Joint consultation paper on addition of new calculation periods under the Clearing Rules for over-the-counter derivative transactions

December 2021



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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Forward

In line with global efforts, the Hong Kong Monetary Authority (**HKMA**) and Securities and Futures Commission (**SFC**) have been working with the Government of the Hong Kong Special Administrative Region and other stakeholders to implement 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 calculation periods for mandatory clearing. It should be read together with papers relating to earlier consultations on the implementation of the OTC derivatives regulatory regime, in particular the consultations on mandatory clearing. All papers can be viewed on the websites of the HKMA and SFC.

Interested parties are invited to submit written comments on the proposals. Comments should reach either the HKMA or SFC on or before 21 January 2022 and 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
54/F, One Island East
18 Westlands Road
Quarry Bay, 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 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 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.

December 2021

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 Data[1] will be used following collection, what you are agreeing to with respect to the HKMA's and 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 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 provisions[2] and codes and guidelines published pursuant to the powers vested in 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 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 SFC have the right to charge a reasonable fee for processing any data access request.

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[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 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	**SFC**
Personal Data Privacy Officer Hong Kong Monetary Authority 55/F, Two International Finance Centre 8 Finance Street Central, Hong Kong	Data Privacy Officer Securities and Futures Commission 54/F, One Island East 18 Westlands Road Quarry Bay, Hong Kong

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

Introduction

1. To meet the G20 commitments to reform OTC derivatives markets, the HKMA and SFC have implemented a regulatory regime for OTC derivatives in Hong Kong. The regime 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. Mandatory clearing took effect on 1 September 2016 to capture specified standardised interest rate swaps between major dealers if certain conditions under the Clearing Rules[3] are met.

3. Pursuant to rule 6 of the Clearing Rules, the clearing obligation in respect of a prescribed person[4] arises when its applicable average total position in relevant OTC derivative transactions in a specified period of time reaches a prescribed threshold (Clearing Threshold) for that period. The specified periods of time for calculating the applicable average total position are stipulated in the Clearing Rules as "Calculation Periods". A Calculation Period is set to be a period of three consecutive months, with two Calculation Periods in each calendar year with a gap of six months between the start of each of them.

4. If a prescribed person's applicable average total position during any Calculation Period reaches the corresponding Clearing Threshold, it must clear relevant OTC derivative transactions with a designated central counterparty from the corresponding "Prescribed Day" onward. The Prescribed Day is set on the day that is seven months after the end of the corresponding Calculation Period, to allow time for the prescribed person to prepare to meet its new clearing obligation.

5. Please refer to Schedule 2 to the Clearing Rules for the current specifications of Calculation Periods, Clearing Thresholds and Prescribed Days. Further technical guidance is set out under the "Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime" (**Clearing FAQs**).

Additional calculation periods

6. When we implemented mandatory clearing in 2016, four Calculation Periods were provided in the Clearing Rules. The specification of multiple Calculation Periods with a regular six-month interval between each Calculation Period aims to –

   (a) ensure that new dealers entering into Hong Kong's OTC derivatives market from time to time, and any prescribed persons who have expanded their OTC derivative business to reach the Clearing Threshold, can be identified on a timely basis for the purposes of mandatory clearing; and

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

[4] A "prescribed person" is an authorized institution under the Banking Ordinance, an approved money broker under the Banking Ordinance or a licensed corporation under the Securities and Futures Ordinance.

(b) reduce the risk of market participants manipulating their positions for a particular Calculation Period to circumvent the clearing obligation.

Similarly, this design also allows a prescribed person to exit from the clearing obligation where specified requirements are met.[5]

7. We have maintained this approach to Calculation Periods since the implementation of mandatory clearing. Over time, eight additional Calculation Periods were added to the Clearing Rules following an industry consultation in 2018, with the last Calculation Period ending on 30 November 2022.

8. Based on our observations, the use of multiple Calculation Periods for the purposes of mandatory clearing has been working as intended (noting that the HKMA and SFC have made available to the public periodic updates to the list of prescribed persons which have reached the Clearing Threshold for the purposes of mandatory clearing). As the existing list of Calculation Periods under Schedule 2 to the Clearing Rules will be exhausted in about one year's time (the last available Calculation Period set out in the Clearing Rules relates to the period of 1 September 2022 to 30 November 2022), it is proposed that eight similar Calculation Periods be added to the Clearing Rules as set out in the table below.

Proposed Additional Calculation Periods	**Clearing Threshold**	**Prescribed Days**
1 March 2023 to 31 May 2023	US$20 billion	1 January 2024
1 September 2023 to 30 November 2023	US$20 billion	1 July 2024
1 March 2024 to 31 May 2024	US$20 billion	1 January 2025
1 September 2024 to 30 November 2024	US$20 billion	1 July 2025
1 March 2025 to 31 May 2025	US$20 billion	1 January 2026
1 September 2025 to 30 November 2025	US$20 billion	1 July 2026
1 March 2026 to 31 May 2026	US$20 billion	1 January 2027
1 September 2026 to 30 November 2026	US$20 billion	1 July 2027

9. In this connection, a draft of the proposed amendments to the Clearing Rules is set out in Annex 1 for reference. It should be noted that the draft amendments are subject to the review of the Department of Justice and the negative vetting of the Legislative Council, and may thus be subject to further changes.

Q1. Do you have any comments or concerns regarding our proposal to add eight additional Calculation Periods? If you do, please provide specific details and the related justifications.

[5] Please see Q35 and Q36 under the Clearing FAQs for guidance.

Way forward

10. We invite comments on the proposal. Comments should reach the HKMA or SFC by no later than 21 January 2022.

11. Thereafter, we aim to table the necessary subsidiary legislation for effecting the additional Calculation Periods before the Legislative Council for negative vetting by the third quarter of 2022, and propose that the amendments commence on 1 March 2023, the starting date of the proposed new series of Calculation Periods.

ANNEX 1 - Draft amendments to the Securities and Futures (OTC Derivative Transactions -Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022

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

1. Commencement

These Rules come into operation on [ ].

2. Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules amended

The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571 sub. leg. AN) are amended as set out in rule 3.

3. Schedule 2 amended (calculation periods, clearing thresholds and prescribed days)

Schedule 2, after item 12—

Add

"13.	1 March 2023 to 31 May 2023	US$20 billion	1 January 2024
14.	1 September 2023 to 30 November 2023	US$20 billion	1 July 2024
15.	1 March 2024 to 31 May 2024	US$20 billion	1 January 2025
16.	1 September 2024 to 30 November 2024	US$20 billion	1 July 2025
17.	1 March 2025 to 31 May 2025	US$20 billion	1 January 2026
18.	1 September 2025 to 30 November 2025	US$20 billion	1 July 2026
19.	1 March 2026 to 31 May 2026	US$20 billion	1 January 2027
20.	1 September 2026 to 30 November 2026	US$20 billion	1 July 2027".