnet Limited
15. Markit
16. OTC Clearing Hong Kong Limited
17. Pictet Asset Management (Hong Kong) Limited
18. Anonymous – one respondent requested that its identity not be published

## APPENDIX B – Revised Draft of the Clearing Rules

(Mark-ups in red and blue show changes from the version attached to the Consultation Paper)

### Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules

(Made by the Securities and Futures Commission under sections 101N, 101P and 101Q 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

These Rules come into operation ~~commence~~ on 1 September ~~1~~ 2016.

##### 2. Interpretation

In these Rules –

~~AFI (—) means an authorized financial institution;~~

~~AMB (—) means an approved money broker;~~

**deliverable FX forward** (交收外匯遠期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange, on a single day in the future, an agreed amount of a currency for—

- (a) an agreed amount of another currency; or
- (b) an amount in another currency calculated by reference to an agreed exchange rate;

**deliverable FX swap** (交收外匯掉期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange 2 currencies (**currency A** and **currency B**) in the following manner—

- (a) on a specified day, a counterparty (**counterparty 1**) will give to the other counterparty (**counterparty 2**) an agreed amount of currency A and will receive from counterparty 2—
  - (i) an agreed amount of currency B; or
  - (ii) an amount in currency B calculated by reference to an agreed exchange rate; and

(b) on another specified day that is after the day referred to in paragraph (a), counterparty 1 will give to counterparty 2 an agreed amount of currency B and will receive from counterparty 2—

(i) an agreed amount of currency A; or

(ii) an amount in currency A calculated by reference to an agreed exchange rate;

**designated CCP** (指定中央對手方) has the meaning given by section 101A of the Ordinance;

**financial services provider** (金融服務提供者) means a person designated by the Commission in accordance with rule 3; a person (except a prescribed person), including a person that is incorporated outside Hong Kong, that carries on a business outside Hong Kong which the person would be prohibited from carrying on in Hong Kong under—  
(a) section 114(1) of the Ordinance, unless the person was a person referred to in section 114(2)(a) or (b); or  
(b) section 11 or 12 of the Banking Ordinance (Cap. 155), unless the person was an AFI;

~~LC (—)~~ means a licensed corporation;

**local AFI** (本地認可財務機構) means an ~~AFI~~ authorized financial institution that is incorporated in Hong Kong;

**local AMB** (本地核准貨幣經紀) means an ~~AMB~~ approved money broker that is incorporated in Hong Kong;

**local LC** (本地持牌法團) means ~~an LC~~ a licensed corporation that is incorporated in Hong Kong;

**overseas AFI** (海外認可財務機構) means an ~~AFI~~ authorized financial institution that is incorporated outside Hong Kong;

**overseas AMB** (海外核准貨幣經紀) means an ~~AMB~~ approved money broker that is incorporated outside Hong Kong;

**overseas LC** (海外持牌法團) means ~~an LC~~ a licensed corporation that is incorporated outside Hong Kong;

**outstanding trades** (未完結交易), in relation to a person and ~~as~~ at a particular time, means ~~the an~~ OTC derivative transactions (except a deliverable FX forwards and a deliverable FX swap) —

(a) to which the person is a counterparty; and ~~which have not —~~

~~(a) matured; or~~

(b) that —

- (i) has not matured; and
- (ii) before the transaction matures, has not been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction;

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

**total position** (總持倉量), in relation to a person, means the aggregate of the notional amounts of ~~the~~ every outstanding trades of the person.

### **3. Designation as a financial services provider**

- (1) For the purposes of these Rules, the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any person (whether incorporated in Hong Kong or outside Hong Kong) as a financial services provider if the Commission is satisfied that it is likely that the person is actively engaged in activities relating to OTC derivative transactions or OTC derivative products outside Hong Kong.
- (2) For the purposes of subrule (1), the Commission may designate a person by name, or by reference to a class or description of persons to which the person belongs, or both.
- (3) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a person made under subrule (1).
- (4) In deciding whether to designate a person under subrule (1) or to revoke the designation of a person under subrule (3), the Commission may have regard to any information in its possession.
- (5) A notice published under subrule (1) or (3) is not subsidiary legislation.

### **43. Transactions that are specified OTC derivative transactions for purposes of clearing obligation**

For the purposes of paragraph (b) of the definition of **specified OTC derivative transaction** in section 101A of the Ordinance, an OTC derivative transaction that is specified in section 2 of Schedule 1 is specified for the purposes of the clearing obligation.

### **54. 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 that is specified in section 2 of Schedule 1 is specified for the purposes of the record keeping obligation.

## Part 2

### Clearing Obligation

#### **65.** When clearing obligation arises

- (1) Subject to ~~subrule (4) and~~ rules ~~7(1) and~~ 8(1), 9(1) and 10(1), a prescribed person must clear a specified OTC derivative transaction with a designated CCP (whether directly or through a third party) within 1 business day after the transaction is entered into if—
- (a) the person is a counterparty to the transaction; and
- (i) the transaction is entered into on or after—
- (A) the prescribed day for the first calculation period in respect of which the person reached the clearing threshold; or
- (B) if the person gave an exit notice, the prescribed day for the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice; and
- (ii) if the person is an overseas AFI or an overseas AMB, the transaction is recorded in the form of an entry in the Hong Kong books of the person; and
- (b) the other counterparty to the transaction—
- (i) is also a prescribed person and the requirements referred to in paragraph (a)(i) are met in relation to the counterparty; or
- (ii) is ~~or~~ a financial services provider; ~~and~~
- ~~(c) the requirements referred to in subrule (2) are met.~~
- ~~(1) The requirements are that—~~
- ~~(a) before the transaction is entered into—~~
- ~~(i) the prescribed person has reached the clearing threshold; and~~
- ~~(ii) the other counterparty to the transaction has reached the clearing threshold; and~~
- ~~(b) the transaction is entered into on or after both of the following days (which may be different days)—~~
- ~~(i) the prescribed day for the calculation period in respect of which the prescribed person first reached the clearing threshold;~~
- ~~(ii) the prescribed day for the calculation period in respect of which the counterparty first reached the clearing threshold.~~
- (2) For the purposes of subrule (1), a prescribed person is regarded as having reached the clearing threshold at all times after—

- (a) subject to paragraph (b), the first calculation period in respect of which the person reached the clearing threshold, even if the person has not reached the clearing threshold for a subsequent calculation period; or
  - (b) if the person gave an exit notice, the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice, even if the person has not reached the clearing threshold for a subsequent calculation period.
- (2) ~~For the purposes of subrule (2)—~~
- ~~(a) a prescribed person that is a local AFI, a local AMB or a local LC reaches the clearing threshold if, for a particular calculation period, the average total position of the person equals or exceeds the amount specified in column 3 of Schedule 2 for the calculation period;~~
  - ~~(b) a prescribed person that is an overseas AFI, an overseas AMB or an overseas LC reaches the clearing threshold if, for a particular calculation period, the average total position of the person equals or exceeds the amount specified in column 4 of Schedule 2 for the calculation period;~~
  - ~~(c) a prescribed person that is an overseas AFI, an overseas AMB or an overseas LC reaches the clearing threshold if, for a particular calculation period, the average local total position of the person equals or exceeds the amount specified in column 5 of Schedule 2 for the calculation period;~~
  - ~~(d) a person that is a financial services provider reaches the clearing threshold if, for a particular calculation period, the average total position of the person equals or exceeds the amount specified in column 6 of Schedule 2 for the calculation period; and~~
  - ~~(e) a person is regarded as having reached the clearing threshold at all times after the calculation period in respect of which the person first reaches the clearing threshold, even if the person does not reach the clearing threshold specified in relation to the person for a subsequent calculation period.~~
- (3) ~~Subrule (1) applies to a prescribed person that is an overseas AFI or an overseas AMB only if the specified OTC derivative transaction to which the person is a counterparty is recorded in the form of an entry in the books of the person in Hong Kong.~~
- (3) An exit notice may be given by a prescribed person if—
- (a) the person is a local AFI, a local AMB or a local LC and the total position of the person on the last day of each month in a period of 12 consecutive months is less than US\$14 billion; or
  - (b) the person is an overseas AFI, an overseas AMB or an overseas LC and the local total position of the person on the

last day of each month in a period of 12 consecutive months is less than US\$14 billion.

- (4) An exit notice given under subrule (3) must—
- (a) be in writing;
  - (b) be given to—
    - (i) the Monetary Authority, if the person is an authorized financial institution or an approved money broker; or
    - (ii) the Commission, if the person is a licensed corporation; and
  - (c) specify—
    - (i) the period of 12 consecutive months (**period**) during which the total position or the local total position (as applicable) of the person on the last day of each month was less than US\$14 billion;
    - (ii) the total position or the local total position (as applicable) of the person on the last day of each month within the period; and
    - (iii) that the total position or the local total position (as applicable) of the person has not equalled or exceeded US\$14 billion between the last day of the last month included in the period and the day on which the exit notice is given.
- (5) For the purposes of this rule, a prescribed person reached the clearing threshold if—
- (a) where the person is a local AFI, a local AMB or a local LC, the average total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period; or
  - (b) where the person is an overseas AFI, an overseas AMB or an overseas LC, the average local total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period.

~~(5)~~(6) In this Rule—

~~**average total position** (—), in relation to a person for a calculation period, means the amount which is equal to the sum of the person's total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;~~

**average local total position** (平均本地總持倉量), in relation to a prescribed person that is an overseas AFI, an overseas AMB or an overseas LC for a calculation period, means the amount which is equal to the sum of the person's local total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

**average total position** (平均總持倉量), in relation to a person for a calculation period, means the amount which is equal to the sum of the person's total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

**calculation period** (計算期間) means a period specified in column 2 of Schedule 2;

**exit notice** (退出通知) means a notice given under subrule (3);

**local total position** (本地總持倉量), in relation to a person, means the total position of the person excluding ~~every~~ the outstanding trades of the person that ~~is~~ ~~are~~ recorded in the form of an entry in the overseas books of the person ~~outside Hong Kong~~;

**prescribed day** (訂明日期), in relation to a calculation period, means the day specified in column ~~4~~ ~~7~~ of Schedule 2.

**76. Clearing obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong**

For the purposes of this Part, a prescribed person must clear a specified OTC derivative transaction with a designated CCP 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.

**87. Clearing obligation does not apply to transactions with exempt affiliate**

- (1) Rule ~~65~~(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if, ~~as at~~ on the day on which the transaction is entered into—
  - (a) the other counterparty to the transaction is an affiliate of the person;
  - (b) the affiliate is an exempt affiliate, within the meaning of subrule (3); and
  - (c) the requirements referred to in subrule (2) are met.
- (2) The requirements are that ~~the person and the exempt affiliate are~~—
  - (a) the person and the exempt affiliate are accounted for on a full basis in the consolidated financial statements of the holding company of the group of companies to which they belong, for the purposes of and in compliance with—

- (i) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants;
    - (ii) the International Financial Reporting Standards issued by the International Accounting Standards Board; or
    - (iii) the standards of accounting practices applicable to the holding company in the place in which it is incorporated; and
  - (b) ~~subject to~~ the risk evaluation, measurement and control procedures ~~which~~ applicable to the person and the exempt affiliate are centrally overseen and managed within the group of companies to which they belong.
- (3) For the purposes of subrule (1)(b), ~~this Rule~~, an affiliate of a prescribed person is an exempt affiliate on and after the effective day specified in an exemption notice until the day before the effective day specified in a cessation notice (if any). ~~, as at a particular day, if—~~
- ~~(a) the person has given a notice, in accordance with subrule (4), that the affiliate is to be regarded as an exempt affiliate for the purposes of this Rule (an exemption notice); and~~
  - ~~(b) the day is—~~
    - ~~(i) on or after the day on which the exemption notice takes effect; and~~
    - ~~(ii) if the person has given a notice, in accordance with subrule (4), that the affiliate is to cease to be regarded as an exempt affiliate for the purposes of this Rule (a cessation notice), before the day on which the cessation notice takes effect.~~
- (4) An exemption notice or a cessation notice given by a prescribed person must—
- (a) be in writing;
  - (b) be given to the Commission or the Monetary Authority;
  - (c) specify the affiliate (or if more than one, each affiliate) of the person that is to be regarded as, or is to cease to be regarded as, an exempt affiliate for the purposes of this ~~R~~rule; and
  - (d) specify the effective day ~~on which the notice is to take effect~~, being a day that is not earlier than the day on which the notice is received by the Commission or the Monetary Authority.
- (5) In this ~~R~~Rule—

**affiliate** (聯屬公司), in relation to a prescribed person, means a corporation that is in the same group of companies as the person, except a corporation that is a collective investment scheme.

**cessation notice** (停止通知), in relation to an exemption notice given by a prescribed person in respect of an affiliate specified in the

exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the affiliate is to cease to be regarded as an exempt affiliate for the purposes of this rule;

**effective day** (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

**exemption notice** (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of an affiliate of the person to the effect that the affiliate is to be regarded as an exempt affiliate for the purposes of this rule.

**98. Clearing obligation does not apply to transactions ~~booked~~ recorded in exempt jurisdiction books**

- (1) Rule ~~6~~5(1) does not apply to a prescribed person that is a licensed corporation ~~an LC~~, a local AFI or a local AMB in relation to a specified OTC derivative transaction to which the person is a counterparty if—
  - ~~(a)(b)~~ on the day on which the transaction is entered into, the jurisdiction is an exempt jurisdiction in relation to the person, within the meaning of subrule (3); ~~and~~
  - ~~(b)(a)~~ the transaction is recorded in the form of an entry in the exempt jurisdiction books of the person ~~in a jurisdiction outside Hong Kong; and~~
  - (c) as at the end of the day on which the transaction is entered into, taking into account every ~~all~~ outstanding trades of the person (including the transaction), the requirements referred to in subrule (2) are met.
- (2) The requirements are that—
  - (a) the jurisdiction position of the person for each jurisdiction that is an exempt jurisdiction in relation to the person does not exceed 5% of the total position of the person; and
  - (b) the aggregate of the person's jurisdiction positions for all jurisdictions that are exempt jurisdictions in relation to the person does not exceed 10% of the total position of the person.
- (3) Subject to subrule ~~(4)~~(5), for the purposes of subrule (1)(a) ~~this Rule~~, a jurisdiction outside Hong Kong is an exempt jurisdiction in relation to a prescribed person on and after the effective day specified in an exemption notice in respect of the jurisdiction until the day before the effective day specified in a cessation notice (if any) in respect of the jurisdiction. ~~, as at a particular day, if—~~
  - ~~(a) the person has given a notice, in accordance with subrule (5), that the jurisdiction is to be regarded as an exempt jurisdiction in relation to the person for the purposes of this Rule (an exemption notice); and~~

- (b) ~~the day is—~~
- (i) ~~on or after the day on which the exemption notice takes effect; and~~
  - (ii) ~~if the person has given a notice, in accordance with subrule (5), that the jurisdiction is to cease to be regarded as an exempt jurisdiction in relation to the person for the purposes of this Rule (a **cessation notice**), before the day on which the cessation notice takes effect.~~

~~(4)~~(5) An exemption notice or a cessation notice given by a prescribed person ~~under subrule (3)~~ must—

- (a) be in writing;
- (b) be given to the Monetary Authority, if the person is a local AFI or a local AMB;
- (c) be given to the Commission, if the person is an LC;
- (d) specify the jurisdiction (or if more than one jurisdiction, each jurisdiction) that is to be regarded as, or is to cease to be regarded as, an exempt jurisdiction in relation to the person for the purposes of this ~~R~~Rule; and
- (e) specify the effective day ~~on which the notice is to take effect~~, being a day that is not earlier than the day on which the notice is received by the Monetary Authority or the Commission.

~~(5)~~(4) A prescribed person that has given an exemption notice and a cessation notice in respect of a jurisdiction is permitted to give only 1 more exemption notice in respect of the jurisdiction.

(6) In this Rule—

**cessation notice** (停止通知), in relation to an exemption notice given by a prescribed person in respect of a jurisdiction specified in the exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the jurisdiction is to cease to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

**effective day** (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

**exemption notice** (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of a jurisdiction to the effect that the jurisdiction is to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

**jurisdiction position** (司法管轄區持倉量), in relation to a prescribed person and an exempt jurisdiction, means the aggregate of the notional amounts of every ~~the~~ outstanding trades of the person

that ~~is~~ ~~are~~ recorded in the form of an entry in the exempt jurisdiction books of the person ~~in the exempt jurisdiction~~.

**10. Clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle**

(1) Rule 6(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if—

(a) the transaction is entered into by the person—

(i) as a result of a multilateral portfolio compression cycle that meets the requirements referred to in subrule (2); and

(ii) with a participant in the multilateral portfolio compression cycle that was a counterparty to one or more of the compressed transactions; and

(b) rule 6(1) did not apply to the person in relation to any of the compressed transactions, under the multilateral portfolio compression cycle.

(2) The requirements are that the multilateral portfolio compression cycle—

(a) was conducted in accordance with the rules of an operator of multilateral portfolio compression cycles;

(b) involved more than 2 participants, none of which was the operator of the cycle; and

(c) was conducted in compliance with the counterparty credit risk tolerance levels set by the participants in the cycle.

(3) In this rule—

**compressed transaction** (壓縮交易), in relation to a multilateral portfolio compression cycle, means an OTC derivative transaction that was modified, or terminated and replaced, under the cycle;

**multilateral portfolio compression cycle** (多邊投資組合壓縮周期) means a process applied to portfolios of OTC derivative transactions between participants in the process—

(a) under which some or all of the transactions are—

(i) modified to reduce their notional value; or

(ii) terminated and replaced with one or more new OTC derivative transactions which have the effect of reducing exposures between or among the participants; and

(b) that is conducted for the purposes of reducing operational risk or counterparty credit risk for the participants.

**119. Clearing obligation taken to have been complied with if transaction cleared under laws of designated jurisdiction**

- (1) A prescribed person is taken to have complied with rule ~~65~~(1) in relation to a specified OTC derivative transaction to which the person is a counterparty if—
  - (a) under the laws of a jurisdiction that is designated by the Commission in accordance with subrule (2) (~~the designated jurisdiction~~), the transaction is required to be cleared with a central counterparty;
  - (b) the transaction has been cleared with a central counterparty in accordance with the laws of the designated jurisdiction; and
  - (c) the central counterparty referred to in ~~sub~~paragraph (b) is a designated CCP.
- (2) For the purposes of subrule (1), 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 the laws of the jurisdiction—
  - (a) provide for requirements that are similar to, or serve similar purposes as, the clearing obligation; and
  - (b) are appropriately administered ~~supervised~~ and enforced in the jurisdiction.
- (3) 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 (2).
- (4) A notice published ~~in the Gazette by the Commission~~ under subrule (2) or (3) is not subsidiary legislation.

## Part 3

### Record Keeping Obligation

#### **12~~10~~. Prescribed persons to keep records in relation to transactions**

A prescribed person must, in relation to a specified OTC derivative transaction to which it is a counterparty, keep the records specified in rule 14~~12~~ in the manner specified in rule 15~~13~~ until no earlier than 5 years after the transaction has—

- (a) matured; or
- (b) before the transaction matures, been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction.

#### **13~~11~~. Prescribed persons to keep records even if counterparty is, or transaction was entered into, outside Hong Kong**

Rule 12~~10~~ 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 wholly or partially outside Hong Kong.

#### **14~~12~~. Records to be kept by prescribed persons**

The records that a prescribed person must keep in relation to a specified OTC derivative transaction are records sufficient to demonstrate that—

- (a) rule 6~~5~~(1) applied to the person in relation to the transaction and—
  - (i) the person complied with rule 6~~5~~(1); or
  - (ii) the person was taken to have complied with rule 6(1) because 11~~9~~(1) applied to the person in relation to the transaction; or
- (b) rule 6~~5~~(1) did not apply to the transaction in relation to the transaction because—
  - (i) rule 6(1)(a)(i) 5(1)(b) was not satisfied;
  - (ii) rule 6(1)(b) 5(1)(c) was not satisfied;
  - (iii) rule 6(3) applied to the person and the person gave a notice under rule 6(3);
  - (iv) rule 8(1) applied to the person in relation to the transaction;
  - (v)~~(iii)~~ rule 9~~7~~(1) applied to the person in relation to the transaction; or
  - (vi)~~(iv)~~ rule 10~~8~~(1) applied to the person in relation to the transaction.

#### **15~~13~~. 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 14~~12~~ in a manner that enables the records to be readily accessible.

## Part 4

### Designation as ~~a~~ Central Counterparty

#### 16~~14~~. Designation as a central counterparty

- (1) The Commission may, if it is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest—
  - (a) designate a person under section 101J(1) of the Ordinance as a central counterparty for the purposes of Part IIIA of the Ordinance; and
  - (b) do the following with regard to a designation—
    - (i) impose conditions;
    - (ii) amend or revoke a condition;
    - (iii) impose additional conditions.
- (2) An application under section 101J(1) of the Ordinance for designation must—
  - (a) be in writing;
  - (b) specify the class or description of OTC derivative transactions in respect of which the applicant seeks to be designated;
  - (c) if the applicant is a person outside Hong Kong, ~~specify~~—
    - (i) specify each authority or regulatory organization outside Hong Kong that is responsible for regulation of the applicant in its capacity as a central counterparty (**overseas regulators**); and
    - (ii) be accompanied by information that is sufficient to demonstrate that the applicant meets legal or regulatory requirements enforced or administered by the overseas regulators, and that those requirements meet generally recognized international principles and standards applicable to central counterparties; and
  - (d) contain or be accompanied by any other information that the Commission may reasonably require.
- (3) The Commission may, in considering an application for designation—
  - (a) by a written notice ~~in writing~~ served on the applicant, request the applicant to submit any additional information that the Commission reasonably considers may be relevant to the Commission's consideration of the application; and
  - (b) have regard to any information in the possession of the Commission, whether provided by the applicant or not.
- (4) A notice of designation given by the Commission to a person under section 101J(1)(a) of the Ordinance must specify—
  - (a) the class or description of OTC derivative transactions in respect of which the person is designated;
  - (b) the conditions (if any) imposed with regard to ~~on~~ the designation; and
  - (c) the time at which the designation is to take effect.
- (5) The Commission may, in considering whether to exercise ~~do~~ any of the powers ~~matters~~ referred to in subrule (1)(b) with regard to a

designation, have regard to any information in the possession of the Commission, whether provided by the designated person or not.

#### **17~~15~~. Refusal to designate**

If the Commission, under section 101J(1)(b) of the Ordinance, refuses to designate a person as a central counterparty for the purposes of Part IIIA of the Ordinance, the Commission must, by a written notice ~~in writing~~ served on the person, inform the person of the refusal and the reasons for the refusal.

#### **18~~16~~. Revocation of designation**

- (1) The Commission may revoke a designation of a person under section 101J(5)(d) of the Ordinance—
  - (a) if the Commission ~~it~~ is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest; or
  - (b) at the request, in writing, of the person.
- (2) If the Commission revokes a designation of a person under section 101J(5)(d) of the Ordinance—
  - (a) it must include in the notice the reasons for the revocation, except where the revocation is at the request of the person; and
  - (b) it may include in the notice any directions to the person that it considers appropriate for the purpose of—
    - (i) ceasing the designation of the person ~~ceasing to be designated~~; or
    - (ii) protecting the interests of the investing public or the public interest.
- (3) The Commission may, in considering whether to revoke a designation of a person under section 101J(5)(d) of the Ordinance, have regard to any information in the possession of the Commission, whether provided by the person or not.

## Schedule 1

### Specified OTC Derivative Transactions for the Purposes of Clearing Obligation and Record Keeping Obligation

#### 1. Interpretation

In this Schedule—

**basis swap** (基準掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties ~~1 counterparty~~ are to be calculated by reference to a floating interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to another floating interest rate applied to the same notional amount;

**features** (特點), in relation to an interest rate swap, and as applicable depending on whether the swap is a basis swap (see Table 1), a fixed-to-floating swap (except an overnight index swap) (see Table 2) or an overnight index swap (see Table 3), means the following—

- (a) the currency in which the notional amount and payments are denominated ~~is~~ as specified under ~~the~~ column 2 with the heading of ~~headed~~ “Currency” in Table 1, 2 or 3;
- (b) the floating rate index on which the floating interest rate (or rates) for the swap is based ~~is~~ as specified under ~~the~~ column 3 with the heading of ~~headed~~ “Floating rate index” in Table 1, 2 or 3;
- (c) the tenor of the swap is within the range as specified under ~~the~~ column 4 with the heading of ~~headed~~ “Tenor” in Table 1, 2 or 3;
- (d) whether or not the swap has optionality ~~is~~ as specified under ~~the~~ column 5 with the heading of ~~headed~~ “Optionality” in Table 1, 2 or 3;
- (e) whether or not the notional amount of the swap is constant during the tenor of the transaction ~~is~~ as specified under ~~the~~ column 6 with the heading of ~~headed~~ “Constant notional” in Table 1, 2 or 3.

**fixed-to-floating swap** (固定對浮動掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties ~~1 counterparty~~ are to be calculated by reference to a fixed interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to a floating interest rate applied to the same notional amount;

**interest rate swap** (掉期息率) means an OTC derivative transaction under the terms 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 fixed interest rates or agreed floating interest rates;

**optionality** (授予選擇權), in relation to an interest rate swap, means a counterparty to the swap is granted an option which, if exercised, would or might affect the amount, timing or form of the payments that would otherwise be made under the swap;

**overnight index swap** (隔夜指數掉期) means a fixed-to-floating swap where the floating interest rate referred to in paragraph (b) of the definition of **fixed-to-floating swap** in this section is based on an overnight interest rate index.

## 2. Specified OTC derivative transactions

The following OTC derivative transactions are specified for the purposes of rules ~~43~~ and ~~54~~—

- (a) a basis swap that has all of the features specified for an item in a row of Table 1;
- (b) a fixed-to-floating swap (except an overnight index swap) that has all of the features specified for an item in a row of Table 2;
- (c) an overnight index swap that has all of the features specified for an item in a row of Table 3.

Table 1 – Basis Swaps

| Item | Currency | Floating<br>Rate Index | Tenor                  | Optionality | Constant<br>Notional |
|------|----------|------------------------|------------------------|-------------|----------------------|
| 1.   | USD      | LIBOR                  | 28 days to 10<br>years | No          | Yes                  |
| 2.   | EUR      | EURIBOR                | 28 days to 10<br>years | No          | Yes                  |
| 3.   | GBP      | LIBOR                  | 28 days to 10<br>years | No          | Yes                  |
| 4.   | JPY      | LIBOR                  | 28 days to 10<br>years | No          | Yes                  |
| 5.   | HKD      | HIBOR                  | 28 days to 10<br>years | No          | Yes                  |

Table 2 – Fixed-to-Floating Swaps (except overnight index swaps)

| Item | Currency | Floating<br>Rate Index | Tenor                  | Optionality | Constant<br>Notional |
|------|----------|------------------------|------------------------|-------------|----------------------|
| 1.   | USD      | LIBOR                  | 28 days to<br>10 years | No          | Yes                  |
| 2.   | EUR      | EURIBOR                | 28 days to<br>10 years | No          | Yes                  |
| 3.   | GBP      | LIBOR                  | 28 days to<br>10 years | No          | Yes                  |
| 4.   | JPY      | LIBOR                  | 28 days to<br>10 years | No          | Yes                  |
| 5.   | HKD      | HIBOR                  | 28 days to<br>10 years | No          | Yes                  |

Table 3 – Overnight Index Swaps

| Item | Currency | Floating<br>Rate Index | Tenor                | Optionality | Constant<br>Notional |
|------|----------|------------------------|----------------------|-------------|----------------------|
| 1.   | USD      | Fed Funds              | 7 days to 2<br>years | No          | Yes                  |
| 2.   | EUR      | EONIA                  | 7 days to 2<br>years | No          | Yes                  |
| 3.   | GBP      | SONIA                  | 7 days to 2<br>years | No          | Yes                  |

## Schedule 2

### Calculation ~~P~~periods, ~~C~~learing ~~T~~hresholds and ~~P~~rescribed ~~D~~ays

| Column<br>1 | Column<br>2                                                                                                                    | Column<br>3                                                                             | Column<br>4                                                                                                 | Column<br>5                                                                                                 | Column<br>6                                                                            | Column<br>4 <sup>7</sup>                                  |
|-------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Item        | Calculation period <sup>1</sup>                                                                                                | Clearing<br>threshold f<br>or local<br>AFI, local<br>AMB, local<br>LC (rule<br>5(3)(a)) | Clearing<br>threshold<br>for<br>overseas<br>AFI,<br>overseas<br>AMB,<br>overseas<br>LC<br>(rule<br>5(3)(b)) | Clearing<br>threshold<br>for<br>overseas<br>AFI,<br>overseas<br>AMB,<br>overseas<br>LC<br>(rule<br>5(3)(c)) | Clearing<br>threshold<br>for<br>financial<br>services<br>provider<br>(rule<br>5(3)(d)) | Prescribed<br>day                                         |
| 1.          | 1 <del>September</del><br><del>March 2016 to 30</del><br><del>November</del><br><del>31 May 2016</del>                         | US\$20<br>billion                                                                       | US\$1<br>trillion                                                                                           | US\$20<br>billion                                                                                           | US\$1<br>trillion                                                                      | 1 <del>July</del><br><del>January</del><br>2017           |
| 2.          | 1 <del>March</del><br><del>2017 September</del><br><del>2016 to 31 May</del><br><del>2017</del><br><del>30 November 2016</del> | US\$20<br>billion                                                                       | US\$1<br>trillion                                                                                           | US\$20<br>billion                                                                                           | US\$1<br>trillion                                                                      | 1 <del>January</del><br><del>July 2017</del> <sup>8</sup> |
| 3.          | 1 <del>September 2017</del><br><del>March 2017 to</del><br><del>30 November 2017</del><br><del>31 May 2017</del>               | US\$20<br>billion                                                                       | US\$1<br>trillion                                                                                           | US\$20<br>billion                                                                                           | US\$1<br>trillion                                                                      | 1 <del>July</del><br><del>January 2</del><br>018          |
| 4.          | 1 <del>March 2018</del><br><del>September 2017</del><br><del>to 31 May 2018</del><br><del>30 November 2017</del>               | US\$20<br>billion                                                                       | US\$1<br>trillion                                                                                           | US\$20<br>billion                                                                                           | US\$1<br>trillion                                                                      | 1 <del>January</del><br><del>July 2018</del> <sup>9</sup> |

<sup>1</sup> ~~Dates are illustrative only.~~

## APPENDIX C – Revised Draft of the Expanded Reporting Rules

*(Mark-ups in red and blue show changes from the current version of the Reporting Rules, and mark-ups in green and yellow highlight show changes from the version attached to the Consultation Paper)*

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

(Made by the Securities and Futures Commission under sections 101L and 101P 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 10 July 2015.

(2) Rule 15 comes into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette.

##### 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) 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;

**excluded currency contract** (豁除貨幣合約) means an OTC derivative product that is a forward contract for the sale or purchase of a currency which—

(a) is entered into for the purpose of settling a sale or purchase of securities denominated in that currency; and

(b) is intended to be settled by the actual delivery of that currency, by the earlier of the following days—

(i) the last day of the customary settlement period for the securities referred to in paragraph (a);

(ii) the seventh business day after the day on which the forward contract is executed;

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

**grace period** (寬限期), in relation to a prescribed person, means the period of 3 months beginning on the starting day;

***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;~~

**previous Rules** (先前的規則) means the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules as in force immediately before the specification day;

**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;~~

**specification day** (指明日期) means 1 July 2017;

**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 becomes a regulated prescribed person in relation to the product type; and~~
- ~~(c) if applicable, the day on which the person ceases to be regarded as an exempt person;~~

**subsequent event** (其後事件), in relation to a specified OTC derivative transaction, means an event that occurs after the transaction was entered into, and which affects the 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 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 1 relating to the transaction (including information and particulars relating to a subsequent event), and the persons involved~~

~~in the transaction, which must be submitted to the Monetary Authority for complying with the reporting obligation~~ has the meaning given by rule 2A;

**valuation transaction information** (交易估值資料), in relation to a specified OTC derivative transaction, means the information and particulars which are within the category of information and particulars specified in item ~~12~~ 11 of Schedule 1, and which satisfy the requirement referred to in ~~rule 2A(2)(b)~~ paragraph (b)(ii) of the definition of **transaction information** in rule 2A(1).

## **2A. Meaning of transaction information**

(1) In these Rules –

**transaction information** (交易資料), in relation to a specified OTC derivative transaction, means the information and particulars relating to the transaction (including information and particulars relating to a subsequent event and valuation transaction information), and ~~to the persons involved in the transaction, which—~~

(a) ~~must be submitted to the Monetary Authority for complying with the reporting obligation; and~~

~~(b) satisfy the requirements referred to in subrule (2).~~

~~(2) The requirements are that the information and particulars are—~~

~~(a) within a category of information and particulars specified in column 2 of Schedule 1; and~~

~~(b) required for completing a data field that is specified by the Monetary Authority in accordance with subrule (3).~~

~~(b) are –~~

~~(i) within a category of information and particulars specified in column 2 of Schedule 1; and~~

~~(ii) required for completing a data field that is specified by the Monetary Authority in accordance with subrule (2) in relation to the class or description of specified OTC derivative transactions to which the transaction belongs.~~

~~(2)(3)~~ For the purposes of ~~paragraph (b)(ii) of the definition of~~ **transaction information** in ~~subrule (2)(b)~~ (1), the Monetary Authority may, after consultation with the Commission and by notice published in the Gazette, specify ~~(whether generally, or with reference in relation to a class or description of specified OTC derivative transactions), the data fields that must be completed by a prescribed person in relation to a~~ **specified OTC derivative** transaction for complying with the reporting obligation.

~~(3)(4) A notice published by the Monetary Authority under subrule (3)(2) is not subsidiary legislation.~~

### 3. When prescribed person to be regarded as exempt person

- (1) Subject to subrule (4), for the purposes of rules 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 ~~in relation to a specified OTC derivative transaction within a product class~~ if the person satisfies 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 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 any~~ 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 any~~ 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 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 the~~ prescribed persons ~~that is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is referred to in subrule (4A) are~~ not ~~eligible~~ to be regarded as ~~an~~ exempt persons for the purposes of rule ~~10(1)(a), 11(1)(a) or 12(1)(a) or 13(1)(a)~~ (as applicable) ~~in relation to a specified OTC derivative transaction within a product class~~ if the person is taken to have submitted the transaction information for a specified OTC derivative transaction within the product class under rule 22(6).

~~(4A) The prescribed persons are persons that, under the previous Rules as they were in force immediately before the specification day—~~

~~(a) reported a specified OTC derivative transaction to the Monetary Authority;~~

~~(b) under rule 17(1) or 18(1), were taken to have reported a specified OTC derivative transaction to the Monetary Authority; or~~

~~(c) were required to report a specified OTC derivative transaction to the Monetary Authority but had not submitted the transaction information for reported the transaction to the Monetary Authority before the specification day (whether because the time for submitting the transaction information reporting was not reached before the specification day, or otherwise).~~

(5) A prescribed person that ceases to satisfy a requirement in subrule (2)—

(a) is not eligible to again 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~~ ceases to be regarded as an exempt person on the day on which the person ceases to satisfy the requirement.

#### 4. When prescribed person to be regarded as having conducted transaction in Hong Kong on behalf of affiliate

(1) For the purposes of rules 10(1)(b), 11(1)(b), 12(1)(c) and 13(1)(b), 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 person 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 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~~ (except a transaction in an excluded currency contract) 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~~ (except a transaction in an excluded currency contract) is specified for the purposes of the record keeping obligation.

## **Part 2**

### **Reporting Obligation**

#### **Division 1—Reporting by Prescribed Persons**

**9. When reporting obligation arises**

- (1) A prescribed person that is required by rule 10, 11, 12, 13, 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 20 in the circumstances specified in subrule (2).
- (2) The circumstances are—
  - (a) when rule 10, 11, 12, 13, 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 a subsequent event occurs while the transaction is still outstanding.

## 10. 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) 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.
- ~~(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules as they were in force immediately before the specification day—~~
  - ~~(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or~~
  - ~~(b) the person was required to report, or under rule 17(1) or 18(1) was taken to have reported, to the Monetary Authority, but the transaction information for the transaction was not submitted person had not reported to the Monetary Authority before the specification day (whether because the time for submitting the transaction information reporting was not reached before the specification day, or otherwise).~~
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person ~~in relation to the specified OTC derivative transaction.~~

## 11. 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) 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.

- (2A) ~~The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules as they were in force immediately before the specification day—~~
- (a) ~~was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or~~
  - (b) ~~the person was required to report, or under rule 17(1) or 18(1) was taken to have reported, to the Monetary Authority, but the transaction information for the transaction was not submitted person had not reported to the Monetary Authority before the specification day (whether because the time for submitting the transaction information reporting was not reached before the specification day, or otherwise).~~
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person ~~in relation to the specified OTC derivative transaction.~~

## **12. 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) 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.

- (2A) ~~The transaction referred to in subrule (1)(b) or (c) includes a transaction that is still outstanding on the specification day and which, under the previous Rules as they were in force immediately before the specification day—~~
- ~~(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or~~
  - ~~(b) the person was required to report, or under rule 17(1) or 18(1) was taken to have reported, to the Monetary Authority, but the transaction information for the transaction was not submitted person had not reported to the Monetary Authority before the specification day (whether because the time for submitting the transaction information reporting was not reached before the specification day, or otherwise).~~
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person ~~in relation to the specified OTC derivative transaction.~~

### 13. 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) 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.
- (2A) ~~The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules as they were in force immediately before the specification day—~~
- ~~(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or~~
  - ~~(b) the person was required to report, or under rule 17(1) or 18(1) was taken to have reported, to the Monetary Authority, but the transaction information for the transaction was not submitted person had not reported to the Monetary Authority before the specification day (whether because the time for submitting the transaction information reporting was not reached before the specification day, or otherwise).~~
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person ~~in relation to the specified OTC derivative transaction.~~

**14. 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.

**15. 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.

**16. Reporting obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong**

For the purposes of 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 Reporting Obligation is Taken to have been 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 is required by rule 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 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 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 9(2)(b), 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 subsequent event 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).

### **Division 3—Reporting to Monetary Authority**

**19. Interpretation of 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) 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) 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) — 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) — 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) — 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 starting day on which the person becomes a regulated prescribed person.~~

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

A prescribed person that is required by rule 9(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.

**21. Reporting by means of electronic reporting system**

- (1) 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.

~~**22. 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 which the requirement in subrule (3) applies must submit the transaction information 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) 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; or~~
  - ~~(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.~~
- ~~(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 day which is not earlier than 2 business days before the day on which the transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the 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 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 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 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 the transaction information (or information and particulars which in the opinion of the Monetary Authority are substantially similar to the transaction information) for the transaction to the Monetary Authority.~~

**23. Reporting outstanding transactions ~~where no concession period~~**

- (1) Subject to subrule (5) **and rule 25B**, a **regulated** prescribed person ~~referred to in subrule (2) and~~ to which the requirement in subrule (3) applies must submit the transaction information 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 of the grace period.
- (4) The transaction information for a specified OTC derivative transaction referred to in subrule (1) is the transaction information comprising—
  - (a) **subject to subrule (6)**, the transaction information as at the first day of the grace period, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into; and
  - (b) **except in the circumstances referred to in subrule (7)**, in chronological order, the transaction information for each subsequent event that has occurred since the first day of the grace period until a day which is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) **Except in the circumstances referred to in subrule (7)**, ~~A~~ **a regulated** prescribed person is not required to submit the transaction information for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period to the Monetary Authority.

~~(6) If, before the specification day, and under the Rules as they were in force immediately before the specification day, transaction information for a specified OTC derivative transaction was submitted to the Monetary Authority by a regulated prescribed person or by an affiliate of a regulated prescribed person on whose behalf the person conducted a specified OTC derivative transaction in Hong Kong (**the previously reported transaction information**)—~~

~~(a) the person is taken to have submitted the previously reported transaction information to the Monetary Authority on the specification day; and~~

~~(b) subrule 4(a) applies to the person in relation to the transaction only to the extent that, as at the specification day, the previously reported transaction information is not all of the information and particulars that constitute transaction information for the transaction.~~

~~(7) The circumstances are that, under the Rules as they were in force immediately before the specification day—~~

~~(a) the specified OTC derivative transaction was reported to the Monetary Authority by the regulated prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or~~

~~(b) the regulated prescribed person was required to report, or under rule 17(1) or 18(1) was taken to have reported, the specified OTC derivative transaction to the Monetary Authority, but the transaction information for the transaction was not submitted to the Monetary Authority before the specification day (whether because the time for submitting the transaction information to the Monetary Authority was not reached before the specification day, or otherwise).~~

**24. Reporting transactions entered into ~~after concession period, or where no concession period~~ on or after starting day**

(1) A **regulated** prescribed person ~~referred to in subrule (2) and~~ to 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 the transaction is entered into.

~~(2) Subrule (1) applies to a prescribed person that—~~

~~(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)(c), that is entered into on or after the first starting day of the grace period.~~

## 25. Reporting subsequent events

- (1) Subject to subrules (2) and (3), ~~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 22, 23 or 24 (including a prescribed person that has submitted the transaction information for a specified OTC derivative transaction to the Monetary Authority despite rule 22(5) or 23(5)) and rule 25B, a prescribed person referred to in subrule (1A)~~ must submit the transaction information for a subsequent event to the Monetary Authority within 2 business days after the event occurs.

(1A) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—

- (a) has submitted the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for the transaction to the Monetary Authority despite rule 23(5)); or
  - (b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.
- (2) If a prescribed person submitted the transaction information for one, or more than one, subsequent event to the Monetary Authority under rule ~~22(4) or~~ 23(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 person to submit the transaction information for a subsequent event that has occurred after the day on which the person ceases to be a prescribed person.

#### **25A. Submitting valuation transaction information**

(1) Subject to rule 25B, a prescribed person referred to in subrule (2) 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.

(2) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—

(a) ~~A prescribed person that has submitted, or is required to submit, the transaction information for the a specified OTC derivative transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for a specified OTC derivative the transaction to the Monetary Authority despite rule 23(5)) must submit the valuation transaction information for the 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.; or~~

(b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.

#### **25B. Modified requirements for transactions reported to Monetary Authority under previous Rules**

(1) Rules 23, 25 and 25A apply to a prescribed person in relation to a specified OTC derivative transaction referred to in subrule (2) subject to the modifications specified in subrule (3), (5) or (7) (as applicable).

(2) The specified OTC derivative transaction is a transaction—

(a) that is still outstanding on the specification day; and

(b) for which previous transaction information was, before the specification day and under the previous Rules, submitted to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong.

(3) If, on the specification day, the transaction has a maturity day that is before 1 July 2018, subject to subrule (7)—

(a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit the previous

transaction information to the Monetary Authority on the specification day;

(b) rule 25(1)—

(i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day; and

(ii) applies until the maturity day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;

(c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day.

(4) For the purposes of subrule (3)(a), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.

(5) If, on the specification day, the transaction has a maturity day that is on or after 1 July 2018—

(a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit to the Monetary Authority—

(i) on the specification day, the previous transaction information; and

(ii) by no later than the last day of the grace period, the additional transaction information as at a day (**reporting day**) which is not earlier than 2 business days before the day on which the additional transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into;

(b) rule 25(1)—

(i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day; and

(ii) applies until the reporting day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;

- (c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day.
- (6) For the purposes of subrule (5)(a)(i), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.
- (7) If, in relation to a transaction referred to in subrule (3), on or after the specification day and before 1 July 2018, a subsequent event occurs that has the effect of extending the maturity day of the transaction to a day that is on or after 1 July 2018 (*extending event*), then—
  - (a) on and from the day on which the extending event occurs, subrule (3) ceases to apply to the prescribed person in relation to the transaction and, subject to paragraph (b), subrule (5) applies to the person in relation to the transaction; and
  - (b) if the extending event occurs on or after the last day of the grace period, subrule (5)(a)(ii) is to be construed as if the reference to the last day of the grace period is a reference to a day that is no later than 2 business days after the day on which the extending event occurs.
- (8) In this rule—
  - additional transaction information** (額外的交易資料) means transaction information that is not previous transaction information;
  - previous transaction information** (先前的交易資料) means information and particulars that constituted the transaction information within the meaning of the previous Rules.

## 26. Submitting counterparty identifying particulars in certain circumstances

- (1) A prescribed person that 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 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 10 January 2016 ~~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 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 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 following transaction information ~~referred to in item 3, 8(e) or 9(d) or (e) (as applicable) in Part 4 of Schedule 1 for a specified OTC derivative transaction from which the identity of a counterparty to the transaction may be ascertained~~

- (a) the name of a counterparty to a specified OTC derivative transaction;
- (b) any identifying reference of, or assigned to, a counterparty to a specified OTC derivative transaction, and the type of the identifying reference;

**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.

## 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 until no earlier than 5 years after the transaction has matured or been terminated.

#### 28. Prescribed persons to keep records even if counterparty is, or transaction was 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 rule 9;
  - (b) without limiting paragraph (a)—
    - (i) the records specified in Schedule 2 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 agent; and
      - (B) records sufficient to demonstrate that the person monitored the reporting by the agent;
  - (c) if rule 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 2 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 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 ~~22(5)~~ or 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 2 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) in a manner that enables the records to be readily accessible.

## Part 4

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

#### 31. Interpretation of 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.

#### 32. Reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified 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 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 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 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; a reference to the starting day in relation to a 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 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 9 in relation to a specified OTC derivative transaction to which the subsidiary is a counterparty, if rule 11(1)(b) requires the institution to report the same transaction to the Monetary Authority.

### **33. Transitional arrangements for specification of subsidiary made before specification day**

~~A specification of a subsidiary by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance, or under section 101E(5) of the Ordinance for the purposes of section 101E(3) of the Ordinance, that was in force immediately before the specification day (as defined in rule 2) continues to have effect on and after the specification day as if the specification was made on the specification day.~~

~~(1) A specification of a subsidiary by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance, that was in force immediately before the specification day continues to have effect on and after the specification day as if the specification was made on the specification day.~~

~~(2) A specification of a subsidiary by the Monetary Authority under section 101E(5) of the Ordinance for the purposes of section 101E(3) of the Ordinance, that was in force immediately before the specification day continues to have effect on and after the specification day as if the specification was made on the specification day.~~

## **Schedule 1**

### **~~Specified OTC Derivative Transactions and Transaction Information to be Submitted to Monetary Authority~~**

[rr. 2 & 2A<sup>26</sup>]

## **Part 1**

### **Interpretation**

#### **~~1. Interpretation~~**

~~In this Schedule—~~

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

- ~~(a) the 2 counterparties to the transaction agree to exchange interest rate cash flows 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 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 for settlement on a single date in the future;~~
- ~~(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 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 and conditions of the transaction) that is prevailing on an agreed future 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;

~~**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.

## ~~2. Monetary Authority notices not subsidiary legislation~~

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

- (a) ~~a notice by which the Monetary Authority specifies a currency for the purposes of this Schedule;~~
- (b) ~~a notice by which the Monetary Authority specifies a floating interest rate index for the purposes of this Schedule.~~

## **Part 2**

### **Specified Product Classes**

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

| Column 1 | Column 2                | Column 3                                                                                            | Column 4                       |
|----------|-------------------------|-----------------------------------------------------------------------------------------------------|--------------------------------|
| Item     | Product class           | Product type                                                                                        | Product type specification day |
|          |                         | (b) — another specified floating interest rate index applied to the same notional amount.           |                                |
| 3.       | Non-deliverable forward | The reference currency is a specified currency and the settlement currency is a specified currency. | 10 July 2015                   |

## Part 4

### Transaction Information 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, or is intended to be, cleared; and
  - (c) — the client clearing services provider (if any) involved in, or intended to be involved in, clearing the transaction.
6. — 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 21(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 in this 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.~~
7. ~~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 21(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 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.~~

| <u>Column 1</u> | <u>Column 2</u>                                                            |
|-----------------|----------------------------------------------------------------------------|
| <u>Item</u>     | <u>Category of information and particulars relating to a specified OTC</u> |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             | <u>derivative transaction, and to the persons involved in the transaction</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>1.</u>   | <u>Information and particulars relating to the Monetary Authority's administration of the reporting of the transaction, including information and particulars identifying—</u> <ul style="list-style-type: none"> <li><u>(a) the nature of the report;</u></li> <li><u>(b) the person submitting the report;</u></li> <li><u>(c) the person that is required to comply with the reporting obligation; and</u></li> <li><u>(d) if the person that is required to comply with the reporting obligation is regarded as having conducted the transaction in Hong Kong on behalf of an affiliate of the person, the affiliate.</u></li> </ul>                         |
| <u>2.</u>   | <u>Information and particulars relating to the class or type of product to which the transaction belongs.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>3.</u>   | <u>Days and periods relating to the transaction, including—</u> <ul style="list-style-type: none"> <li><u>(a) the day on which the transaction was entered into or on which a subsequent event is agreed;</u></li> <li><u>(b) the day on which the transaction or a subsequent event becomes effective;</u></li> <li><u>(c) the day on which the transaction matures or terminates;</u></li> <li><u>(d) dates or periods relating to a feature of the class or type of product to which the transaction belongs; and</u></li> <li><u>(e) dates or periods relating to the reporting of a transaction that is outstanding as at a particular time.</u></li> </ul> |
| <u>4.</u>   | <u>Information and particulars relating to the counterparties to the transaction, including names, places of incorporation or residence, identifying references, and rights and obligations arising under, or relating to, the transaction.</u>                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <u>5.</u>   | <u>Information and particulars relating to pricing of the transaction (other than valuation transaction information), including—</u> <ul style="list-style-type: none"> <li><u>(a) notional amounts and schedules;</u></li> <li><u>(b) reference and settlement currencies;</u></li> <li><u>(c) agreed prices, rates or indices;</u></li> <li><u>(d) settlement details; and</u></li> <li><u>(e) other features or details specific to the class or type of product to which the transaction belongs that may affect the value of the transaction.</u></li> </ul>                                                                                                |
| <u>6.</u>   | <u>Information and particulars relating to the documentation of the transaction, including the version, type and date of any master agreement executed and the type and date of any supplementary materials.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <u>6.7.</u> | <u>Information and particulars relating to the confirmation of the transaction, including the platform through which, and the manner in which, the transaction was confirmed and any identifying reference assigned to the transaction by the confirmation platform.</u>                                                                                                                                                                                                                                                                                                                                                                                         |

|               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>7.8.</u>   | <p>Information and particulars relating to the execution of the transaction, including—</p> <ul style="list-style-type: none"> <li>(a) <u>the platform through which</u> and the manner in which the transaction was executed;</li> <li>(b) <u>any identifying reference assigned to the transaction by the execution platform;</u></li> <li>(c) <u>the day on which, and the time at which, the transaction was executed; and</u></li> <li>(d) <u>any agent involved in the execution of the transaction.</u></li> </ul>                                                                                                                                                                                                                                                                                                            |
| <u>8.9.</u>   | <p>Information and particulars relating to the clearing of the transaction, including—</p> <ul style="list-style-type: none"> <li>(a) <u>whether the transaction was, or is intended to be, cleared through a central counterparty;</u></li> <li>(b) <u>if applicable, the central counterparty through which the transaction was, or is intended to be, cleared;</u></li> <li>(c) <u>identifying references assigned to the original transaction before it is cleared, and the <u>two 2</u> new transactions resulting from the clearing process;</u></li> <li>(d) <u>the client clearing services provider (if any) involved in, or intended to be involved in, clearing the transaction; and</u></li> <li>(e) <u>whether or not the clearing obligation applies to <u>a person in relation to</u> the transaction.</u></li> </ul> |
| <u>9.10.</u>  | Information and particulars relating to whether and how <u>a the</u> transaction arises from, or is amended as a result of, a portfolio compression exercise.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <u>10.11.</u> | Particulars of any identifying reference assigned to the 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 21(2)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <u>11.12.</u> | <p>Information and particulars relating to the valuation of the transaction, including—</p> <ul style="list-style-type: none"> <li>(a) <u>the basis of the valuation;</u></li> <li>(b) <u>the day on which, and the time at which, the valuation was calculated;</u></li> <li>(c) <u>the value of the transaction; and</u></li> <li>(d) <u>the currency in which the value is denominated.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <u>12.13.</u> | <p>Information and particulars relating to a subsequent event, including—</p> <ul style="list-style-type: none"> <li>(a) <u>the day on which the event occurred;</u></li> <li>(b) <u>the type of the event; and</u></li> <li>(c) <u>the changes resulting from the event to information or particulars submitted to the Monetary Authority.</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <u>13.14.</u> | Other information and particulars relating to the transaction, <u>or to the</u> persons involved in the transaction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## Schedule 2

[r. 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 showing particulars of the terms and conditions of the specified OTC derivative transaction, including particulars relating to all payments and margin requirements relating to the transaction.
4. Records sufficient to demonstrate that the transaction information submitted to the Monetary Authority under Division 3 of Part 2 was accurate.

## APPENDIX D – Proposed List of Financial Services Providers

For the purposes of the definition of “financial services providers” under the Clearing Rules, we propose to designate the following persons as financial services providers.

|    |                                                |
|----|------------------------------------------------|
| 1  | Banco Santander SA                             |
| 2  | Bank of America N.A.                           |
| 3  | Barclays Bank plc                              |
| 4  | Barclays Capital Inc.                          |
| 5  | BNP Paribas                                    |
| 6  | BNP Paribas Fortis                             |
| 7  | BNP Paribas Securities Corp.                   |
| 8  | Citibank N.A.                                  |
| 9  | Citigroup Global Markets Inc.                  |
| 10 | Citigroup Global Markets Japan Inc.            |
| 11 | Citigroup Global Markets Limited               |
| 12 | Citigroup Global Markets Australia Pty Limited |
| 13 | Credit Agricole Corporate and Investment Bank  |
| 14 | Credit Foncier de France                       |
| 15 | Credit Suisse AG                               |
| 16 | Credit Suisse International                    |
| 17 | Credit Suisse Securities (Japan) Limited       |
| 18 | Credit Suisse Securities (USA) LLC             |
| 19 | Deutsche Bank AG                               |
| 20 | Deutsche Bank Securities Inc.                  |
| 21 | Goldman Sachs & Co.                            |
| 22 | Goldman Sachs Bank USA                         |
| 23 | Goldman Sachs International                    |

|    |                                                    |
|----|----------------------------------------------------|
| 24 | Goldman Sachs Japan Co., Ltd.                      |
| 25 | HSBC Bank PLC                                      |
| 26 | HSBC Bank USA, NA                                  |
| 27 | HSBC France                                        |
| 28 | HSBC Securities (USA) Inc.                         |
| 29 | ING Bank NV                                        |
| 30 | ING Bank Slaski                                    |
| 31 | ING DiBa AG                                        |
| 32 | J.P. Morgan Chase Bank NA                          |
| 33 | J.P. Morgan Markets Australia Pty Limited          |
| 34 | J.P. Morgan Securities Japan Co., Ltd.             |
| 35 | J.P. Morgan Securities LLC                         |
| 36 | J.P. Morgan Securities plc                         |
| 37 | Merrill Lynch Capital Services Inc.                |
| 38 | Merrill Lynch International                        |
| 39 | Merrill Lynch International Bank Limited           |
| 40 | Merrill Lynch Japan Securities Co., Ltd.           |
| 41 | Merrill Lynch, Pierce, Fenner & Smith Inc.         |
| 42 | Mitsubishi UFJ Morgan Stanley Securities Co., Ltd. |
| 43 | Mitsubishi UFJ Securities International plc        |
| 44 | Mitsui Capital Markets (UK) Limited                |
| 45 | Mizuho Bank, Ltd.                                  |
| 46 | Mizuho Capital Markets (UK) Limited                |
| 47 | Mizuho Capital Markets Corporation                 |
| 48 | Mizuho International Plc                           |
| 49 | Mizuho Securities Co., Ltd.                        |
| 50 | Mizuho Trust & Banking Co., Ltd.                   |

|    |                                           |
|----|-------------------------------------------|
| 51 | Morgan Stanley & Co International plc     |
| 52 | Morgan Stanley & Co. LLC                  |
| 53 | Morgan Stanley Capital Services LLC       |
| 54 | Morgan Stanley MUFG Securities Co., Ltd.  |
| 55 | Natixis                                   |
| 56 | Nomura Financial Products & Services Inc. |
| 57 | Nomura Global Financial Products Inc.     |
| 58 | Nomura International plc                  |
| 59 | Nomura Securities Co., Ltd.               |
| 60 | Nomura Securities International, Inc.     |
| 61 | Nordea Bank AB                            |
| 62 | Nordea Bank Denmark A/S                   |
| 63 | Nordea Bank Finland Plc                   |
| 64 | Nordea Bank Norges ASA                    |
| 65 | SG Americas Securities LLC                |
| 66 | SMBC Capital Markets Inc.                 |
| 67 | SMBC Nikko Capital Markets Limited        |
| 68 | SMBC Nikko Securities Inc.                |
| 69 | Societe Generale                          |
| 70 | Societe Generale Newedge UK Limited       |
| 71 | Standard Chartered Bank                   |
| 72 | Sumitomo Mitsui Banking Corporation       |
| 73 | Sumitomo Mitsui Trust Bank, Limited       |
| 74 | The Bank of New York Mellon               |
| 75 | The Bank of Tokyo-Mitsubishi UFJ, Ltd.    |
| 76 | The Royal Bank of Scotland plc            |
| 77 | UBS AG                                    |

|    |                             |
|----|-----------------------------|
| 78 | UBS Limited                 |
| 79 | UBS Securities LLC          |
| 80 | UniCredit Bank AG           |
| 81 | UniCredit Bank Austria AG   |
| 82 | Unicredit SpA               |
| 83 | Well Fargo Bank NA          |
| 84 | Well Fargo Securities       |
| 85 | Wells Fargo Securities, LLC |