

Joint consultation paper on the annual update to the list of Financial Services Providers under the clearing obligation for over-the-counter derivative transactions

March 2020



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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FOREWORD

In line with global efforts, the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) have been working with the Government of the Hong Kong Special Administrative Region and relevant stakeholders on implementing a regulatory regime for the over-the-counter (**OTC**) derivatives market in Hong Kong. The regime, which is now in place, provides for, among other things, the introduction of reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions

This consultation is in respect of the annual review of the list of Financial Services Providers (**FSPs**) that will become effective on 1 January 2021. It should be read together with papers relating to earlier consultations on the implementation of the OTC derivatives regulatory regime, in particular our various consultations on mandatory clearing. All papers can be viewed on the websites of the HKMA and the SFC.

Interested parties are invited to submit written comments on the proposals, and the comments should reach either the HKMA or the SFC on or before 28 April 2020. Comments may be submitted by any of the following methods –

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

By email to: fss@hkma.gov.hk or otcconsult@sfc.hk

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

By post to one of the following:

Financial Stability Surveillance Division
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street, Central
Hong Kong

Supervision of Markets Division
Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

Please note that the names of commentators and the contents of their submissions may be published by the HKMA and the 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 this consultation paper.

You may not wish your name or submission to be published by the HKMA and the SFC. If this is the case, please state that you wish your name, your submission or both to be withheld from publication when you make your submission.

March 2020

PERSONAL INFORMATION COLLECTION STATEMENT

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the HKMA's and the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of collection

2. The personal data provided in your submission in response to this consultation paper may be used by the HKMA or the SFC for one or more of the following purposes –
 - (a) to administer –
 - (i) the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA; and
 - (ii) the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) to perform statutory functions under the provisions of the Banking Ordinance (Cap. 155), the Securities and Futures Ordinance (Cap. 571) and relevant provisions;
 - (c) for research and statistical purposes; or
 - (d) for other purposes permitted by law.

Transfer of personal data

3. Personal data may be disclosed by the HKMA or the SFC to members of the public in Hong Kong and elsewhere as part of this public consultation. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA and SFC websites and in documents to be published by the HKMA and SFC during the consultation period or at its conclusion.

Access to data

4. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA and the SFC have the right to charge a reasonable fee for processing any data access request.

¹ Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

² The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

Retention

5. Personal data provided to the HKMA and the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of their functions.

Enquiries

6. Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to –

HKMA

Personal Data Privacy Officer
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street
Central, Hong Kong

SFC

Data Privacy Officer
Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the HKMA and the SFC is available upon request.

A. Introduction

1. To meet the G20 commitments to reform OTC derivatives markets, the HKMA and the SFC have been working on implementing a regulatory regime for OTC derivatives in Hong Kong. The regime, which is now in place, provides for, among other things, the introduction of reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions.
2. To date, we have implemented two phases of mandatory reporting and one phase of mandatory clearing (**Phase 1 Clearing**). Phase 1 Clearing took effect on 1 September 2016 to capture specified standardised interest rate swaps (**IRS**) between major dealers if certain conditions under the Clearing Rules³ are met.
3. Major dealers with a presence in Hong Kong are usually Authorized Institution (**Als**) or Licensed Corporations (**LCs**). They therefore fall under the scope of prescribed persons in the Clearing Rules. In order to capture transactions between prescribed persons and major dealers outside of Hong Kong that are not Als or LCs, the concept of a FSP was introduced.
4. Under the Clearing Rules, the SFC may, with the consent of the HKMA and by notice published in the Gazette, designate any person (whether incorporated in Hong Kong or outside Hong Kong) as a FSP if the SFC is satisfied that it is likely that the person is actively engaged in OTC derivative activities outside Hong Kong. The first list of FSPs was gazetted in August 2016 and came into effect on 1 September 2016.

B. Annual Update to the List of Financial Services Providers under the Clearing Obligation

Scope of a FSP

5. We have adopted the following two criteria to determine whether an entity comes within the scope of a FSP –
 - (a) it belongs to a group of companies appearing on the list of global systemically important banks (**GSIBs**) published by the Financial Stability Board, or on 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 (**G15-dealers**); and
 - (b) it is a member of the largest central counterparties (**CCPs**) offering clearing for interest rate swaps in the US, Europe, Japan and Hong Kong (**IRS CCPs**).

³ The Securities and Futures (OTC Derivatives Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.

6. In order to ensure that the list of FSPs (**FSP List**) remains relevant and appropriate, we conduct an annual review of the FSP List following a consultation in 2018⁴. The policy adopted in the 2018 consultation is that we will take a snapshot of the entities falling within the FSP criteria in paragraph 5 above at the end of each calendar year, identify any changes and consult the market on any proposed amendments to the FSP List in the following year.
7. To date, the FSP List was updated twice, effective 1 January 2019 and 1 January 2020. This consultation is for the revised FSP List to take effect on 1 January 2021.

Changes to the List of GSIBs

8. We have reviewed the list of GSIBs published by the FSB in November 2019 to identify changes from the list published in November 2018. The Toronto-Dominion Bank was identified as a new GSIB. The following group entities of the Toronto-Dominion Bank are members of LCH Limited, one of the IRS CCPs. We therefore propose to include them in the revised FSP List:

- (a) The Toronto-Dominion Bank
- (b) TD Bank, N.A.
- (c) TD Bank USA, N.A.

New clearing members of IRS CCPs

9. We have also reviewed the clearing memberships of IRS CCPs as at 31 December 2019 to identify entities which are part of a GSIB group or G15-dealers group which have become members of IRS CCPs since our last review. We have identified the following entities and we propose to include them in the revised FSP List –

	Name of the entity	G-SIB or G15-dealers group
1	Bank of China (UK) Ltd	Bank of China
2	BofA Securities, Inc	Bank of America
3	Citibank Europe Plc	Citigroup
4	Mizuho Securities USA LLC	Mizuho FG
5	UBS Switzerland AG	UBS

GSIBs or G-15 Group Member Entities which are no longer IRS CCP members

10. In respect of GSIB or G15-dealers member entities which are no longer clearing members of IRS CCPs, our approach has been to keep them on the FSP List, unless there is no longer any entity within the group which is a clearing member of an IRS CCP.

⁴ See the *Joint consultation paper on enhancements to the OTC derivatives regime for Hong Kong to– (1) mandate the use of Legal Entity Identifiers for the reporting obligation, (2) expand the clearing obligation and (3) adopt a trading determination process for introducing a platform trading obligation* issued in March 2018 and the consultation conclusions paper published in June 2018.

11. Based on our review, Merrill Lynch, Pierce, Fenner & Smith Incorporated (a group entity belonging to the Bank of America) is no longer a member of an IRS CCP. Other entities within the Bank of America group continue to be members of IRS CCPs. Unless we receive a submission that there is a permanent change in its business models so that it no longer conducts OTC derivative transactions, we propose to keep Merrill Lynch, Pierce, Fenner & Smith on the revised FSP List in accordance with our stated approach.
12. The revised FSP List, consolidating all proposed changes as explained above, is set out in the [Annex](#). The proposed changes are also highlighted for easy reference. We welcome any comments or concerns about any of the entities included in the revised FSP List.

Question: Do you have any comments or concerns about our proposed revised FSP List? If you do, please provide specific details.

C. Timing for submission of comments

13. The proposed update to the FPS List is formed in accordance with the established policy and process communicated to the market participants. We believe market participants are familiar with the policy and process involved in the annual update and they will have anticipated the substance of our proposals. In view of the above, we propose to allow around one month for the submission of comments on this consultation, and comments should reach the HKMA or the SFC by no later than 28 April 2020.

D. Way Forward

14. As stated in our 2018 Consultation, we will align the effective date of the revised FSP List to the prescribed day⁵ of the calculation period⁶ nearest to when the consultation conclusions paper is published. We intend to publish this consultation conclusions paper in June 2020. This means the nearest calculation period will be 1 March 2020 to 31 May 2020. Accordingly, the effective date of the revised FSP List will fall on 1 January 2021, which is the prescribed day for the calculation period of 1 March 2020 to 31 May 2020.

⁵ A prescribed day in relation to a calculation period is the day which is seven months after the end of the calculation period.

⁶ A calculation period is the period in which a person's applicable position in OTC derivatives is calculated to determine whether it has reached the clearing threshold. The applicable clearing threshold for each calculation period is set out in Schedule 2 to the Clearing Rules.

ANNEX - Revised List of Financial Services Providers

The following entities are proposed to be designated as FSPs for the purposes of the Clearing Rules. Changes from the current FSP List are explained in the notes set out below:

	Name of the entities	Notes
1.	Agricultural Bank of China Limited	
2.	Banco Santander S.A.	
3.	<u>Bank of China (UK) Ltd</u>	A member of an existing GSIB group and a new member of an IRS CCP. We propose to include it in the revised FSP List.
4.	Bank of America, N.A.	
5.	Bank of America Merrill Lynch International Designated Activity Company	
6.	Banque Palatine S.A.	.
7.	Barclays Bank Ireland Plc	
8.	Barclays Bank PLC	
9.	Barclays Bank UK PLC	
10.	Barclays Capital Inc.	
11.	BNP Paribas Fortis SA/NV	
12.	BNP Paribas SA	
13.	BNP Paribas Securities Corp.	
14.	BofA Securities Europe SA	
15.	<u>BofA Securities Inc.</u>	A member of an existing GSIB group and a new member of an IRS CCP. We propose to include it in the revised FSP List.
16.	CACEIS Bank SA	
17.	<u>Citibank Europe Plc</u>	A member of an existing GSIB group and a new member of an IRS CCP. We propose to include it in the revised FSP List.
18.	Citibank, N.A.	
19.	Citigroup Global Markets Europe AG	
20.	Citigroup Global Markets Inc.	
21.	Citigroup Global Markets Japan Inc.	

	Name of the entities	Notes
22.	Citigroup Global Markets Limited	
23.	Credit Agricole Corporate and Investment Bank	
24.	Credit Foncier de France	
25.	Credit Suisse (Schweiz) AG	
26.	Credit Suisse AG	
27.	Credit Suisse International	
28.	Credit Suisse Securities (Japan) Limited	
29.	Credit Suisse Securities Sociedad de Valore, S.A.	
30.	Credit Suisse Securities (USA) LLC	
31.	Deutsche Bank AG	
32.	Deutsche Bank Securities Inc.	
33.	DB Privat- und Firmenkundenbank AG	
34.	Goldman Sachs & Co. LLC	
35.	Goldman Sachs Bank Europe SE	
36.	Goldman Sachs Bank USA	
37.	Goldman Sachs Financial Markets Pty Ltd	
38.	Goldman Sachs International	
39.	Goldman Sachs Japan Co., Ltd.	
40.	HSBC Bank plc	
41.	HSBC Bank USA, N.A.	
42.	HSBC France	
43.	HSBC Securities (USA) Inc.	
44.	HSBC UK Bank plc	
45.	ING Bank N.V.	
46.	ING Bank Śląski S.A.	
47.	ING-DiBa AG	
48.	J.P. Morgan AG	
49.	JPMorgan Chase Bank, N.A.	
50.	JPMorgan Securities Japan Co., Ltd.	
51.	J.P. Morgan Securities LLC	
52.	J.P. Morgan Securities plc	

	Name of the entities	Notes
53.	Merrill Lynch Capital Services Inc.	
54.	Merrill Lynch International	
55.	Merrill Lynch Japan Securities Co., Ltd.	
56.	Merrill Lynch, Pierce, Fenner & Smith Incorporated	A member of an existing GSIB group. It is no longer a member of an IRS CCP, but other entities within the group continue to remain as members. We propose to keep it in the revised FSP List.
57.	Mitsubishi UFJ Morgan Stanley Securities Co., Ltd.	
58.	Mizuho Bank, Ltd.	
59.	Mizuho Capital Markets LLC	
60.	Mizuho International plc	
61.	<u>Mizuho Securities USA LLC</u>	A member of an existing GSIB group and a new member of an IRS CCP. We propose to include it in the revised FSP List.
62.	Morgan Stanley & Co. International plc	
63.	Morgan Stanley & Co. LLC	
64.	Morgan Stanley Capital Services LLC	
65.	Morgan Stanley Europe SE	
66.	Morgan Stanley MUFG Securities Co., Ltd.	
67.	MUFG Bank, Ltd.	
68.	MUFG Securities EMEA plc	
69.	NATIXIS	
70.	National Westminster Bank Plc	
71.	NatWest Markets N.V.	
72.	NatWest Markets plc	
73.	Nomura Financial Products & Services, Inc.	
74.	Nomura Global Financial Products, Inc.	
75.	Nomura International plc	
76.	Nomura Securities Co., Ltd.	
77.	Nomura Securities International, Inc.	
78.	Nordea Bank Abp	

	Name of the entities	Notes
79.	RBC Capital Markets, LLC	
80.	RBC Europe Limited	
81.	Royal Bank of Canada	
82.	Abbey National Treasury Services plc <u>Santander Financial Services Plc</u>	Abbey National Treasury Service plc changed its name to Santander Financial Services Plc
83.	Santander Investment Securities Inc.	
84.	SG Americas Securities LLC	
85.	SMBC Capital Markets Inc.	
86.	SMBC Nikko Securities Inc.	
87.	Societe Generale	
88.	Societe Generale International Limited	
89.	Standard Chartered Bank	
90.	Sumitomo Mitsui Banking Corporation	
91.	Sumitomo Mitsui Trust Bank, Limited	
92.	<u>TD Bank, N.A.</u>	A member of a new GSIB group on the November 2019 GSIB list, and a member of an IRS CCP. We propose to include it in the revised FSP List.
93.	<u>TD Bank USA, N.A.</u>	A member of a new GSIB group on the November 2019 GSIB list, and a member of an IRS CCP. We propose to include it in the revised FSP List.
94.	The Bank of New York Mellon	
95.	<u>The Toronto-Dominion Bank</u>	A member of a new GSIB group on the November 2019 GSIB list, and a member of an IRS CCP. We propose to include it in the revised FSP List.
96.	UBS AG	
97.	UBS Europe SE	
98.	UBS Securities LLC	
99.	<u>UBS Switzerland AG</u>	A member of an existing GSIB group and a new member of an IRS CCP. We propose to include it in the revised FSP List.
100.	UniCredit Bank AG	
101.	UniCredit Bank Austria AG	

	Name of the entities	Notes
102.	UniCredit S.p.A.	
103.	Wells Fargo Bank, N.A.	
104.	Wells Fargo Securities, LLC	