

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

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I. INTRODUCTION

1. On 18 July 2014, the Hong Kong Monetary Authority (**HKMA**) and Securities and Futures Commission (**SFC**) issued a joint consultation paper (**Consultation Paper**) on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules (**Rules**).
2. The Consultation Paper set out the key proposals for the mandatory reporting and related record keeping requirements developed jointly by the HKMA and SFC, and with input from the industry. A draft of the Rules reflecting these proposals was also attached to the paper.
3. The deadline for submitting comments on the Consultation Paper was 18 August 2014. Some comments were submitted after the deadline but these were also considered.
4. We received a total of 23 written submissions from a range of respondents including financial institutions, providers of market infrastructure, consulting firms, industry bodies, a professional body and an end user. 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) and the SFC (www.sfc.hk).
5. This Conclusions Paper summarises the comments received, the HKMA and SFC's responses to these comments and our conclusions. This paper should be read together with the Consultation Paper and the comments received.
6. The English version of the Conclusions Paper also attaches a revised draft of the Rules at **Appendix C**. The revised version incorporates changes made in light of the feedback received. Some drafting changes have also been made for better clarity. It should be noted however that the revised draft of the Rules remains subject to review by the Department of Justice, and so there may be further drafting changes.
7. We take this opportunity to thank everyone who took the time and effort to comment on the proposals and draft Rules. Your comments and suggestions have been most useful, and have helped us refine and finalise many key aspects of the Rules.

II. EXECUTIVE SUMMARY

Background

8. The Securities and Futures Ordinance (**SFO**) was amended by the Securities and Futures (Amendment) Ordinance 2014 (**Amendment Ordinance**) to provide for a broad regulatory framework for the OTC derivatives market in Hong Kong. The amendments were passed by the Legislative Council (**LegCo**) in March 2014. Among other things, they introduce mandatory reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions. The precise ambit and related details of these obligations will be set out in rules to be made by the SFC with the

HKMA's consent and after consultation with the Financial Secretary. The HKMA and SFC are working together to develop these rules.

9. The Consultation Paper explained our detailed proposals regarding the mandatory reporting and related record keeping requirements. These new requirements aim to enhance financial market stability by increasing transparency in the OTC derivatives market. The proposals cover the following key areas –
- (a) the types of transactions that will have to be reported,
 - (b) the types of persons that will be subject to reporting and in what circumstances,
 - (c) the types of exemptions and reliefs that may apply,
 - (d) reporting timeframes and applicable grace periods,
 - (e) the form, manner and contents of reports, and
 - (f) the related mandatory record keeping obligations.

Main comments and concerns

10. We received a range of useful comments on the proposals in the Consultation Paper and on the draft Rules attached to it. The main comments raised and our responses are as follows.

Product scope of the mandatory reporting requirement

11. Respondents were generally supportive of our proposal to implement the mandatory reporting obligation in phases by different types of products. There was also support for the proposal to initially cover only certain types of interest rate swaps (**IRS**) and non-deliverable forwards (**NDF**). We received a few drafting suggestions, as well as requests to exclude “precious metals” from the definition of “specified currency” (which is used to define NDF). Taking into account the suggestions received, we have further revised the definitions of IRS and NDF to provide better clarity. We have also removed precious metals as requested so as to avoid bringing commodity-related transactions into the initial reporting phase.
12. We further confirm that overnight index swaps (**OIS**) will be covered in the first phase of mandatory reporting, whereas forward rate agreements (**FRA**) and foreign exchange (**FX**) derivatives (other than NDF) will be covered in future phases. We also confirm that structured products containing embedded NDF components will not be regarded as OTC derivative transactions and hence will not be subject to mandatory reporting. These matters are explained in more detail in paragraphs 39 to 41 below.

“Conducted in Hong Kong”

13. Respondents generally accepted the need to report transactions which are

“conducted in Hong Kong” (i.e. transactions that they have conducted in Hong Kong on behalf of an affiliate). However, there were requests for more clarity on some of the language used to define “conducted in Hong Kong” (such as “trader” and “engaged by”), and on how this reporting limb would apply in certain specific circumstances (e.g. where a global book is used, where transactions are executed on electronic trading platforms, and where an order routing arrangement is in place). We explain these matters in greater detail below – see paragraphs 43 and 44 below. The HKMA and SFC will also prepare FAQs to provide further guidance on the requirement to report transactions “conducted in Hong Kong”. Separately, there was also a suggestion to rephrase “perform a substantial part of his or her duties in Hong Kong” as “perform his or her duties predominantly in Hong Kong” for better certainty, which we agree with and have incorporated.

Reporting obligation for authorized Institutions (AIs) and licensed corporations (LCs) that are registered/licensed to carry on Type 9 regulated activity (RA)

14. In the Consultation Paper, we also proposed to require AIs and LCs to report OTC derivative transactions that they have entered into on behalf of a counterparty in their capacity as a person registered/licensed to carry on Type 9 RA (asset management) for that counterparty. However, market participants noted various difficulties in reporting such transactions given certain practices in the fund industry. More time is needed to address these issues. At the same time, we do not want to delay the implementation of mandatory reporting for the main group of players in the market. Hence, we have decided to hold back on this particular reporting limb in the first phase of implementation. We will consult again on it at a later stage.

Reporting obligation for central counterparties (CCPs)

15. Regarding the reporting obligation of CCPs, we welcome the general support for the manner in which the reporting obligation has been cast, i.e. that they should only report transactions to which they are counterparty in their capacity as a CCP, and that in the case of CCPs that are authorized under section 95 of the SFO to provide central clearing services (**ATS-CCP**), they should only report transactions if the other counterparty is a Hong Kong incorporated company. We will proceed along the lines of the proposals discussed in the Consultation Paper.

Reporting obligation of Hong Kong persons

16. There was general support for how we propose to cast the reporting obligation in respect of Hong Kong persons, i.e. persons (other than AIs, LCs, approved money brokers (**AMBs**) and CCPs) that are based in or operating from Hong Kong. Respondents also generally supported the proposed reporting and exit thresholds for IRS and NDF. On the other hand, there were also requests for more clarity on some of the more operational and technical aspects of the proposal, and in respect of some of the language used. There were also suggestions that the reporting obligation should be introduced in phases by type of reporting entity, i.e. that the more significant players (such as dealers) should be subject to mandatory reporting first while others (such as Hong Kong persons who are not active players in the OTC derivatives market) should be permitted more time to prepare for the new regime and should

therefore be covered in the last phase of implementation.

17. In light of these concerns, we now propose to defer the implementation of mandatory reporting and related record keeping requirements for Hong Kong persons to a later time. This approach will allow any teething problems to be addressed before the regime is extended to a wider population, and is also more in line with the approach taken in other major jurisdictions. The deferral also has the benefit of allowing us time to align the reporting requirements for Hong Kong persons with the regime for regulating systemically important participants (**SIP**), which will be implemented at a later stage. Such alignment will be useful as the term “SIP” essentially comprises Hong Kong persons only (as it expressly excludes AIs, AMBs, LCs, RCHs and ATS-CCPs).
18. As a result, all references to the reporting and record keeping obligations of Hong Kong persons, and to the exemptions applicable to them, have been removed from the Rules for the initial phase of implementation. We will consult again on these requirements at a later stage.

Reporting to the HKMA

19. As explained in the Consultation Paper, the mandatory reporting obligation requires reporting entities to report their reportable transactions to the HKMA via the electronic reporting system developed and operated by or on behalf of the HKMA (**HKTR**). We received suggestions to allow the use of alternative means to comply with the mandatory reporting obligation. Specifically, respondents asked for some form of “substituted compliance” whereby the reporting of transactions to an acceptable overseas trade repository (**TR**) could be regarded as fulfilling the reporting obligation in Hong Kong. As explained in the earlier consultation paper and consultation conclusions published in October 2011 and July 2012 respectively, in order to ensure Hong Kong regulators are able to obtain relevant OTC derivatives information effectively, it is necessary to require reporting entities to report transactions to the HKMA via the HKTR. We remain of the view that regulators should have unfettered access to relevant OTC derivatives data held in a TR for various regulatory purposes, including market surveillance and risk monitoring purposes. Moreover, we understand that many market participants are already reporting transactions to overseas TRs for the purpose of complying with overseas regulations. In view of this, we have already indicated that we will allow the use of reporting agents (which could be an overseas TR) under our regime. We believe this should help ease the reporting burden for market participants. The HKMA will also endeavour to ensure that the reporting standards and specifications adopted by the HKTR are in line with international and industry standards.

Exempt person relief

20. In the Consultation Paper, we proposed an exempt person relief whereby AIs, AMBs and LCs that are small players, not active in the OTC derivatives market, may be exempted from reporting transactions to which they are counterparty. We also proposed that the relief once lost would be lost permanently, i.e. that it would not be open to revival. Respondents generally welcomed this relief, but requested that it be

open to revival. Additionally, many respondents disagreed with the proposal that the exempt person relief cannot apply to AIs, AMBs and LCs who enter into OTC derivative transactions with Hong Kong persons. There were also requests to extend the relief to cover transactions that an AI or LC is required to report in its capacity as a person registered/licensed to carry on Type 9 RA (asset management). Separately, there appeared to be some confusion as to whether some of the criteria for qualifying as an exempt person were intended to be taken as alternative or collective requirements.

21. Taking into account the comments received, we have revised the criteria for this relief by removing the limit on the number of transactions that may be outstanding. Moreover, as the reporting obligation of Hong Kong persons and fund managers will not be implemented at the initial stage (as discussed above), we have further amended the criteria by removing the requirement that an entity must not have entered into any reportable transactions with a Hong Kong person, and the requirement that it must not have entered into reportable transactions in its capacity as a person registered/licensed for Type 9 RA. We do not however propose to extend the exempt person relief further at this stage, or to permit revivals.

Exemption in respect of central banks, governments, etc

22. We received suggestions to consider providing relief for certain types of entities (e.g. governments, central banks etc) and their counterparties from the mandatory reporting obligation. However, we do not consider this necessary as overseas central banks and governments will not be caught by our reporting regime to begin with. As for their counterparties, we propose to follow the practice adopted in other major jurisdictions, which is that they should still be subject to reporting.

Concession period and grace period

23. In the Consultation Paper, we proposed a concession period of 3 months to set up connections to the HKTR, and a grace period of up to 6 months (which would include the 3-month concession period, or any remaining part of it) to backload historical transactions. Respondents welcomed these proposals but urged that the periods be extended further. In view of the industry's request, we have extended the concession period to 6 months, and consequently the grace period will now be extended to a maximum of 9 months.

Reporting of transaction information

24. Respondents asked for more clarity on the specific transaction information to be reported under the mandatory reporting obligation. We have accordingly further amended Schedule 2 to the Rules to refine some of the requirements and provide better clarity. Furthermore, given the importance of the transactions' identifying references in assisting the process of validating reports, eliminating duplicated reports and aggregating transactions for analysis, Schedule 2 to the Rules has been further revised to mandate the submission of trade identifying references that are acceptable by the HKMA. These will be specified in the directions and instructions published by the HKMA.

Masking relief

25. In the Consultation Paper, we proposed a masking relief, which, as a transitory measure, would allow reporting entities to mask certain counterparty identifying information when there is a statutory barrier which prohibits the reporting of such information to the HKMA via the HKTR. We also proposed that counterparty identifying information may be masked where counterparty consent is needed for its disclosure, except that in such cases, the relief would only apply in respect of historical transactions (i.e. transactions entered into before the Rules first come into effect).
26. Respondents welcomed the proposal for a masking relief, but requested that its scope be expanded to cover both historical and new transactions in cases where counterparty consent is needed, even if only for a limited time after the Rules first come into effect. Some respondents also suggested that market participants should be able to establish the existence of a statutory or legal barrier by providing an appropriate legal opinion rather than being restricted to a predefined list determined by regulators.
27. In light of respondents' concerns, we propose to extend the masking relief to cover both historical and new transactions in cases where counterparty consent is needed. However, the coverage in respect of new transactions will be limited to transactions entered into within the first six months after the Rules first take effect. This should allow market participants enough time to obtain client consent without causing any market disruption. Moreover, we recognize that when the barrier to TR reporting is removed in a jurisdiction, this may not have a retrospective effect, i.e. the barrier may still apply in respect of transactions that predate the removal of the barrier. Reporting entities may therefore still have difficulty in reporting counterparty identifying information even after a jurisdiction has been removed from the list of jurisdictions designated for the purpose of the masking relief. We have therefore modified the Rules to ensure that the masking relief continues to apply in such cases.

Specified subsidiaries of locally incorporated AIs

28. Based on the available information regarding the OTC derivatives activities of AIs' subsidiaries, the HKMA does not perceive an immediate need to specify any subsidiaries of AIs for the purposes of the mandatory reporting obligation. However, the HKMA will continue to monitor the development, and may consider implementing such requirement in the future, if necessary.

Mandatory record keeping requirement

29. In view of concerns about the length of the proposed record retention period, we have shortened it from 7 years to 5 years. Records of a reportable transaction will therefore have to be kept for so long as the transaction exists and for a further 5 years after the transaction has matured or been terminated. We have also amended the Rules to provide more clarity on the types of records that need to be kept, as well as the form and manner in which they should be kept.

Fees for reporting to the HKMA via HKTR

30. As explained in the Consultation Paper, fees will be charged (on a cost recovery basis) for reporting to the HKMA via the HKTR. We earlier explained in the Consultation Paper that a monthly fee of HK\$3 will be charged for each transaction reported to the HKMA that is still outstanding on the last business day of the month, subject to a proposed cap of HK\$1 million per reporting entity per annum.
31. However, in order to support new regulatory developments (e.g. new requirements to report the valuation of transactions), the system capacity of the HKTR will need to be further augmented. Such system enhancements will significantly add to the operating cost of the HKTR. For the purposes of preserving cost breakeven, the current plan is to raise the monthly fee from HK\$3 to HK\$4.5 per transaction reported to the HKMA that is still outstanding on the last business day of the month, and increase the annual cap from HK\$1 million to HK\$1.5 million per reporting entity.

Further consultation

32. We would like to take this opportunity to further consult on the following matters, and welcome any feedback from interested parties by 23 December 2014 –
 - (a) Regarding the reporting of valuation transaction information, we further discuss in paragraphs 122 to 125 below the details of this requirement, including the proposed reporting timeframe, implementation timetable and approach, and would welcome any views on the proposed requirements.
 - (b) For the purpose of the masking relief, we propose to designate the list of jurisdictions which is set out in paragraph 126 below, and would welcome comments on such proposed list.
 - (c) The definition of “OTC derivative product” under section 1B of Part 1 of Schedule 1 to the SFO excludes products that are traded on a “prescribed” stock or futures market, and cleared through a “prescribed” clearing house. For this purpose, we propose to recommend to the Financial Secretary that he prescribe the list of stock/futures markets and clearing houses set out in **Appendix B**, and would welcome views on the proposed list.

Next steps

33. Our intention is to introduce the Rules into LegCo for negative vetting in Q1 2015, and subject to the legislative process, the mandatory reporting and related record keeping obligations for regulated entities (i.e. AIs, AMBs, LCs and CCPs operating in Hong Kong) are expected to commence in Q1 2015.
34. Our next goal is to conduct a public consultation on the detailed rules for mandatory clearing and related record keeping obligations. We aim to issue these in Q1 of 2015. Thereafter, we will consult the market on other aspects of the regime, including the

oversight of SIPs and reporting and related record keeping obligations for Hong Kong persons, which we currently aim to do in around Q2 2015.

III. COMMENTS RECEIVED AND OUR RESPONSE

A. OTC derivative transactions that will be subject to mandatory reporting

Product coverage and definitions of IRS and NDF

35. We welcome the general support to implement mandatory reporting in phases by product type, and to start first with certain types of IRS and NDF.
36. Part 1 of Schedule 1 to the Rules sets out the definitions of “IRS” and “NDF”. We received suggestions to make reference to concepts and definitions used by ISDA when drafting our definitions. We note that it may not be possible to simply adopt technical definitions and language used by ISDA in our Rules but we have tried as far as possible to incorporate the ISDA concepts when finalising the definition of “IRS”.
37. Taking into consideration the feedback received, we have also made the following changes to the definitions of “NDF” and “specified currency” in Part 1 of Schedule 1 to the Rules –
 - (a) Respondents commented that the proposed definition of “NDF” did not differentiate between spot and forward contracts. They therefore suggested that the definition should make clear that settlement takes place on a future date to ensure that only forwards are captured. The definition of “OTC derivative product” under the SFO already excludes spot contracts. However, we have modified the definition for better clarity to address the industry’s concerns – see paragraphs (a) and (c)(ii) of the revised definition.
 - (b) There was concern that the proposed definition of “NDF” is so wide that it might unintentionally capture non-deliverable swaps. It was therefore suggested that the definition be amended so that it describes NDFs as transactions with only one value or settlement date. We have modified the definition accordingly – see paragraphs (a) and (c)(ii) of the revised definition.
 - (c) In addition, one respondent commented that it is necessary to specify the reference currency amount in the settlement currency. The definition of NDF is therefore further amended to provide better clarity – see paragraph (c) of the revised definition.
 - (d) Separately, a few respondents suggested removing the reference to precious metals from the definition of “specified currency” (which is used to define NDF) so as to avoid bringing transactions relating to commodities into the first phase of mandatory reporting. In response to these comments, we have modified the definition of “specified currency” to remove precious metals. Precious metals will be categorised as commodities when the mandatory reporting requirement for commodity derivatives is implemented in a future phase.

38. The language in Part 3 of Schedule 1 to the Rules has also been amended to tally with the changes to the definitions of IRS and NDF.

Further clarification

39. Some respondents sought clarification on whether OIS and structured products containing embedded NDF components would be covered by the mandatory reporting requirement, and whether the definition of “IRS” in Part 1 of Schedule 1 to the Rules encompasses FRA. We confirm that OIS are captured by the definition of “IRS” in the Rules and therefore are reportable if they fall within one of the two product types covered in the first phase (e.g. if they are single currency OIS). However, the mandatory reporting obligation will not cover structured products containing embedded NDF components. This is by virtue of subsection (2)(f) of the definition of “OTC derivative product” (in section 1B of Part 1 of Schedule 1 to the SFO) which excludes embedded derivatives. We would also like to clarify that the definition of “IRS” in Part 1 of Schedule 1 to the Rules does not encompass FRA. Our intention is to cover FRA and some other commonly traded interest rate products (e.g. cross-currency swaps, options, etc) for mandatory reporting in a subsequent phase.
40. One respondent noted that there are operational constraints on reporting complex and bespoke products. Market participants may rest assured that we will take into account the characteristics and nature of products before determining if they should be subject to mandatory reporting in any future phase. As explained above, we will only cover certain types of IRS and NDF at the initial stage. The HKMA and SFC will conduct public consultation before expanding the scope of mandatory reporting to cover other products. The current intention is that the next phase of reporting should cover other interest rate and FX derivatives, as well as certain equity derivatives. Other equity derivatives, as well as credit and commodity derivatives will be covered in subsequent phases. We will continue to monitor the development of the OTC derivatives market and consider the need to introduce reporting requirements in respect of other products as appropriate.
41. A few respondents also opined that an FX transaction, which is executed for the purpose of settling a securities transaction or as a result of another security-related transaction, should be considered as an FX spot transaction, even though such transactions may have a relatively longer settlement period. This should not be an imminent issue because the transactions in question should essentially be deliverable forwards which are not subject to the reporting obligation in the initial phase. We will take into account the feedback in this respect when determining the scope of mandatory reporting for FX derivatives (other than NDF) in the future. We will use a prescriptive approach in determining the product coverage. Separate thresholds will be provided for FX derivatives, when we extend the mandatory reporting obligation to cover FX derivatives in future phases.

B. Reporting obligations of AIs, AMBs and LCs

42. The Consultation Paper noted that we proposed to require AIs, AMBs and LCs to report both transactions to which they are counterparty, and transactions that they

have “conducted in Hong Kong”. Additionally, in respect of AIs and LCs, we also proposed that they report transactions that they have entered into on behalf of a counterparty in their capacity as a person registered/licensed to carry on Type 9 RA. There was general support for the first of these reporting limbs, i.e. the requirement to report transactions to which entities are counterparty. However, respondents did have specific concerns and questions in respect of the other two. These are discussed below.

“Conducted in Hong Kong”

43. We received requests for more clarification on certain aspects of the requirement to report transactions “conducted in Hong Kong”. In view of these requests, we would like to clarify our proposals as follows.
- (a) We do not intend to catch purely sales activities, i.e. transactions where the role of the person in Hong Kong is that of a salesman who negotiates between a client and a trader. Rather, our intention is to capture transactions where the decision to enter into them is made by a Hong Kong trader. Moreover, we understand that the decision making process may often involve junior traders and senior traders. We would like to clarify that both junior and senior traders will be considered as “traders” under the Rules, i.e. no distinction will be drawn between them. We would also like to clarify that a salesman will not be regarded as having taken on the role of “trader” simply because he is able to adjust the pricing to achieve a desired sales credit.
 - (b) The Rules require that the trader in Hong Kong must be employed or engaged by the reporting entity. The term “engaged by” will take on its ordinary meaning. For example, it will capture those traders who have been seconded to work for the reporting entity in Hong Kong.
44. As for how the Rules will apply in respect of transactions that are booked in a global book, or executed on an electronic trading platform, or subject to an order routing arrangement, we clarify as follows.
- (a) For transactions booked in a global book – If the trader identified as responsible for the decision of entering into the transaction is a Hong Kong trader, the transaction is reportable to the HKMA via HKTR. Once a transaction is reported to the HKMA, any subsequent events relating to the transaction will have to be reported, even if these subsequent events are handled by other traders outside Hong Kong. Conversely, if a Hong Kong trader is not responsible for the decision to enter into the transaction, then even if he may be involved in a subsequent event relating to the transaction, both the transaction, and the subsequent event will fall outside our reporting regime. It is for reporting entities to ensure that they are able to identify whether transactions booked in a global book are reportable to the HKMA or not. However, we appreciate that there may be cases where a reporting entity is unable to identify which transactions in its global book were decided by which traders. In such cases, we expect the reporting entity to report, at a minimum, all transactions entered into during the period when the global book

was managed by a Hong Kong trader. We also expect all subsequent events relating to such transactions, to be reported to the HKMA via the HKTR.

- (b) For transactions executed on an electronic trading platform – Such transactions will be reportable if the trader who sets the parameters of the key economic terms (in particular pricing) of transactions that may be executed on the electronic trading platform, is a Hong Kong trader. In such case, the Hong Kong trader will be regarded as being responsible for the decision to enter into the transaction. On the other hand, where the parameters of the key economic terms (in particular pricing) were set by a trader outside Hong Kong, but were last modified by a Hong Kong trader before the transaction was executed, then the Hong Kong trader will be regarded as responsible for the final decision of entering into the transaction, and accordingly the transaction will be reportable.
 - (c) For transactions subject to an order routing arrangement – Although the dealer executing the transaction may need to be licensed, the transaction will only be subject to mandatory reporting if it is “conducted in Hong Kong” on behalf of an affiliate, or if the dealer is a counterparty to it. If however the transaction is conducted on behalf of a counterparty that is not an affiliate, e.g. a client, then the transaction will not have to be reported by the dealer.
45. The HKMA and SFC will issue FAQs to provide further guidance on the mandatory reporting requirement as it applies to transactions “conducted in Hong Kong”, including in relation to the matters discussed above. We will take into account the feedback received from the consultation when preparing these FAQs.
46. Lastly, with regard to the concept of “conducted in Hong Kong”, paragraph 66(d) of the Consultation Paper explained that the intention is to only capture transactions entered into by a Hong Kong trader who is predominantly based in Hong Kong, irrespective of his location at the time of entering into the transaction. One respondent considered that the intention of paragraph 66(d) of the Consultation Paper is not fully reflected in the Rules because they describe the trader as performing a “substantial part of his or her duties in Hong Kong” and thus connote a lower threshold. It was suggested that the intention would be better reflected by using the phrase “predominantly based in Hong Kong” instead. We agree with the suggestion, and have accordingly amended the Rules – see rule 4(b)(ii).
47. With regard to the term “trader” as used in the Rules, we also received suggestions to include only a trader who has worked in Hong Kong for more than 46 days in the preceding quarter and who is officially seconded or employed by the Hong Kong entity. Moreover, there was also a suggestion to use the term “portfolio manager” instead of “trader” in the Rules to avoid confusion. We do not agree that it is necessary to introduce a minimum time period for which a trader works in Hong Kong, before the requirement concerning “conducted in Hong Kong” will apply. We would also like to clarify that the reporting requirement in respect of transactions “conducted in Hong Kong” is not aimed at catching fund managers. In fact, the requirement will not apply to a fund manager and the fund it manages, because the fund which is the counterparty to the OTC derivative transaction will not be an affiliate of the fund

manager. Therefore, we do not believe it is appropriate to replace the term “trader” with “portfolio manager”.

48. In addition, a few respondents stressed the importance for definitions and concepts used in Hong Kong (e.g. “conducted in Hong Kong”, “trader location” description) to be aligned with those used in other jurisdictions. While it is important to facilitate a consistent implementation of the OTC derivatives reforms globally, we believe it is also crucial for regulators to take into account local market characteristics when casting the scope of the local requirements. We will continue to maintain a close dialogue with overseas regulators to keep abreast of international regulatory developments and support the global implementation of the reforms.

Expanded scope of circumstances under which AIs and LCs will be required to report

49. Respondents raised various concerns about the proposal to require AIs and LCs that are registered / licensed for Type 9 RA to report transactions that they have entered into in their capacity as fund managers. Many of the issues raised affect both the fund managers and the funds they manage. We note that most funds rely heavily on their counterparties (who are usually dealers) to report their trades to a TR. Funds and fund managers are therefore not accustomed to, nor have in place the necessary system set-up for, reporting transactions themselves. The proposals under the Rules allow for reporting through agents, and would therefore allow for reporting through such dealer-counterparties. However, it is not uncommon for funds to transact with dealers that are overseas entities. Such overseas dealer-counterparties would also not have the necessary system set-up in place to report to the HKMA via the HKTR. Additionally, in the case of fund managers, as they are not counterparties to the transaction, their information may not be included in the information reported by the dealer-counterparty. It is necessary therefore for the dealer-counterparty to make certain technical adjustments before the transaction can be reported on behalf of the fund manager.
50. We note the reporting difficulties raised by respondents, but need more time to address them. At the same time, we do not want to delay the implementation of mandatory reporting for the main group of players in the market. Hence, we have decided to hold back on this particular requirement in the first phase of implementation. Accordingly, all references to the requirement for AIs and LCs to report transactions entered into in their capacity as a person licensed / registered for Type 9 RA have been removed from the Rules. We will take into consideration the comments received when we further fine tune these proposals for implementation at a later stage.
51. In the Consultation Paper, we also sought views on whether any specific difficulties were envisaged, if an AI or LC that is registered/licensed for Type 9 RA is also required to report transactions that it has advised a counterparty on, i.e. even though it has not entered into the transaction on behalf of that counterparty. We note that the majority of respondents did not support extending the reporting requirement to AIs and LCs that provide only advisory / non-discretionary investment management services. We also note respondents’ concerns about the difficulties that such an approach might present (e.g. the AI or LC that plays an advisory role may not know

whether the trade was eventually executed or not, and they may not have access to the necessary information about the transaction that would have to be reported). In view of the feedback received, we do not propose to extend the requirement for the time being but we will keep in view development in this area.

Other related issues

52. We received a request for clarification on whether the start date for those entities that have been reporting to the HKMA under the interim reporting requirement, in respect of the specified product types, will be the date referred to in Rule 1(1) (i.e. the start date of the Rules). We would like to clarify that there will be a single start date for the Rules. However, for entities that have been reporting under the interim reporting requirement, they will be regarded as having complied with the backloading obligation to the extent that they have reported the relevant information before the Rules commence. This is by virtue of section 21(6) of the Rules.
53. In addition, one respondent sought clarification on the reporting obligation in the context of prime brokerage arrangements, where an entity enters into an NDF transaction with their prime broker, and the prime broker enters into a back-to-back trade with the executing broker. We would like to clarify that if the entity, prime broker and executing broker are different legal entities and they fall under our reporting regime, each of them will have a reporting obligation for that trade. However, as discussed below, we are not proposing to impose a reporting obligation on Hong Kong persons in the first phase, and hence the entity (assuming it is a Hong Kong person) will not be subject to reporting in this phase.

C. Reporting obligation of CCPs

54. Respondents were generally supportive of the manner in which the reporting obligation for CCPs has been cast. We did however receive requests for further clarification and confirmation on certain aspects of the proposals. In response to these, we clarify as follows.
- (a) There is no obligation on AIs, AMBs, LCs and Hong Kong persons to ensure that a CCP complies with its reporting obligations.
 - (b) The definition of “recognized clearing houses” (**RCHs**) has been expanded under the Amendment Ordinance to include those that clear OTC derivatives. This expanded definition is expected to be implemented as part of the first phase of implementation.
 - (c) For overseas CCPs that intend to provide clearing services to market participants in Hong Kong, we do not expect they will seek to become RCHs. Rather, we expect they will apply to be authorized as automated trading services (**ATS**) providers. The definition of ATS has also been expanded by the Amendment Ordinance to include services for the clearing of OTC derivatives. However, that amendment will be implemented at a later stage when mandatory clearing is introduced. An ATS provider that clears OTC derivative transactions will only have to report transactions with counterparties

that are Hong Kong incorporated companies.

- (d) Transactions entered into by a CCP (be it an RCH or an authorized ATS provider) as part of its default management procedures are still transactions entered into in its capacity as a CCP. They will therefore be reportable under the proposed reporting regime. There should not however be concern that this may result in public disclosure of details regarding action taken by a CCP in such circumstances. As stated in our Consultation Paper, data collected by the HKMA via the HKTR will be used for regulatory and market surveillance purposes and our current plan remains that any public disclosure of such data will be on an aggregate basis only.
- (e) For CCPs that operate a principal clearing model, they will only be required to report transactions to which they are a counterparty. We do not propose to require CCPs to report transactions between its members and their clearing clients.
- (f) There will not be any restriction on clearing with overseas CCPs pending their authorization as an ATS provider, as long as the services they offer do not fall within the definition of ATS. We are aware of the importance of giving CCPs sufficient time to be authorized to clear OTC derivatives (and designated for the purposes of mandatory clearing where appropriate) before the expanded definition of ATS and mandatory clearing requirements are implemented.

D. Reporting obligation of Hong Kong persons

- 55. We welcome the general support for the definition of “Hong Kong person”. We also note, and welcome, the support for the proposed threshold levels for IRS and NDF.
- 56. However, we have also received submissions that the reporting obligation should be implemented in phases by type of reporting entity in line with the approach taken in other jurisdictions. In particular, the more significant players (such as dealers) should be subject to mandatory reporting first while others (such as Hong Kong persons who are not active players in the OTC derivatives market) should be the last group of reporting entities to be subject to reporting. We see merit in the suggested approach. In addition, we believe there is a need to align the reporting requirements for Hong Kong persons with the regime for regulating SIP, which will be implemented at a later stage. Such alignment will be useful as the term “SIP” essentially comprises Hong Kong persons (as it expressly excludes AIs, AMBs, LCs, RCHs and ATS-CCPs).
- 57. For all of the above reasons, we have decided to defer implementation of mandatory reporting for Hong Kong persons until a later time. Accordingly, all references to reporting obligations and exemptions, as applicable to Hong Kong persons, have been removed from the Rules. We will consult the market with respect to these matters again at a later stage when we introduce mandatory reporting for Hong Kong persons. The various drafting suggestions for fine tuning the definition, and requests for further clarification on certain aspects of the definition that we received on this occasion will also be taken into account at that time.

E. Application to cross border transactions

58. The Consultation Paper explained that, under certain circumstances, a reporting entity must report a reportable transaction, even if one or more counterparties to the transaction is a person outside Hong Kong or the transaction was entered into wholly or partially outside Hong Kong.
59. Some respondents suggested allowing the use of alternative means to satisfy the mandatory reporting requirement in Hong Kong. In particular, respondents requested some form of “substituted compliance”, e.g. reporting to any TR that could transmit data to the HKMA and SFC. As explained in the earlier consultation paper and consultation conclusions published in October 2011 and July 2012 respectively, it is necessary to require reporting entities to report to the HKMA via the HKTR to comply with the mandatory reporting obligation. This has been reflected in the Amendment Ordinance. The objective of such requirement is to ensure that Hong Kong regulators have unfettered access to the TR data for regulatory and market surveillance purposes. We noted that the requirement to report to a local TR is not unique to Hong Kong. In order to ensure that Hong Kong regulators can obtain relevant OTC derivatives information as quickly and directly as possible, we remain of the view that reports should be made to the HKMA via HKTR to fulfil the reporting requirement in Hong Kong. That said, we note some of the difficulties expressed by respondents. In order to reduce the compliance burden on reporting entities, we have built in a degree of flexibility into our regime, i.e. reporting entities may report their transactions via an agent (which could be an overseas TR). We will continue to maintain dialogue with the industry to facilitate reporting to the HKMA via the HKTR. The HKMA will also endeavour to ensure that the reporting standards and specifications adopted by the HKTR are in line with those set by international standard setting bodies and major industry platforms. We believe this should ease the reporting burden for reporting entities which operate in both local and overseas markets.
60. Furthermore, in paragraph 97 of the Consultation Paper, we noted that, in certain circumstances, an overseas-incorporated AI or ATS-CCP may not need to report transactions if one or more counterparties to the transaction is a person outside Hong Kong or the transaction was entered into wholly or partially outside Hong Kong. We received comments that the circumstances prescribed might be easily circumvented, with the result that not all transactions which are intended to be reportable would be captured. We do not agree with this view. While it is crucial for regulators to obtain information about OTC derivative transactions that are relevant to the local market, we believe it is also important to avoid an unnecessarily wide extra-territorial reach when regulating the OTC derivatives market. Our proposed approach is aimed at striking an appropriate balance between the two.

F. Exemptions and other relief from the reporting obligation

61. We welcome the general support for our proposed exemptions and reliefs. We have received various comments and suggestions for each of the proposed exemptions and reliefs, which we discuss below.

Exemption for less active AIs, AMBs and LCs (exempt persons)

62. In the Consultation Paper, we proposed an exempt person relief whereby AIs, AMBs and LCs that are small players, not active in the OTC derivatives market, can be exempted from reporting transactions to which they are counterparty. We also proposed that this exemption would apply on a product class basis, and could not be revived once lost (i.e. that once the exemption ceases to apply, it cannot be revived again even if all criteria are subsequently met again). The market generally welcomed this proposal although there were requests that the relief be open to revival with the regulator's consent. There were also requests for certain amendments and extension.
63. We would like to clarify that the purpose of the exempt person relief is to prevent unintended consequences. In particular, a small AI/AMB/LC should not be prevented from entering into OTC derivative transactions to hedge its commercial risks just because it has not set up system connections for reporting its OTC derivative transactions to the HKMA via the HKTR. At the same time it should not be compelled to incur the costs of putting such systems in place if it only occasionally enters into such transactions, or its transactions are relatively insignificant. Given the reasons for this relief, we do not see why it should be revived once lost. Once an AI/AMB/LC fails to qualify for this relief, it will need to set up system connections with the HKTR. Once this is done, it will not face the dilemma described above and hence there is no need to provide the relief again afterwards, particularly as the relief applies on a product class basis which means that even though the relief may be lost for one product class (e.g. IRS) it may still apply in respect of another (e.g. NDF). For the avoidance of doubt, we have amended the Rules to make it more explicit that the exempt person relief cannot be revived once lost – see Rule 3(5).
64. A few respondents suggested that the criteria for the exempt person relief should be amended by removing the limit on the number of transactions (i.e. maximum 5 transactions outstanding per product class), particularly as there is also a US\$30 million limit on the gross notional value of outstanding transactions. There also appeared to be some confusion as to whether both of these limits had to be met to qualify for the exempt person relief, or whether meeting one sufficed. We agree that it may not be necessary to have both a limit on the number of transactions and a limit on the gross notional position. We have therefore removed the former. Additionally, one respondent also suggested that the proposed limit of US\$30 million should be calculated on a net notional basis. Since the net notional position is not a good indication of the level of relevant OTC derivatives activities, we do not propose to use a net notional position limit instead of a gross notional position limit.
65. One of the criteria for the exempt person relief is that the reporting entity must not have any outstanding OTC derivative transactions to which a Hong Kong person is also counterparty. We received suggestions to remove this restriction, or to limit the relief so that it applies only where the Hong Kong person has in fact relied on the AI, AMB or LC to report the transaction. As we will not be imposing any reporting obligation on Hong Kong persons at the initial stage, this restriction will in any event be removed for now. We will revisit its suitability at a later stage when we introduce reporting requirements for Hong Kong persons.

66. Separately, there were also requests to extend the exempt person relief to cover transactions that an AI or LC is required to report in its capacity as a person registered/licensed for Type 9 RA. Again, as noted above, such transactions will not have to be reported in the initial phase and so the issue of extending the exempt person relief to cover them is moot for now. We will revisit its suitability at a later stage when these transactions are brought under the reporting net.
67. The Rules provide that a licensed bank will not be qualified for the exempt person relief in respect of a particular product class if the bank has already reported a transaction in the same product class to the HKMA via the HKTR, and that transaction is still outstanding when the Rules commence. One respondent sought clarification as to whether an AI/AMB/LC, which has not yet reported to the HKMA via the HKTR but has set up a system linkage with the HKTR, will still be qualified for the exempt person relief. We confirm that this is correct. In such cases, although the AI/AMB/LC has set up a system linkage with the HKTR and should therefore not be eligible for the exempt person relief, it is possible that the AI/AMB/LC may only need to report transactions at a much later time. By then its system linkage (being left unused) might be totally obsolete, making its position similar to that of an AI/AMB/LC that has never set up any system linkage. Therefore we consider it necessary to extend the exempt person relief to such AI/AMB/LC. Moreover, this “concession” does not present significant concern because the AI/AMB/LC will be subject to mandatory reporting once its position in a product class has exceeded the US\$30 million threshold.

Exemption for Hong Kong persons where transaction is reportable by an AI, AMB or LC

68. We received suggestions to further reduce the compliance burden for Hong Kong persons who are relying on the “Hong Kong person exemption” (i.e. the exemption that relieves a Hong Kong person from reporting a transaction if an AI/AMB/LC is also required to report that transaction). Some respondents also considered that, practically speaking, it might be difficult for a Hong Kong person to tell whether its counterparty has a reporting obligation in respect of the transaction, and if so, whether it has reported the transaction to the HKMA. They suggested therefore that Hong Kong persons should be exempted from reporting an OTC derivative transaction as long as the other counterparty to the transaction is an AI/AMB/LC. As mentioned earlier, we are going to defer mandatory reporting for Hong Kong persons to a later stage, and so these concerns do not need to be addressed immediately. We will however take them into consideration at a later stage when we finalise our proposals in respect of reporting obligations and exemptions applicable to Hong Kong persons.

Relief for AI, AMB or LC where affiliate has reported

69. The Consultation Paper explained that under Rule 21 (Rule 17 in the revised draft) an AI, AMB or LC will be taken to have complied with the reporting requirement for transactions that they have “conducted in Hong Kong”, if the affiliate on whose behalf the transaction is conducted has confirmed to the AI, AMB or LC, in good faith, that it (i.e. the affiliate) has reported the transaction. Respondents from the banking industry enquired whether an agency agreement entered into with affiliates for the reporting of such transactions to the HKMA via the HKTR would constitute outsourcing. We would

clarify first of all that it is not necessary for an AI, AMB or LC to enter into an agency agreement with its affiliate in order to benefit from the relief under Rule 17 (**Rule 17 relief**). However, an AI, AMB or LC may choose to do so for practical considerations (e.g. it may find it more practical to appoint an agent than to keep records of confirmations from its affiliates as described below). If an AI chooses to enter into an agency agreement with its affiliates for reporting transactions conducted on behalf of affiliates to the HKMA via the HKTR, the HKMA holds the view that this constitutes outsourcing. An AI should follow the guidance on outsourcing issued by the HKMA via email around December 2013. In brief, the AI should issue a notification letter containing certain required information to the HKMA 3 months before the planned implementation date of the outsourcing. Please also refer to our discussion below on the HKMA's procedure for agency reporting via the HKTR.

70. We would like to point out that to take advantage of the Rule 17 relief, the AI, AMB or LC concerned should have arrangements in place to ensure it has received the relevant confirmation from its affiliate. Once the confirmation is received, the AI, AMB or LC's reporting obligation will be taken to have been complied with. In most situations where the affiliate is an overseas person, it will not itself have an obligation, under the Rules, to report the transaction concerned. Although its reporting to the HKMA helps the AI, AMB or LC take advantage of the Rule 17 relief, the reporting is regarded as submitted voluntarily by the affiliate. Therefore it is not necessary for the affiliate to indicate in its report to the HKMA that it is reporting for an AI, AMB or LC, or to identify the AI, AMB or LC concerned.
71. On the other hand, in general where an AI, AMB or LC appoints a reporting agent to report an OTC derivative transaction to the HKMA via the HKTR, despite the agency arrangement, the reporting obligation still rests with the AI, AMB or LC concerned. In this case the report submitted by the reporting agent should indicate that the report is submitted for an AI, AMB or LC, and identify who that AI, AMB or LC is. The AI, AMB or LC should monitor the performance of the reporting agent to ensure that its reporting obligation has been properly discharged.
72. The HKMA will provide further guidance on reporting by affiliates and agents in the technical specification or FAQs.

Exemption in respect of central banks, governments, etc

73. We have received suggestions to consider providing relief for certain types of entities, such as governments, central banks, governmental agencies, certain specified multilateral agencies and organisations (including multijurisdictional banks), and their counterparties from the mandatory reporting obligation.
74. We note that overseas central banks and governments will not be caught as reporting entities under the reporting regime. Moreover, in line with the practice adopted in other major jurisdictions, we do not believe entities that are counterparties to central banks and governments should be exempted from the reporting obligation. We would add also that the secrecy provisions under the SFO have been expanded to cover data collected by the HKMA under the mandatory reporting obligation. This data will be used for regulatory and market surveillance purposes. The HKTR will also have

procedures and mechanisms in place to safeguard the confidentiality of data collected from market participants. Any public disclosure of data held in the HKTR will also initially be on an aggregate basis only.

G. Backloading requirement for outstanding transactions

75. We welcome the general support for the proposed backloading requirement. We have also received a request to clarify whether the backloading requirement will apply to transactions of AIs incorporated outside Hong Kong, where those transactions are “conducted in Hong Kong”. We clarify that backloading only applies in respect of transactions to which reporting entities are counterparty, and not in respect of transactions that they have “conducted in Hong Kong”. This is reflected in Rules 9(2), 10(2), 11(2), 12(2), 13(2) and 14(2) – all of which note that the retrospective effect of the reporting obligation (i.e. backloading obligation) only applies in respect of counterparty transactions. It follows that in the case of AIs incorporated outside Hong Kong, they are only required to backload the transactions to which they are a counterparty and which are booked into their Hong Kong branch.

H. Time for reporting and grace periods

Concession period and grace period

76. In the Consultation Paper, we proposed to allow reporting entities: (a) a concession period of up to 3 months to set up their reporting channel to the HKTR; and (b) a grace period of up to 6 months (including the aforesaid 3-month concession period) to complete any backloading. Several respondents suggested extending the length of the concession period and grace period in order to provide industry with sufficient time to prepare for the implementation of mandatory reporting.
77. In view of the feedback received, we have extended the concession period to 6 months, and consequently the grace period will be extended to a maximum of 9 months (including the aforesaid 6-month concession period). We believe such extension will provide market participants with sufficient time to prepare for the implementation of mandatory reporting. The Rules have been changed to reflect this – see the definitions under Rule 18 as well as Rules 21(2) and 22(2).
78. Separately, the Consultation Paper noted that an entity that becomes an AI, AMB or LC after the concession period will not have the benefit of that period for establishing system connections for reporting transactions to the HKMA. There was a suggestion to consider providing a concession period in such circumstances as well. We do not believe this is necessary. Persons seeking to become an AI, AMB or LC and who intend to carry on a business involving OTC derivatives, should have the necessary arrangements in place for reporting OTC derivative transactions before they obtain their regulated entity status. A further concession is not justified. The same applies to entities who have just lost their entitlement to the exempt person relief. In a sense, the period during which they enjoyed the exempt person relief is already a kind of respite for them to get ready for reporting. They should closely monitor their activities while

the exemption is in force so as to leave sufficient time for system connection. We therefore do not believe any additional concession is necessary in such case either.

Reporting timeframes

79. With regard to the reporting timeframe for CCPs, we would like to clarify that the “T” date for a trade that will be cleared is the date on which the trade is accepted by the CCP for clearing.

I. Form and manner of reporting obligation

How to report

80. As explained in the Consultation Paper, reportable transactions must be reported to the HKMA via the HKTR. We would add that the HKMA will be publishing directions and instructions regarding the use of the HKTR and the reporting of transactions through the HKTR. This is now also made explicit in the Rules – see Rule 20(2). Reporting entities will have to report their transactions in accordance with these directions and instructions in order to comply with the mandatory reporting obligation. The Rules have been amended to clearly reflect this point – see Rule 20(1).
81. We would also like to point out that the HKMA has already published technical specifications, the Administration and Interface Development Guide (**AIDG**), on its webpage (<https://hktr.hkma.gov.hk>). These are currently being used for the interim reporting requirement. The HKMA may further publish revised technical specifications to align with the development of the mandatory reporting requirement under the Rules.

What to report

82. In the Consultation Paper, we explained that certain transaction information (including information relating to subsequent events) and additional information for administrative purpose must be reported to the HKMA via the HKTR for discharging the reporting obligation. Some respondents opined that the concepts of “transaction information” and “subsequent event” are very broad, and suggested providing more clarity on the definitions. We also received various suggestions on how to define “subsequent events”.
83. Schedule 2 to the Rules sets out the types of transaction information that will have to be reported. Reporting to the HKMA must be made in accordance with instructions provided for reporting via the HKTR. Details of the instructions and the reporting requirements, including the data fields designated as mandatory for reporting purposes, the data format requirements etc, are set out in the AIDG published by the HKMA, which is available on the HKMA webpage. The HKMA may further update the AIDG, when necessary. Moreover, we would like to clarify a few matters regarding Schedule 2 to the Rules –
- (a) We received a request to clarify the meaning of the term “confirmation” referred to in item 4 of Schedule 2 to the Rules. We would like to clarify that

confirmation of a transaction refers to all kinds of confirmation that is agreed with the counterparty for the execution of the trade.

- (b) For IRS, we would like to clarify that the reporting entity is required to report who the fixed/floating leg payers are, but it is not necessary to report the amounts of the series of interest payment to be paid by each counterparty to the transaction. Furthermore, it is also our intention to require the reporting of information relating to each agreed interest rate or interest rate index, including the tenor and spread (if applicable). We have therefore revised item 8 of Schedule 2 to the Rules to provide better clarity in this regard.
 - (c) We received a suggestion to make the floating rate tenor an optional field for OIS. In response to the suggestion, the floating rate tenor for OIS has been uplifted from the HKTR to align with industry or international standard. For details, please refer to the AIDG published by the HKMA on 18 September 2014.
 - (d) For NDF, our intention is also to require the reporting entity to report particulars of the counterparty that is the purchaser of the reference currency and the counterparty from whom the reference currency is to be purchased. Hence, new sub-items have been added to item 9 of Schedule 2 to the Rules to reflect this intention. Moreover, further amendments have been made to item 9 of Schedule 2 to the Rules to clearly set out the information relating to the reference currency and settlement currency that has to be reported.
 - (e) On the use of a unique identifier for a transaction, one respondent expressed support for the unique transaction identifier (**UTI**) construct adopted by the European Securities and Markets Authority and suggested that Hong Kong define a UTI construct to avoid confusion in the market. On further reflection, we feel the reporting of transaction-identifying references is necessary as such references are critical to assisting the processes of validating reports, eliminating any duplicate reports, and aggregation of transactions. We have therefore revised item 10 of Schedule 2 to the Rules to mandate the submission of transaction-identifying references that are acceptable by the HKMA. (The HKMA will also revise the technical specifications to make the relevant fields mandatory.) As to which references will be acceptable, this will be specified in the directions and instructions published by the HKMA, and will include the Unique Swap Identifier (**USI**) used in the US, and the Trade ID (**TID**) used in the EU.
84. A person, who has reported (or is required to report) transaction information to the HKMA, must report transaction information relating to all subsequent events to the HKMA within two business days after the event occurs. Subsequent events that are required to be reported are basically those events that will affect the economic terms and conditions of the transaction (e.g. any change in the notional amount, rate, counterparty, etc). In order to provide better clarity, we have modified item 7 of Schedule 2 to the Rules to specify that the types of subsequent events to be reported will be those that can be accepted for reporting via the HKTR as specified in the directions and instructions for using the HKTR published by the HKMA. We also take

this opportunity to clarify the following issues –

- (a) Events due to the passage of time (i.e. intrinsic events, such as a trade reaching maturity, fixings, etc) are not required to be reported.
 - (b) One respondent sought clarification on the reporting of subsequent events in respect of NDFs that are not centrally cleared. We understand that, for an NDF transaction, there may be less chance for the economic terms and conditions to be changed after the transaction is executed. If there is no such change to the NDF transaction, there should be no further update that needs to be reported for the transaction. For an NDF transaction that is subsequently cleared by a CCP, it will be necessary for that entity to update the previously reported trade as terminated, and to report the new trade facing the CCP or the clearing service provider.
85. We would like to clarify that two equal and opposite transactions will also need to be reported even though they may have the effect of cancelling out one another. Two equal and opposite transactions are regarded as two distinct transactions until they are actually closed out. Each transaction should be considered individually with reference to the Rules to determine whether it is reportable. As mentioned above, the AIDG contains the technical reporting guidance.
86. The requirement to report subsequent events, will not apply to a reporting entity after it ceases to be an AI, AMB, LC, RCH or ATS-CCP. However, as explained in the Consultation Paper, the reporting obligation will only cease, if the reporting entity has notified the HKMA that it should no longer be regarded as subject to reporting. Since the intention is for the reporting entity to notify the HKMA by means of the electronic reporting system (i.e. HKTR), we have modified the Rules to clearly reflect such intention – see Rule 24(4).

Reporting of “valuation transaction information”

87. We propose to require the reporting of certain information relating to the daily valuation of transactions. Item 6 of Schedule 2 to the Rules, which describes the types of valuation transaction information that will have to be reported, has been further revised to provide better clarity. We received suggestions to exempt Hong Kong persons from this requirement. We would like to clarify that the intention has always been to impose this requirement on regulated entities only (i.e. AIs, AMBs, LCs, RCHs and ATS-CCPs) – see paragraph 128 of the Consultation Paper. As Hong Kong persons (e.g. end-users) are not major participants in the OTC derivatives market, the current thinking is not to impose such a requirement on them.
88. We also received suggestions to define the terms “marked-to-market” and “marked-to-model”, and to illustrate under what conditions the valuation should change from marked-to-market to marked-to-model. We expect reporting entities to report the value of the transaction based on the current market price (i.e. marked-to-market), if such information is available. However, if the market value of the transaction is not available, reporting entities may report the value of the transaction, which is derived from financial models (i.e. marked-to-model). However, we do not

believe it is necessary to define the terms “marked-to-market” and “marked-to-model” in the Rules.

89. One respondent also sought clarification on whether it is acceptable for reporting entities to submit the previous day’s valuation figures if the valuation data is sourced from an overseas system and it is a holiday in the overseas location. We will take into consideration any relevant international standards and provide further guidance on the administrative issues relating to the reporting of valuation transaction information at a later stage. (Please also refer to paragraphs 122 to 125 below regarding the further consultation on issues relating to the reporting of valuation transaction information.)

Barriers to reporting counterparty identifying information (Masking)

90. We welcome respondents’ support for the proposed masking relief. Some respondents, however, suggested expanding the scope of the relief. In particular, we had proposed that, as a transitory measure, certain counterparty identify particulars could be masked if there was a statutory barrier which prohibited their disclosure, or if the disclosure of such particulars required the consent of the relevant counterparty. We had further proposed that where there was a prohibition, the masking relief would apply in respect of both historical and new transactions, but where counterparty consent was required, the masking relief would only apply in respect of historical transactions. Many respondents requested that the relief be extended to cover both historical and new transactions in cases where counterparty consent is needed, even if such relief is only for a limited time after the Rules come into effect.
91. Barriers that prevent reporting of counterparty identifying information to TRs contravene the G20’s objective as outlined in the G20 Leaders’ 2009 Pittsburgh communiqué. Internationally, regulators are considering the possibility of having a deadline after which the masking of counterparty identifying information to TRs would no longer be permitted. It is therefore not appropriate to extend the proposed masking relief as suggested by respondents. However, in light of the concerns raised, we propose to give market participants more time to obtain client consent. We have therefore postponed the cut-off date for historical transactions to the expiry of the first concession period under the Rules. In other words, for cases where counterparty consent is needed, the masking relief will now also cover new transactions entered into within the first 6 months after the Rules are first implemented. It is expected that, thereafter, market participants should no longer enter into transactions with counterparties who are unwilling to consent to their particulars being included for the purposes of compliance with the mandatory reporting obligation. As the same cut-off date will apply to all asset classes (i.e. not just IRS and NDF), we encourage market participants to obtain consent for reporting of OTC derivative transactions of all asset classes as soon as practicable. Moreover, for transactions entered into during the first 6 months after initial implementation (including in asset classes other than IRS and NDF), and where market participants are unable to obtain counterparty consent despite reasonable efforts to do so, we also encourage market participants to keep records to demonstrate that reasonable efforts have been made to obtain the relevant consent.

92. There was a suggestion to allow reporting entities to rely on a legal opinion to demonstrate that the reporting of counterparty identifying information is prohibited in certain jurisdictions rather than be limited by a predefined list of jurisdictions specified by the HKMA and SFC. We do not believe it is appropriate for us to allow reporting entities to rely on a legal opinion for the masking relief as this could result in uncertainties and inconsistencies across different market participants. That said, we would encourage market participants to provide their legal opinions to regulators as soon as practicable so that we can consider whether it is necessary to amend the list of designated jurisdictions.
93. We also received suggestions that the masking relief should not be a transitory measure. As indicated above, we will closely monitor international developments in this regard. In any case, we will not remove a jurisdiction from the list of designated jurisdiction without clear legal support for doing so, and taking into account the approach adopted by regulators in other markets. Respondents further requested that the list of designated jurisdictions for the masking relief be released as soon as possible to allow parties to obtain the necessary waivers and engage with their counterparties. The proposed list of designated jurisdictions is set out under paragraph 126 below.
94. In addition, with regard to our proposals for subsequently reporting counterparty identifying information when the pre-requisites for masking cease to exist, one respondent requested that reporting entities be given more time to begin doing so. There was also a suggestion that any removal of the masking relief for a particular jurisdiction should only occur following a positive change in the jurisdiction's legislation.
95. As explained above, masking of counterparty identifying information contravenes the G20's objectives. Masking should therefore only be tolerated to the extent that it is absolutely necessary. We believe the grace period for "unmasking" counterparty identifying information is adequate. In particular, we have provided for a longer period (i.e. three months) where a jurisdiction is removed from the list of designated jurisdictions as such a change may affect a higher number of counterparties. As for cases where counterparty consent has been obtained, as only one counterparty is involved, we believe a grace period of one month is adequate. Separately, we recognize that when a jurisdiction has removed its barriers to TR reporting, this may not have a retrospective effect (i.e. the barrier may still apply in respect of transactions entered into prior to the barrier being removed). As a result, although a jurisdiction has been removed from the list of designated jurisdiction, the masking relief may still be needed for such historical transactions. The Rules have therefore been amended to clarify this – see Rule 26(2)(a).

J. Specified subsidiaries of locally-incorporated AIs

96. One respondent suggested that a number of factors should be taken into account when specifying a subsidiary of locally-incorporated AIs for the mandatory reporting requirement, such as the technological impact of the requirement on the specified subsidiaries, and the existence of any restrictions under the laws of an overseas jurisdiction that may prevent specified subsidiaries located in that jurisdiction from

complying with such requirement. There were also requests for sufficient lead time to be given to the industry to build the necessary infrastructure to support compliance with this requirement.

97. Based on information currently available, the HKMA considers that the OTC derivatives activities of Als' subsidiaries are generally not significant. Accordingly, the HKMA does not intend to specify any subsidiaries of Als for the purposes of the reporting obligation at this stage. The HKMA will monitor and review the situation from time to time. When the need to implement such requirement arises, we will consult the industry on the criteria for specification of subsidiaries and provide Als with sufficient lead time to comply with the new requirement.

K. Use and public disclosure of data collected by the HKMA

98. We welcome the support for Hong Kong adhering to international standards on data sharing and aggregation. Respondents also stressed the importance of ensuring procedures are in place to protect the confidentiality of the data stored in the HKTR. We appreciate and agree that it is crucial to protect the confidentiality of TR data. As mentioned above, the secrecy and disclosure provisions under the SFO have been expanded to cover data received under the mandatory reporting obligation. The HKTR will have the necessary procedures and mechanisms in place to safeguard the confidentiality of data collected from market participants. The data collected by the HKMA via the HKTR will be used for regulatory and market surveillance purposes. We will take into account the feedback received when considering the details of the mechanism for sharing and public disclosure of TR data. Our current plan is for public disclosure to be made on an aggregate basis only.

L. Other matters related to reporting

Meaning of "counterparty"

99. One respondent sought clarification about the term "counterparty" and suggested defining the term in the Rules. We would like to clarify that the term "counterparty" will carry its ordinary meaning (i.e. it refers to the contractual party to the transaction with legal liability to settle). We do not consider it necessary to provide a definition for such term. We note also that the term is already used in the SFO, generically, without definition.

Reporting treatment of certain transactions

100. One bank sought clarification on how the reporting requirements would apply in certain specific scenarios. In the light of this enquiry, we would like to highlight the following guiding principles for reporting -
- (a) In general, inter-branch transactions (i.e. transactions between branches of the same legal entity) do not have to be reported. However, in line with international practice, inter-affiliate transactions (i.e. transactions between different legal entities within the same group) will be reportable if other relevant criteria for reporting are met.

- (b) An AI/AMB/LC's own reporting obligation will not be affected by whether the counterparty to the transaction also has a reporting obligation. For example, where the reporting entity is an AI and the counterparty to the transaction is a Hong Kong person, whether the Hong Kong person has exceeded its reporting threshold is irrelevant to the AI to determine its own reporting obligation of the transaction.

101. In addition, intra-branch trades (e.g. trades between desks within the same branch) do not have to be reported because such intra-branch trades are internal transactions and do not, by themselves, create any external exposure. This point will be clarified in the technical specifications issued by the HKMA for reporting via the HKTR.

Two-sided reporting

102. We received suggestions to allow one-sided reporting and to include a reporting hierarchy that places primary reporting responsibility on entities with greater financial and institutional means to implement reporting.

103. We believe that requiring both counterparties to report will allow the HKTR to perform better data checks. Therefore, we believe it is necessary to require two-sided reporting. Moreover, we have tried to reduce the reporting burden of market participants, where possible, by providing various reliefs and exemptions.

Over-reporting

104. A few respondents sought clarification on whether over-reporting will be permitted, i.e. whether a reporting entity may report a transaction even though it is not a reportable transaction. For example, can an AI backload all outstanding trades even if they are due to mature or terminate before the expiry of the grace period?

105. We would like to clarify that there is no prohibition on over-reporting. However, once a transaction is reported voluntarily, any subsequent events relating to that transaction will also have to be reported – see Rule 24(1).

HKTR membership

106. We would like to clarify that an entity that has a reporting obligation needs to apply for HKTR membership. The entity can then appoint an agent to report on its behalf. The purpose of the membership is to create an account in the HKTR for the entity who has a reporting obligation, so that the HKTR can recognise that the submission of a trade report into the HKTR is for the purpose of fulfilling a reporting obligation of that entity. Therefore, it is necessary for the entity to set up an HKTR membership and account.

Reporting agent

107. To facilitate reporting, the HKTR accepts agency reporting, i.e. a reporting entity may appoint another entity as an agent to report transactions to the HKMA via the HKTR on its behalf. In terms of the HKTR's procedure for agency reporting, the agent will

need to specify on whose behalf it is reporting (i.e. it will have to specify the reporting entity that it is acting for). The agent will also need to be nominated as an agent by the reporting entity. For this purpose, an agent nomination form, signed by both the reporting entity and the agent, will have to be returned to the HKMA. The agent will also need to perform testing and technical setup for submitting trade reports via the HKTR.

108. However, we would emphasise that, even though an entity has appointed an agent to report on its behalf, it may still be necessary for that entity to understand the reporting process, be responsible for the documentation and account setup, have the ability to review the information reported by its agent to the HKMA via the HKTR, as well as to have contingency procedures in place to report transactions via the HKTR in the event that its agent fails to report.
109. With regard to agency reporting, we believe that while a reporting entity may appoint an agent to report on its behalf, its agent may further appoint another agent to assist with the submission of trade reports to the HKMA via the HKTR (i.e. agent-on-agent reporting). In such a case, the reporting entity will need to acknowledge and nominate the final agent, i.e. the one who will submit the trade report via the HKTR (**submission agent**) on the agent nomination form. The form will also have to be signed by the reporting entity and the submission agent. The HKTR will not need to know the “middle agent(s)”, nor will it require any document to be signed by the middle agent(s). We regard the relationship between the reporting entity, middle agent(s) and final agent as being merely a contractual one which is extraneous to the HKTR. The HKTR will be enhanced so that the submission agent will be able to access the transaction information submitted by it, and to access it via both website and system reports generated by the HKTR. Only the reporting entity and the submission agent will be able to view such information, but not the middle agent(s). It will be for the reporting entity and submission agent to decide whether to share any system report with the middle agent(s).
110. We would like to point out that the appointment of a reporting agent does not relieve a reporting entity from its reporting obligation. The reporting entity must therefore monitor its reporting agent to ensure that the relevant reporting obligation has been fulfilled. At a minimum, the person should receive and review reports from its reporting agent confirming the reporting of transactions. That said, we do not intend to be prescriptive about how an agent should be monitored. Other monitoring approaches that can reasonably be expected as effective are also acceptable.

M. Proposed mandatory record keeping obligation

111. In the Consultation Paper, we set out the proposed details of the mandatory record keeping obligation, which is introduced to supplement the mandatory reporting obligation. As explained above, the mandatory record keeping obligation for Hong Kong persons will not be implemented in the first phase of the reporting regime, but will be implemented at a later stage. Therefore, we have removed the mandatory record keeping obligation of Hong Kong persons from the Rules. We will take into consideration comments received when we finalise our proposals on the record keeping obligations for Hong Kong persons. Any further update on the record keeping

obligations of Hong Kong persons will be provided in the consultation to be conducted at a later stage.

Records to be kept

112. We received various drafting suggestions on Schedule 3 to the Rules, which describes the types of records that need to be kept for fulfilling the mandatory record keeping obligation. We have accordingly further revised Schedule 3 for better clarity. There was also a suggestion to remove item 3 from Schedule 3 (i.e. records evidencing communications and instructions that resulted in the execution of specified OTC derivative transaction). However, we do not agree that it is appropriate to remove this item, as it is important to maintain records of communications and instructions where these lead to the execution of reportable transactions.
113. Moreover, we would like to clarify that item 2 of Schedule 3 refers to records which show that the transaction has been executed (e.g. confirmation). Moreover, records to be kept for purposes of the record keeping obligation will also include messages sent via the HKTR and any relevant electronic communications (e.g. emails and Bloomberg messages through which an order is placed).

Manner in which and duration for which records must be kept

114. There was concern that the proposed record retention period is too long. Taking into account the responses received and drawing reference to other jurisdictions, we have shortened the length of time for which the records need to be maintained from 7 years to 5 years. Records of a reportable transaction will therefore have to be kept for so long as the transaction exists and for a further 5 years after the transaction has matured or been terminated – see Rule 31.
115. We also received suggestions to harmonise the mandatory record keeping requirement with the existing record keeping provisions in the SFO. While an exact alignment is not possible, we have tried to further modify the Rules in light of this suggestion and the context of the OTC derivatives regime – see Rule 30(a) and (b). Under the revised Rules, the records must be kept in a manner that enables them to be readily accessible, and also readily searchable and identifiable by reference to the transaction and the counterparty to the transaction. Moreover, records kept in either paper or electronic forms will satisfy the mandatory record keeping requirement. For the sake of clarity, we also clarify that audio recordings may be kept in audio form and need not be converted into written form.
116. In addition, respondents expressed difficulty in keeping phone records in a manner such that they are readily searchable by reference to the transaction and the counterparty to the transaction. In view of such difficulty, we have revised the Rules to address these concerns – see Rule 30(b).

IV. FEES FOR REPORTING TO THE HKMA VIA THE HKTR

117. As explained in the Consultation Paper, fees will be charged (on a cost recovery basis)

for reporting to the HKMA via the HKTR. The fees will be set out in subsidiary legislation to be made by the Chief Executive in Council, and will thus also be subject to negative vetting by LegCo. We earlier explained in the Consultation Paper that a monthly fee of HK\$3 will be charged for each transaction reported to the HKMA that is still outstanding on the last business day of the month, and that this will be subject to a proposed cap of HK\$1 million per reporting entity per annum.

118. However, given the new regulatory developments (e.g. new requirements to report the valuation of transactions, etc), the system capacity of the HKTR will need to be further augmented to support such development. Since these system enhancements will significantly add to the operating cost of the HKTR, it is necessary to adjust the fees to preserve cost breakeven. Therefore, the current plan is to raise the monthly fee from HK\$3 to HK\$4.5 per transaction reported to the HKMA that is still outstanding on the last business day of the month, and increase the annual cap from HK\$1 million to HK\$1.5 million per reporting entity.

V. FURTHER CONSULTATION

119. In relation to the mandatory reporting and related record keeping obligations, we would like to take this opportunity to further consult on the following three matters –

- (a) the reporting of valuation transaction information – see paragraphs 122 to 125 below,
- (b) the proposed list of jurisdictions to be designated by the SFC for the purposes of the masking relief – see paragraph 126 below, and
- (c) the proposed list of markets and clearing houses to be prescribed by the Financial Secretary for the purposes of the definition of “OTC derivative product” – see paragraphs 127 to 134 below.

120. We invite views on these issues which should be submitted in writing by one of the following methods and by 23 December 2014.

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

121. 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.**

Reporting of valuation transaction information

122. As explained above, we will require the reporting of daily valuation transaction information. Reporting entities will be required to report –
- (a) the valuation type and/or source of the valuation (e.g. whether the transaction is valued on a marked-to-market basis or marked-to-model basis, whether the valuation is sourced from a CCP or agreed between the counterparties, etc) – see item 6 of Schedule 2,
 - (b) when the transaction was last valued (i.e. the valuation date),
 - (c) the value of the transaction, and
 - (d) the currency in which the value is denominated.
123. To facilitate systemic risk assessment, we believe it is important for the HKMA and SFC to obtain valuation transaction information on a daily basis. This obligation will only apply to reporting entities that are regulated (i.e. AIs, AMBs, LCs and CCPs). Similar to the reporting of other transaction information, we propose to require the daily valuation transaction information to be reported on a no later than T+2 basis. Our current intention is to also require two-sided reporting of such information where both counterparties are regulated reporting entities. (If one counterparty is not a regulated entity, then two-sided reporting of such information will not be possible.)
124. In terms of the valuation of the transaction to be reported, the following is proposed –
- (a) For transactions that are cleared through a CCP, the valuation should be the one determined by the CCP.
 - (b) For non-centrally cleared transactions where the counterparties have agreed to exchange margin, the valuation should be the one mutually agreed between the counterparties for the purposes of exchanging margin.
 - (c) For other non-centrally cleared transactions, the valuation should be based on the methodology mutually agreed between the counterparties.
125. The requirement to report valuation transaction information will not be implemented at the initial stage of the reporting regime, but at a later stage in the future. Our current thinking is to implement this requirement around Q1 2016. We believe this proposed timetable will provide the industry with sufficient time to prepare for the

implementation. As explained in paragraph 87 above, we intend to only require regulated entities (i.e. Als, AMBs, LCs, RCHs and ATS-CCPs) to report valuation transaction information. Our current thinking is to phase in the implementation of this requirement by different types of market participants. We would welcome any views on the above proposals.

Prescription of jurisdictions for the masking relief

126. As explained in the Consultation Paper, the SFC will, with the consent of the HKMA, designate jurisdictions for the purposes of the masking relief, if we are satisfied that it is likely that the reporting of counterparty identifying information is prohibited under the laws of that jurisdiction, or by authorities or regulators in that jurisdiction. We propose to designate the following jurisdictions, and would welcome any comments on this proposed list –

- (a) Algeria
- (b) Argentina
- (c) Austria
- (d) Bahrain
- (e) Belgium
- (f) France
- (g) Hungary
- (h) India
- (i) Indonesia
- (j) Israel
- (k) Luxembourg
- (l) Pakistan
- (m) People's Republic of China
- (n) Samoa
- (o) Singapore
- (p) South Korea
- (q) Switzerland
- (r) Taiwan

Prescription of markets and clearing houses

127. The term “OTC derivative product”, and consequently the OTC derivatives regime under the SFO, aim to encompass only products that are typically negotiated bilaterally between counterparties directly. Products that are traded on a stock or futures market are intended to be excluded. This is because they are already subject to regulation under existing laws and hence do not need to be subject to the new OTC derivatives regime as well.

128. The definition of “OTC derivative product” in section 1B of Part 1 of Schedule 1 to the SFO already excludes products that are traded on a recognized stock market or recognized futures market (i.e. a market based in Hong Kong, operated by a recognized exchange company, and regulated under the SFO). For products traded on a market that is based outside Hong Kong, subsection (2)(c) of section 1B allows these to be excluded as well, but only if the market is a stock or futures market prescribed under section 392A of the SFO, and the product is cleared through a

clearing house that is also prescribed under that section.

129. We recognize that many market participants in Hong Kong are global players, and hence trade products on both Hong Kong and overseas markets. Accordingly, it is necessary to prescribe overseas markets and clearing houses under section 392A for the purposes of the first phase of implementation. Such prescription will mean that products traded on the prescribed markets and cleared through the prescribed clearing houses will not be “OTC derivative products”, and hence not subject to mandatory reporting under our regime. The markets and clearing houses that we propose to recommend that the Financial Secretary prescribe under section 392A of the SFO are set out at **Appendix B**.
130. In compiling the list at Appendix B, we have taken into account the following factors—
- (a) We have considered which markets and clearing houses might be more commonly used by our market participants. We have soft consulted some market participants and industry associations to better understand which markets and clearing house are most relevant to their current activities and services.
 - (b) We have considered the list of exchanges under Schedule 3 to the Securities and Futures (Financial Resources) Rules.
131. We are also mindful that the list of prescribed markets and clearing houses must strike an appropriate balance between ensuring a robust regime and addressing market concerns. The proposed list therefore only includes stock/futures markets and clearing houses that meet the following criteria –
- (a) They operate in jurisdictions whose securities or futures regulator is a member of the International Organization of Securities Commissions.
 - (b) They are regulated in their home jurisdictions, and their regulatory status is comparable to that of a recognized exchange company or recognized clearing house under the SFO. For example, they may be “Regulated Markets” or CCPs authorized to offer services and activities in the EU, or “Designated Contract Markets” or “Derivatives Clearing Organizations” regulated by the CFTC in the US, etc.
 - (c) The markets and clearing houses are regulated by the relevant market regulator, banking regulator or government agency in that jurisdiction.
132. We believe these markets and clearing houses are subject to regulation under the laws of their home jurisdiction, and that it is therefore unnecessary for products traded and cleared through them to be subject to our OTC derivatives regime as well. In particular—
- (a) We expect these markets to provide a higher level of transparency than OTC markets. This transparency includes both pre-trade transparency on quotes and orders for transactions, as well as post-trade transparency on completed

transactions through reporting to regulators and the public. We also expect such markets to have an effective supervisory regime to safeguard market integrity and prevent abuse.

- (b) For the clearing houses, we expect them to have robust risk management systems in place to help reduce the interconnectedness of market participants, and consequently their counterparty exposure.
133. It will be noted that some of the markets in Appendix B are prescribed by reference to both the name of the market itself and its operator, whereas others are prescribed by reference to the name of the operator only. This is essentially to ensure that we do not include markets that are regulated in the EU as multilateral trading facilities (**MTFs**) but also operated by entities that operate traditional exchanges. Like swap execution facilities in the US, we believe MTFs in the EU are more commonly used for executing OTC derivatives. Our current thinking therefore is that products traded on them should not fall outside the scope of our OTC derivatives regime.
134. We welcome comments on the proposed list at Appendix B. If market participants believe there are other markets or clearing houses that should also be added to the list, they should provide the full legal name of the market or clearing house and its operator, and (in the case of a market) details of the clearing house through which the product must be cleared. They should also provide details of the jurisdiction(s) in which it is established and operates, details of its regulatory status in each applicable jurisdiction and the regulator or agency that oversees its activities.

VI. CONCLUDING REMARKS AND NEXT STEPS

135. We are grateful for the many comments and suggestions submitted in response to our Consultation Paper. These have been critical in helping us to refine the Rules as discussed in this Conclusions Paper. We aim to introduce the revised Rules into LegCo for negative vetting in Q1 2015. Subject to the legislative process, it is expected that the mandatory reporting and related record keeping obligations for AIs, AMBs, LCs and RCHs will commence in Q1 2015. Although the Rules also provide for mandatory reporting by ATS-CCP, that obligation will not come into effect until mandatory clearing is implemented. This is because the amendments to the ATS definition to cover the clearing of OTC derivatives will not come into effect until that time. As for the mandatory reporting and related record keeping obligations for Hong Kong persons, we plan to consult on these again when we consult on the detailed rules for the oversight and regulation of SIPs around Q2 2015. In any event, we do not expect these requirements to come into effect earlier than Q4 2015.
136. In the meantime, the HKMA and SFC are working on the detailed rules for implementing other aspects of the regime. As with mandatory reporting, our current intention is to adopt a phased approach when implementing the mandatory clearing, trading and related record keeping obligations, and our initial focus will be on the dealer-to-dealer trades. We aim to consult the market on our detailed proposals for mandatory clearing and related record keeping obligations around Q1 2015. This will cover matters such as who will be subject to the obligations and in what

circumstances, what types of products will have to be centrally cleared, what if any exemptions might apply, etc. Further consultation in relation to the implementation of mandatory clearing (i.e. detailed rules on the designation of CCPs for meeting mandatory clearing requirements and guidelines on the authorisation of CCPs providing clearing services for OTC derivatives) is currently targeted for around Q2/Q3 2015. As explained, the mandatory clearing and related record keeping obligations will only cover dealer-to-dealer trades initially, and we expect these to be implemented no earlier than Q4 2015. We plan to extend these requirements to cover trades involving non-dealers at a later stage, but no earlier than 2016.

137. With regard to the mandatory trading and related record keeping obligations, the detailed implementation timetable, including the timing for public consultation, is still under consideration. Similar to mandatory clearing, our current thinking is to cover only dealer-to-dealer transactions initially, and other transactions at a subsequent phase. We expect to implement the initial phase of mandatory trading no earlier than 2016.
138. We will maintain a close dialogue with the industry and provide market participants with sufficient lead time to prepare for the implementation of the new requirements. We will provide further details of the implementation timetable in subsequent consultations.

APPENDIX A – LIST OF RESPONDENTS

(in alphabetical order)

1. Alternative Investment Management Association
2. Citibank
3. CLP Holdings Limited
4. CompliancePlus Consulting Limited
5. Depository Trust and Clearing Corporation
6. DTC Association, The
7. Global Foreign Exchange Division (of the Global Financial Markets Association)
8. GreySpark Partners Pty Ltd
9. Hang Seng Bank Limited
10. Hong Kong Association of Banks, The
11. Hong Kong Investment Funds Association
12. Hong Kong Trustees' Association
13. HSBC Private Bank
14. ICI Global
15. International Swaps and Derivatives Association, Inc.
16. Law Society of Hong Kong, The
17. LCH.Clearnet Limited
18. Managed Funds Association
19. OTC Clearing Hong Kong Limited
20. State Street Corporation
21. Anonymous – one respondent requested that its identity and contents of its submission not be published
22. Anonymous – one respondent requested that its identity not be published
23. Anonymous – one respondent requested that its identity not be published

APPENDIX B – LIST OF PROPOSED MARKETS AND CLEARING HOUSES TO BE PRESCRIBED

Proposed list of stock and futures markets

For the purposes of the definition of “OTC derivative product” under the SFO, we propose to prescribe the markets operated by the following entities, except that where specific markets are identified below, we propose to prescribe only the markets identified below.

	<u>Market operator</u>	<u>Market proposed to prescribed</u>
1.	ASX Limited	
2.	Australian Securities Exchange Limited	
3.	BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros	
4.	Board of Trade of the City of Chicago, Inc.	
5.	Boerse Stuttgart AG	BADEN-WUERTTEMBERGISCHE WERTPAPIERBOERSE (REGULIERTER MARKT)
6.	Borsa Italiana S.p.A	ELECTRONIC BOND MARKET, ELECTRONIC OPEN-END FUNDS AND ETC MARKET, ELECTRONIC SHARE MARKET, ITALIAN DERIVATIVES MARKET, MARKET FOR INVESTMENT VEHICLES (MIV), SECURITISED DERIVATIVES MARKET
7.	Société de la Bourse Luxembourg S.A.	BOURSE DE LUXEMBOURG
8.	BSE Ltd.	
9.	Budapesti Értéktőzsde Zártkörűen Működő Részvénytársaság	BUDAPESTI ÉRTÉKTŐZSDE (BUDAPEST STOCK EXCHANGE)
10.	Bursa Malaysia Derivatives Berhad	
11.	Bursa Malaysia Securities Berhad	
12.	Chicago Board Options Exchange, Incorporated	
13.	Chicago Mercantile Exchange Inc.	
14.	China Financial Futures Exchange	
15.	Commodity Exchange, Inc.	
16.	Dalian Commodity Exchange	
17.	Deutsche Börse AG	FRANKFURTER WERTPAPIERBOERSE (REGULIERTER MARKT), FRANKFURTER WERTPAPIERBOERSE

		XETRA (REGULIERTER MARKT)
18.	Eurex Frankfurt AG	EUREX DEUTSCHLAND
19.	Eurex Zürich AG	
20.	Euronext Amsterdam N.V.	NYSE EURONEXT - EURONEXT AMSTERDAM
21.	Euronext Brussels N.V./S.A.	EURONEXT BRUSSELS DERIVATIVES, EURONEXT BRUSSELS
22.	Euronext Lisbon – Sociedad Gestora de Mercados Regulamentados, S.A.	EURONEXT LISBON
23.	Euronext UK Markets Limited	
24.	Euronext Paris S.A.	EURONEXT PARIS
25.	European Energy Exchange AG	EUROPEAN ENERGY EXCHANGE
26.	GreTai Securities Market	
27.	Hellenic Exchanges – Athens Stock Exchange S.A.	ATHENS EXCHANGE DERIVATIVES MARKET, ATHENS EXCHANGE SECURITIES MARKET
28.	ICE Futures Canada, Inc.	
29.	ICE Futures Europe	
30.	ICE Futures U.S., Inc.	
31.	Indonesian Stock Exchange	
32.	JSE Limited	
33.	Korea Exchange, Inc.	
34.	LIFFE Administration and Management	THE LONDON INTERNATIONAL FINANCIAL FUTURES AND OPTIONS EXCHANGES (LIFFE)
35.	London Stock Exchange plc	LONDON STOCK EXCHANGE DERIVATIVES MARKET, LONDON STOCK EXCHANGE - REGULATED MARKET
36.	MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal	MEFF MEFF - SEGMENTO DERIVADOS ENERGIA, MEFF EXCHANGE
37.	Mercado Mexicano de Derivados, S.A. de C.V.	
38.	Montréal Exchange Inc.	
39.	OJSC Moscow Exchange MICEX-RTS	
40.	Multi Commodity Exchange of India Limited	
41.	Nagoya Stock Exchange, Inc.	
42.	NASDAQ OMX Copenhagen A/S	NASDAQ OMX COPENHAGEN A/S
43.	NASDAQ OMX Helsinki Ltd	NASDAQ OMX HELSINKI (ARVOPAPERIPÖRSSI)

44.	NASDAQ OMX PHLX LLC	
45.	NASDAQ OMX Stockholm AB	NASDAQ OMX STOCKHOLM AB
46.	National Commodity & Derivatives Exchange Limited	
47.	National Stock Exchange of India Limited	
48.	New York Mercantile Exchange, Inc.	
49.	New York Stock Exchange LLC	
50.	New Zealand Exchange Limited	
51.	NYSE Arca, Inc.	
52.	NYSE MKT LLC	
53.	Osaka Exchange, Inc.	
54.	Oslo Børs ASA	OSLO AXESS, OSLO BØRS ASA
55.	Shanghai Futures Exchange	
56.	Shanghai Stock Exchange	
57.	Shenzhen Stock Exchange	
58.	Singapore Exchange Derivatives Trading Limited	
59.	Singapore Exchange Securities Trading Limited	
60.	SIX Structured Products Exchange Ltd.	
61.	SIX Swiss Exchange Ltd	
62.	Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)	BOLSA DE MADRID, MERCADO CONTINUO ESPANOL
63.	Thailand Futures Exchange Public Company Limited	
64.	The London Metal Exchange Limited	
65.	The NASDAQ Stock Market LLC	
66.	The Philippine Stock Exchange, Inc.	
67.	The Stock Exchange of Thailand	
68.	The Taiwan Futures Exchange Corporation	
69.	Tokyo Commodity Exchange, Inc.	
70.	Tokyo Financial Exchange Inc.	
71.	Tokyo Stock Exchange, Inc.	
72.	TSX Inc.	
73.	Turkey Derivatives Exchange	
74.	Warsaw Stock Exchange S.A.	WARSAW STOCK EXCHANGE/BONDS/CATALYST/MAIN

		MARKET, WARSAW STOCK EXCHANGE/COMMODITY DERIVATIVES, WARSAW STOCK EXCHANGE/FINANCIAL DERIVATIVES, WARSAW STOCK EXCHANGE/ETPS, WARSAW STOCK EXCHANGE/ EQUITIES/MAIN MARKET
75.	Wiener Börse AG	WIENER BOERSE AG AMTLICHER HANDEL (OFFICIAL MARKET), WIENER BOERSE AG GEREGELTER FREIVERKEHR (SECOND REGULATED MARKET)
76.	Zhengzhou Commodity Exchange	

Proposed list of clearing houses

For the purposes of the definition of “OTC derivative product” under the SFO, we propose to prescribe the following clearing houses.

1.	Asigna, Compensación y Liquidación
2.	ASX Clear (Futures) Pty Limited
3.	ASX Clear Pty Limited
4.	Athens Exchange Clearing House S.A.
5.	BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
6.	BME Clearing S.A.
7.	Bursa Malaysia Derivatives Clearing Berhad
8.	Bursa Malaysia Securities Clearing Sdn. Bhd.
9.	Canadian Derivatives Clearing Corporation
10.	Cassa di Compensazione e Garanzia S.p.A.
11.	CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)
12.	CDS Clearing and Depository Services Inc.
13.	Chicago Mercantile Exchange Inc.
14.	China Financial Futures Exchange
15.	China Securities Depository and Clearing Corporation
16.	Dalian Commodity Exchange
17.	Eurex Clearing AG
18.	European Central Counterparty N.V.
19.	European Commodity Clearing AG
20.	GreTai Securities Market
21.	ICE Clear Canada, Inc.

22.	ICE Clear Europe Limited
23.	ICE Clear US, Inc.
24.	India Clearing Corporation Limited
25.	Indonesian Clearing and Guarantee Corporation
26.	Istanbul Clearing, Settlement and Custody Bank Inc.
27.	Japan Commodity Clearing House Co., Ltd.
28.	Japan Securities Clearing Corporation
29.	JSE Clear (Pty) Ltd.
30.	KDPW_CCP S.A.
31.	KELER Central Counterparty Ltd.
32.	Korea Exchange, Inc.
33.	LCH.Clearnet Limited
34.	LCH.Clearnet S.A.
35.	LME Clear Ltd.
36.	Multi Commodity Exchange of India Limited
37.	Nasdaq OMX Clearing AB
38.	CJSC JSCB National Clearing Centre
39.	National Securities Clearing Corporation
40.	National Securities Clearing Corporation Limited
41.	New Zealand Clearing Limited
42.	Oslo Clearing ASA
43.	Shanghai Futures Exchange
44.	Singapore Exchange Derivatives Clearing Limited
45.	SIX SIS AG
46.	SIX X-Clear Ltd.
47.	Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., (Sociedad Unipersonal)
48.	Taiwan Depository & Clearing Corporation
49.	Thailand Clearing House Co., Ltd.
50.	The Central Depository (Pte) Limited
51.	The Options Clearing Corporation
52.	Securities Clearing Corporation of the Philippines
53.	The Taiwan Futures Exchange Corporation
54.	Tokyo Financial Exchange Inc.
55.	Zhengzhou Commodity Exchange

APPENDIX C – REVISED DRAFT RULES

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

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

Part 1 Preliminary

1. Commencement

- (1) Subject to subrule (2), these Rules come into operation on _____ 201 .
- (2) ~~Rules 14 and 30~~ The following rules come into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette—
 - (a) rule 14;
 - (b) rule 2, valuation transaction information;
 - (c) rule 25;
 - (d) item 6 of Schedule 2.

2. Interpretation

In these Rules—

affiliate (_____), 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;

ATS-CCP (_____) means a person authorized under section 95(2) of the Ordinance to provide automated trading services, but only when the person is—

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

~~conducted a transaction in Hong Kong on behalf of an affiliate (_____), in relation to a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker, has the meaning given by rule 4;~~

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

exempt person () has the meaning given by rule 3;

Hong Kong person () means a person referred to in rule 5(2);

local branch (), in relation to 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 (), in relation to a transaction on a particular day, means the transaction has not, as at that day, matured or been terminated;

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

product class specification day (), in relation to a product class, means the day specified in column 3 of Part 2 of Schedule 1;

product type () 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 (), in relation to a product type, means the day specified in column 4 of Part 3 of Schedule 1;

RCH () means a person that is a recognized clearing house, but only when ~~it~~ the person is acting in its capacity as a central counterparty;

regulated prescribed person () means the following prescribed persons—

~~(a) an RCH;~~

~~(b) an ATS-CCP;~~

~~(e)~~ a licensed corporation that is not an exempt person;

~~(d)~~ an authorized financial institution that is not an exempt person; ~~and~~

~~(e)~~ an approved money broker that is not an exempt person;

(d) an RCH;

(e) an ATS-CCP;

reporting threshold () has the meaning given by rule 16(4);

specified position () and **specified position that has reached the reporting threshold** (), in relation to a Hong Kong person, have the meaning given by rule 16;

starting day () means—

~~(a)~~ in relation to a regulated prescribed person, means the later of the product type specification day and the day on which the person became a regulated prescribed person; ~~or~~

~~(b)~~ in relation to a Hong Kong person—

~~(i)~~ the first day on or after the product type specification day on which the person has a specified position in the product class to which the product type belongs that has reached the reporting threshold; ~~or~~

~~(ii) where the person previously had, but ceased to have, a specified position referred to in subparagraph (i), the first day on which the person subsequently has a specified position referred to in subparagraph (i);~~

~~*still outstanding* (), in relation to a transaction on a particular day, means has not, as at that day, matured or been terminated;~~

subsequent event () means an event that occurs after a transaction in an OTC derivative product is entered into, and which affects the product, the terms or conditions on which the transaction was entered into or the persons involved in entering into the transaction;

terminated (), in relation to a transaction, means terminated in accordance with the terms or conditions of the transaction or by agreement between the counterparties to the transaction, before the transaction matures;

transaction information () means the information and particulars specified in Schedule 2 relating to a specified OTC derivative transaction (including information and particulars relating to a subsequent event and valuation transaction information), and the persons involved in the transaction, which must be submitted to the Monetary Authority for complying with the reporting obligation;

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

3. Meaning of *exempt person*

(1) Subject to subrule (4), for the purposes of rules 9(1)(a), 10(1)(a), 11(1)(a) and 12(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 and to which the person is a counterparty, if the person satisfies all of the requirements in subrule (2) ~~in relation to that product class~~.

(2) The requirements are that, on or at any time after the product class specification day, ~~the prescribed person~~ —

(a) ~~except in the circumstances described in subrule (3), does not enter into a class transaction as a counterparty, or have an outstanding class~~ 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 it the prescribed person is a counterparty, where the other counterparty is a Hong Kong person, does not exceed US\$30 million;

(b) ~~does not conduct a class transaction in Hong Kong on behalf of an affiliate, as described in rule 9(1)(b), 10(1)(b), 11(1)(c) or 12(1)(b) (as applicable)~~ does not apply to the prescribed person in relation to a specified OTC derivative transaction within the product class;

(c) if ~~it~~ the prescribed person is an authorized financial institution incorporated outside Hong Kong, ~~does not enter into a class transaction, as described in rule~~

- 11(1)(b) does not apply to the person in relation to a specified OTC derivative transaction within the product class.;
- ~~(d) if it is a licensed corporation licensed for Type 9 regulated activity or an authorized financial institution registered for Type 9 regulated activity, does not enter into a class transaction, as described in rule 9(1)(c), 10(1)(c) or 11(1)(d) (as applicable); and~~
- ~~(e) except in the circumstances described in subrule (3), does not have outstanding class transactions to which it is a counterparty—~~
- ~~(i) exceeding 5 in number; and~~
- ~~(ii) having in aggregate a total gross notional value exceeding US\$30 million.~~
- (3) The circumstances referred to in For the purposes of subrule (2)(a) and (2)(e) are that the, a prescribed person that is an authorized financial institution incorporated outside Hong Kong, and its is regarded as being a counterparty to an OTC derivative transaction if the person is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch was not involved in the transaction of the person.
- (4) Despite subrule (1), a prescribed person that is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155), is not to be regarded as an exempt person for the purposes of rules 10(1)(a) or 11(1)(a) (as applicable) in relation to a specified OTC derivative transaction within a product class if, on the day on which these Rules commence—
- (a) the person has a specified OTC derivative transaction within the product class which is still outstanding; and
- (b) in respect of which the transaction, the person submitted to the Monetary Authority transaction information (or information which in the opinion of the Monetary Authority is substantially similar to transaction information) before the day on which these Rules commence.
- (5) A prescribed person that ceases to satisfy any of the requirements in subrule (2)—
- (a) is not eligible to be regarded as an exempt person in relation to any other specified OTC derivative transaction within the same product class; and
- (b) is to be regarded as becoming a regulated prescribed person on the day on which the person ceases to satisfy the requirement.

~~In this rule—~~

~~*class transaction* (——) means an OTC derivative transaction within the product class to which a specified OTC derivative transaction referred to in rule 9(1)(a), 10(1)(a), 11(1)(a) or 12(1)(a) (as applicable) belongs.~~

4. Meaning of conducted a transaction in Hong Kong on behalf of an affiliate]
Circumstances in which prescribed person regarded as conducting transaction on behalf of affiliate

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

- (a) ~~the transaction is recorded in the form of an entry in the books of~~ the affiliate is a counterparty to the transaction; and
- (b) one of the individuals who made the decision for the affiliate to enter into the transaction—
 - (i) acted in his or her capacity as a trader; and
 - (ii) was employed or engaged by the prescribed person to perform ~~a substantial part of~~ his or her duties predominantly in Hong Kong.

5. Persons specified as prescribed persons~~(Hong Kong persons and central counterparties)~~
for reporting obligation

~~(1)~~—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; ~~and~~
- ~~(c) a person referred to in subrule (2);~~

~~(2)~~—Subject to subrule (3), the following persons ~~(Hong Kong persons)~~ are the persons referred to in subrule (1)(a)—

- ~~(a) an individual who is resident in Hong Kong;~~
- ~~(b) a partner of a partnership which is established under Hong Kong law;~~
- ~~(c) a trustee of a trust which is established under Hong Kong law;~~
- ~~(d) a company;~~
- ~~(e) a non-Hong Kong company; and~~
- ~~(f) any other entity which is established under Hong Kong law.~~

~~(3)~~—Subrule (2) does not include the following persons—

- ~~(a) a licensed corporation;~~
- ~~(b) an authorized financial institution;~~
- ~~(c) an approved money broker;~~
- ~~(d) an RCH; and~~
- ~~(e) an ATS-CCP.~~

6. Persons specified as prescribed persons~~(Hong Kong persons and central counterparties)~~
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 reporting obligation

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

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

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

Part 2 Reporting Obligation

Division 1—Specified OTC Derivative Transactions Required to be Reported by Prescribed Persons

9. Transactions to be reported by licensed corporations

- (1) A prescribed person that is a licensed corporation must report a specified OTC derivative transaction to the Monetary Authority if the person—
 - (a) subject to subrule (3), is a counterparty to the transaction; or
 - (b) subject to rule ~~2+17~~, in the circumstances specified in rule 4, conducted the transaction in Hong Kong on behalf of ~~a counterparty to the transaction that is an~~ affiliate of the person; ~~or~~
 - ~~(c) is licensed for Type 9 regulated activity and—
 - (i) in the course of carrying on the activity, manages a portfolio of assets for another person;
 - (ii) in the course of managing the portfolio, enters into the transaction on behalf of the other person; and
 - (iii) the other person is a counterparty to the transaction.~~
- (2) AThe transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to an exempt person.

10. Transactions to be reported by authorized financial institutions incorporated in Hong Kong

- (1) A prescribed person that is an authorized financial institution incorporated in Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—
 - (a) subject to subrule (3), is a counterparty to the transaction; or

- (b) subject to rule ~~24~~17, in the circumstances specified in rule 4, conducted the transaction in Hong Kong on behalf of ~~a counterparty to the transaction that is an~~ affiliate of the person; ~~or~~
- ~~(c) is registered for Type 9 regulated activity and—~~
 - ~~(i) in the course of carrying on the activity, manages a portfolio of assets for another person;~~
 - ~~(ii) in the course of managing the portfolio, enters into the transaction on behalf of the other person; and~~
 - ~~(iii) the other person is a counterparty to the transaction.~~
- (2) AThe transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to an exempt person.

11. Transactions to be reported 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 ~~person's~~ 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 ~~a substantial part of~~ his or her duties predominantly in Hong Kong; or
 - (c) subject to rule ~~24~~17, in the circumstances specified in rule 4, conducted the transaction in Hong Kong on behalf of ~~a counterparty to the transaction that is an~~ affiliate of the person; ~~or~~
 - ~~(d) is registered for Type 9 regulated activity and—~~
 - ~~(i) in the course of carrying on the activity, manages a portfolio of assets for another person;~~
 - ~~(ii) in the course of managing the portfolio, enters into the transaction on behalf of the other person; and~~
 - ~~(iii) the other person is a counterparty to the transaction.~~
- (2) AThe transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to an exempt person.

12. Transactions to be reported by approved money brokers

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

13. Transactions to be reported 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) ~~A~~The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

14. Transactions to be reported 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 is a company.
- (2) ~~A~~The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

~~15. Transactions to be reported by Hong Kong persons~~

- ~~(1) Subject to rules 20 and 22, a prescribed person that is a Hong Kong person must report a specified OTC derivative transaction to the Monetary Authority if—~~
 - ~~(a) the person has a specified position in the product class to which the transaction belongs, and the specified position has reached the reporting threshold for the product class;~~
 - ~~(b) subject to paragraphs (c), (d), (e) and (f), the person is a counterparty to the transaction;~~
 - ~~(c) in the case of a person referred to in rule 5(2)(a), (d), (e) or (f) (a Hong Kong person other than a partner or a trustee), the person entered into the transaction in a capacity other than as a partner of a partnership or as a trustee of a trust;~~
 - ~~(d) in the case of a person referred to in rule 5(2)(b) (a partner of a partnership), the person entered into the transaction in their capacity as a partner of the partnership to which the transaction is attributable;~~

- ~~(e) in the case of a person referred to in rule 5(2)(c) (a trustee), the person entered into the transaction in their capacity as a trustee of the trust to which the transaction is attributable; and~~
- ~~(f) in the case of a person referred to in rule 5(2)(e) (a non Hong Kong company), the person entered into the transaction in Hong Kong.~~
- ~~(2) Subject to subrule (3), a transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the starting day.~~
- ~~(3) Subrule (2) applies to a person referred to in rule 5(2)(e) (a non Hong Kong company) only in relation to transactions which the person entered into in Hong Kong on or after the product class specification day.~~

16. Hong Kong persons – meaning of specified position

- ~~(1) For the purposes of rule 15(1)(a) and subject to rule 17, the *specified position* () that a Hong Kong person has in a product class is calculated in accordance with the following formula—~~

$$S \div 6$$

~~Where—~~

~~S is the sum of the notional principal values of the person's gross positions in a product class, calculated as at the last day of each of the preceding 6 calendar months;~~

~~*notional principal value* means the amount agreed by the counterparties to a transaction to be the basis on which, or the amount by reference to which, any payment under the transaction is calculated.~~

- ~~(2) For the purposes of rule 15(1)(a), a Hong Kong person is taken to have a specified position in a product class that has reached the reporting threshold for the product class—~~
 - ~~(a) from the first day of the calendar month immediately following the day on which the person has a specified position that reaches the reporting threshold; and~~
 - ~~(b) until the first day (being the last day of a calendar month) on which the person has a specified position that is below the exit threshold.~~

- ~~(3) When determining whether a specified position in a product class has reached the reporting threshold or is below the exit threshold, reference is to be made to the reporting threshold or exit threshold for that product class on the last day of the last calendar month (the 6th month) included in the calculation of the specified position.~~

- ~~(4) In this rule—~~

~~*reporting threshold* (), in relation to a product class, means the amount specified in column 3 of Part 4 of Schedule 1 (or an equivalent amount in a currency other than the currency specified in that column).~~

~~*exit threshold* (), in relation to a product class, means the amount specified in column 4 of Part 4 of Schedule 1 (or an equivalent amount in a currency other than the currency specified in that column).~~

~~17. Hong Kong persons—certain positions to be included in specified position~~

- ~~(1) Subject to subrules (2), (3), (4), (5) and (6), a Hong Kong person, when calculating the person's specified position in a product class, must include only the positions attributable to transactions to which the person is a counterparty.~~
- ~~(2) Transactions referred to in subrule (1) include—
 - ~~(a) transactions to which a counterparty is a person outside Hong Kong;~~
 - ~~(b) except in the case of a person referred to in rule 5(2)(e) (a non Hong Kong company), transactions which the person entered into before the product class specification day;~~
 - ~~(c) in the case of a person referred to in rule 5(2)(e) (a non Hong Kong company), only transactions which the person entered into in Hong Kong on or after the product class specification day; and~~
 - ~~(d) subject to paragraph (c), transactions which were entered into wholly or partially outside Hong Kong.~~~~
- ~~(3) A person referred to in rule 5(2)(a), (d), (e) or (f) (a Hong Kong person other than a partner or a trustee) must include only the gross positions attributable to the person in a capacity other than as a partner of a partnership or as a trustee of a trust.~~
- ~~(4) A person referred to in rule 5(2)(b) (a partner) must—
 - ~~(a) include only the gross positions attributable to the partnership of which the person is a partner; and~~
 - ~~(b) if the person is a partner of more than one partnership, treat separately and not aggregate the gross positions attributable to each partnership.~~~~
- ~~(5) A person referred to in rule 5(2)(c) (a trustee) must—
 - ~~(a) include only the gross positions attributable to the trust of which the person is a trustee; and~~
 - ~~(b) if the person is a trustee of more than one trust, treat separately and not aggregate the gross positions attributable to each trust.~~~~
- ~~(6) A Hong Kong person that constitutes more than one collective investment scheme must treat separately and not aggregate the gross positions attributable to a particular collective investment scheme and those attributable to another collective investment scheme.~~

1815. Prescribed persons to report all transaction events

- (1) A prescribed person that is required by rule 9, 10, 11, 12, 13, ~~14 or 15~~ **or 14** to report a specified OTC derivative transaction to the Monetary Authority must report the transaction to the Monetary Authority in accordance with ~~Division 3~~ **rule 19** in each of the circumstances ~~described~~ **specified** in subrule (2).
- (2) The circumstances are—
 - (a) when rule 9, 10, 11, 12, 13, ~~14 or 15~~ **or 14** first begins to apply to the **prescribed** person in relation to the transaction; and

- (b) when a subsequent event occurs while the transaction is still outstanding.

1916. Prescribed persons to report even if counterparty, or transaction entered into, outside Hong Kong

For the purposes of rules 9, 10, 11, 12, 13, ~~14 and 15~~ and 14, 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) ~~subject to rule 15(1)(f)~~, the transaction was entered into wholly or partially outside Hong Kong.

Division 2—Circumstances in which Requirement to Report ~~D~~oes ~~N~~ot Apply or is Taken to be Complied ~~W~~ith

~~20. — Hong Kong person not required to report if licensed corporation, authorized financial institution or approved money broker also required to report~~

~~A Hong Kong person is not required to report a specified OTC derivative transaction to the Monetary Authority if a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is required to report the transaction.~~

2117. Licensed corporation, authorized financial institution or approved money broker taken to report if affiliate reports

- (1) ~~Where~~ **If** a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is required by rule 9(1)(b), 10(1)(b), 11(1)(c) or 12(1)(b) to report a specified OTC derivative transaction to the Monetary Authority in a circumstance ~~referred to~~ **specified** in rule ~~18~~5(2)(a) or (b), the person is taken to have complied with the requirement to report the transaction in that circumstance if the requirement in subrule (2) is satisfied.
- (2) The requirement is that the person's affiliate has confirmed to the person, in good faith, that the affiliate has reported the transaction to the Monetary Authority (whether directly or indirectly) in accordance with ~~Division 3~~**rule 19** (as ~~Division 3~~**rule 19** applies to the person in relation to the circumstance).

~~22. — Partners (that are Hong Kong persons) taken to report if one partner, or person authorized by partners, reports~~

- ~~(1) — Where more than one partner of a partnership is required to report a specified OTC derivative transaction to the Monetary Authority in a circumstance referred to in rule 18(2)(a) or (b), all of the partners of the partnership are taken to have complied with the requirement to report the transaction in that circumstance if the requirement in subrule (2) is satisfied.~~

~~(2) The requirement is that the transaction is reported to the Monetary Authority in accordance with Division 3 (as Division 3 applies to the partners in relation to the circumstance) by one of the partners, or by another person authorized by the partners.~~

Division 3—Reporting to Monetary Authority

2318. Interpretation of **this** Division 3

In this Division—

concession period (), in relation to—

- (a) a person that is a regulated prescribed person on the product type specification day, means the period of **36** months beginning on the product type specification day; **and**
- (b) a person that becomes a regulated prescribed person within **36** 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 **36** months after the product type specification day; **and**

~~(c) a Hong Kong person, means the period of 3 months beginning on the starting day;~~

grace period (), in relation to—

- (a) a person that is a regulated prescribed person on the product type specification day, means the period of **69** months beginning on the product type specification day;
- (b) a person that becomes a regulated prescribed person within **36** 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 **69** months after the product type specification day; **and**
- (c) a person that becomes a regulated prescribed person more than **36** months after the product type specification day, means the period of 3 months beginning on the day on which the person becomes a regulated prescribed person; **and**

~~(d) a Hong Kong person, means the period of 6 months beginning on the starting day.~~

2419. Transaction information to be **reported submitted** to Monetary Authority in accordance with **this** Division 3

A prescribed person that is required **by rule 15(1)** to report a specified OTC derivative transaction to the Monetary Authority must submit the transaction information ~~(including, subject to rule 30, daily valuation transaction information about the transaction)~~ to the Monetary Authority in accordance with this Division.

2520. Reporting to be via Monetary Authority's electronic reporting system

- (1) A report 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 electronic reporting system is 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 section 101B of the Ordinance and these Rules. 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 transaction information by means of the system.~~

2621. Reporting outstanding transactions and transactions entered into during concession period

- (1) Subject to subrules (5) and (6), a person referred to in subrule (2) and to whom ~~a~~ the requirement ~~referred to~~ in subrule (3) applies, must submit the transaction information referred to in subrule (4) to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to—
- (a) a person ~~who~~that is a regulated prescribed person on the product type specification day; and
 - (b) a person ~~who~~that becomes a regulated prescribed person within 36 months after the product type specification day; ~~and~~
 - ~~(c) a Hong Kong person who has a specified position that has reached the reporting threshold.~~
- (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 referred to in subrule (1) is—
- (a) if the transaction information is submitted during the concession period, the transaction information as at a time which is not earlier than 2 business days before the time it is submitted, reflecting the net effect of all subsequent events that have occurred since the specified OTC derivative transaction was entered into; or
 - (b) if the transaction information is submitted after the concession period, the transaction information comprising—
 - (i) the transaction information as at the end of the concession period, reflecting the net effect of all subsequent events that have occurred since the specified OTC derivative transaction was entered into; and
 - (ii) in chronological order, the transaction information ~~in respect of~~ for each subsequent event that has occurred since the end of the concession period until a day that is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) A prescribed person is not required to submit the transaction information to the Monetary Authority ~~in respect of~~ for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period.

- (6) A prescribed person that is an authorized financial institution is ~~deemed~~**taken** to have submitted the transaction information ~~in respect of~~**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 submitted to the Monetary Authority **the** transaction information (or information which in the opinion of the Monetary Authority is substantially similar to **the** transaction information) ~~in respect of~~**for** the transaction.

2722. Reporting outstanding transactions where no entitlement to concession period

- (1) Subject to subrule (5), a person referred to in subrule (2) and to whom the requirement ~~referred to~~ in subrule (3) applies must submit the transaction information referred to in subrule (4) to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to a person ~~who~~**that** becomes a regulated prescribed person more than ~~3~~**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~~**day on which the person becomes a regulated prescribed person**.
- (4) The transaction information referred to in subrule (1) is **the** transaction information comprising—
 - (a) **the** transaction information as at the day on which the person becomes a regulated prescribed person, reflecting the net effect of all subsequent events that have occurred since the ~~specified OTC derivative~~ transaction was entered into; and
 - (b) in chronological order, **the** transaction information ~~in respect of~~**for** each subsequent event that has occurred since the day on which the person became a regulated prescribed person until a day that is not earlier than 2 business days before the day on which the ~~transaction~~ information is submitted.
- (5) A prescribed person is not required to submit **the** transaction information to the Monetary Authority ~~in respect of~~**for** a specified OTC derivative transaction that has matured or been terminated before the end of the grace period.

2823. Reporting transactions entered into after concession period, or where no entitlement to concession period

- (1) A person referred to in subrule (2) and to whom ~~a~~**the** requirement ~~referred to~~ in subrule (3) applies must submit the transaction information to the Monetary Authority within 2 business days after ~~the~~ ~~a~~ ~~specified OTC derivative~~ transaction is entered into.
- (2) Subrule (1) applies to—
 - (a) a person referred to in rule 2**6**~~1~~(2); and

- (b) a person referred to in rule 272(2).
- (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 person referred to in subrule (2)(a), that is entered into after the end of the concession period; ~~and~~or
 - (b) for a person referred to in subrule (2)(b), that is entered into on or after the day on which the person becomes a regulated prescribed person.

294. Reporting subsequent events

- (1) Subject to subrules (2), ~~and~~ (3) and ~~rule 31(4)~~, a prescribed person that has submitted, or is required to submit, the transaction information to the Monetary Authority in accordance with rule ~~26, 27 or 28~~21, 22 or 23 (including a person that has submitted the transaction information ~~about~~for a specified OTC derivative transaction despite rule ~~26~~1(5) or ~~27~~2(5)); must submit the transaction information ~~relating to~~for a subsequent event to the Monetary Authority within 2 business days after the event occurs.
 - ~~(2) If a prescribed person submitted the transaction information for one, or more than one, subsequent event under rule 21(4) or 22(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) Where~~If a prescribed person is required to submit the transaction information ~~relating to~~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 ~~in respect of~~for that day provided that the information submitted incorporates all of the subsequent events that occurred on that day.
 - ~~(4) Subrule (1) does not require a prescribed person to submit to the Monetary Authority the transaction information relating to~~for a subsequent event that has occurred in respect of a specified OTC derivative transaction that has not matured or been terminated if the person—
 - ~~(a) the person—~~
 - ~~(i) has ceased to be a regulated prescribed person;~~
 - ~~(ii) is a licensed corporation licensed for Type 9 regulated activity or is an authorized financial institution registered for Type 9 regulated activity and rule 9(1)(c), 10(1)(c) or 11(1)(d) (as the case may be) has ceased to apply to it by reason of it ceasing to manage assets for the person on whose behalf it entered into the transaction;~~
 - ~~(iii) has ceased to be a Hong Kong person; or~~
 - ~~(iv) is a Hong Kong person but rule 15 has ceased to apply to the person by reason of the person ceasing to have a specified position that has reached the reporting threshold; and~~
 - (b) ~~the prescribed person~~ has notified the Monetary Authority, by means of the electronic reporting system, that this subrule applies to the person in relation to the transaction.

3025. Reporting~~Submitting~~ valuation transaction information

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

3126. Reporting~~Submitting~~ counterparty ~~identity~~identifying particulars in certain circumstances

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

~~jurisdiction~~, or an authority or regulatory organization in ~~that jurisdiction~~, would prohibit the submission of 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 (), in relation to a prescribed person ~~that is required to report a specified OTC derivative transaction to the Monetary Authority~~, means the person cannot submit counterparty identifying particulars for a specified OTC derivative transaction because the person is required to obtain consent from ~~the~~ counterparty to the transaction (other than the prescribed person) to the submission of the particulars and, despite reasonable efforts, the person has been unable to obtain consent from the counterparty;

counterparty identifying particulars () means the transaction information referred to in item 3, 8(e), 9(d) or 9(e) (as applicable) of Schedule 2 ~~relating to~~ for a specified OTC derivative transaction from which the identity of a counterparty to the transaction may be ascertained;

counterparty masking particulars () means the particulars of a counterparty to ~~the~~ 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

3227. Prescribed persons to keep records in relation to transactions

- ~~(1)~~—A prescribed person ~~(other than a Hong Kong person)~~ must, in relation to a specified OTC derivative transaction, keep the records specified in rule ~~34~~29 in the ~~form and~~ manner specified in rule ~~36~~0(1), for the period specified in rule ~~37~~1.
- ~~(2)~~—~~A prescribed person that is a Hong Kong person must, in relation to a specified OTC derivative transaction, keep the records specified in rule 35 in the manner specified in rule 36(3), for the period specified in rule 37.~~

3328. Prescribed persons to keep records even if counterparty, or transaction entered into, outside Hong Kong

Rule ~~3227~~ 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.

3429. Records to be kept by prescribed persons ~~(other than Hong Kong persons)~~

The records that a prescribed person ~~(other than a Hong Kong person)~~ must keep in relation to a specified OTC derivative transaction are—

- (a) records sufficient to demonstrate that the person has complied with rules 9, 10, 11, 12, 13 or 14 (as applicable) and ~~rule 2415~~;
- (b) without limiting paragraph (a)—
 - (i) the records specified in ~~Part 1 of~~ Schedule 3 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 its agent; and
 - (B) records sufficient to demonstrate that the person monitored the reporting by the agent;
- (c) if rule 9, 10, 11 or 12 (as applicable) does not apply to the person in relation to the transaction because the person is an exempt person—
 - (i) the records specified in ~~Part 1 of~~ Schedule 3 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)(ea);
- (d) if rule ~~2417~~ applies to the person in relation to the transaction (the person's affiliate has reported the transaction to the Monetary Authority), the confirmation received from the affiliate; and
- (e) if rule ~~261(5)~~ or ~~272(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 ~~Part 1 of~~ Schedule 3, relating to the transaction.

~~35. Records to be kept by Hong Kong persons~~

~~The records that a prescribed person that is a Hong Kong person must keep in relation to a specified OTC derivative transaction are—~~

- ~~(a) records sufficient to demonstrate that the person has complied with rules 15 and 24;~~
- ~~(b) without limiting paragraph (a), the records specified in Part 2 of Schedule 3, relating to the transaction;~~
- ~~(c) if rule 15 does not apply to the person in relation to the transaction because the person does not have a specified position that has reached the reporting threshold—~~
 - ~~(i) the records specified in item 1 of Part 2 of Schedule 3, relating to the transaction;~~
 - ~~(ii) records sufficient to demonstrate that rule 15 did not apply to the person at the time the person would, but for the person's specified position not having~~

- reached the reporting threshold, have been required to report the transaction to the Monetary Authority; and
- ~~(iii) without limiting subparagraph (ii) —~~
 - ~~(A) records of any calculation performed for the purpose of ascertaining the person's specified position; and~~
 - ~~(B) records sufficient to demonstrate that the calculation is accurate, including records relating to the OTC derivative transactions in the product class to which the transaction belongs which constitute the person's specified position;~~
 - ~~(d) if rule 20 applies to the person in relation to the transaction (a licensed corporation, an authorized financial institution or an approved money broker is required to report), the records specified in item 1 of Part 2 of Schedule 3, relating to the transaction; and~~
 - ~~(e) if rule 26(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 item 1 of Part 2 of Schedule 3, relating to the transaction.~~

3630. Form and manner in which records to be kept

- ~~(1) A prescribed person (other than a Hong Kong Person) must keep the records specified in rule 34~~29~~ —~~
 - ~~(a) in a manner that enables the records to be readily accessible; and~~
 - ~~(b) except in the case of a record of a telephone conversation, in a manner that enables the records to be readily searchable and identifiable by reference to the specified OTC derivative transaction and the counterparty to the transaction; and~~
 - ~~(b) subject to subrule (2), in electronic form and stored in a computer or other electronic system.~~
- ~~(2) Despite subrule (1)(b) —~~
 - ~~(a) records that were created in paper form and are maintained by the person only in paper form, may be kept in paper form;~~
 - ~~(b) a record of a telephone conversation may be kept as a tape or digital audio file and may be stored in a sound recording media; and~~
 - ~~(c) during the period of 9 months beginning on the product class specification day, the records may be kept in any form and manner.~~
- ~~(3) A prescribed person that is a Hong Kong person must keep the records specified in rule 35 in a manner that enables the records to be readily retrieved.~~

3731. Period for which records to be kept

A prescribed person must keep the records specified in rule 34 or 35 (as applicable)~~29~~ for not less than 75 years after the specified OTC derivative transaction has matured or been terminated.

Part 4

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

382. Interpretation of this Part 4

In this Part—

cessation day (), in relation to a specified subsidiary, means the day notified by the Monetary Authority to the authorized financial institution 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 (), 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 ~~served on~~given to the authorized financial institution 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 (), 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.

393. Reporting and record keeping obligations applicable to authorized financial institution in respect of specified subsidiary

- (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 ~~described~~specified in subrule (5), the specified subsidiary complies with rules 10, ~~18~~ and ~~24~~15 in relation to a specified OTC derivative transaction to which it is a counterparty, as if it were an authorized financial institution incorporated in Hong Kong to which rule 10(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 ~~described~~specified in subrule (5), the specified subsidiary complies with rule 3427 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 3427 applies.
- (5) The modifications referred to in subrules (2) and (4) are—
- (a) a reference to a regulated prescribed person or to a prescribed person that is an authorized financial institution incorporated in Hong Kong (other than an exempt person) is to be construed as a reference to a specified subsidiary;
 - (b) a reference to a day on which a person is or becomes a regulated prescribed person is to be construed in relation to a specified subsidiary as a reference to the effective day; and
 - (c) a reference to a day on which a person ceases to be a regulated prescribed person is to be construed in relation to a specified subsidiary as a reference to the cessation day.
- (6) This rule is not to be construed as requiring an authorized financial institution incorporated in Hong Kong to ensure that a specified subsidiary complies with rule 2415 in relation to a specified OTC derivative transaction to which the subsidiary is a counterparty, if rule 10(1)(b) requires the authorized financial institution to report the same transaction to the Monetary Authority.

OTC Derivative Transactions to which these Rules Apply

Part 1 Interpretation

1. Interpretation

In this Schedule—

interest rate swap agreement () means an OTC derivative transaction ~~in respect of interest rates whereby~~ under the terms or conditions of which—

- (a) ~~the 2 counterparties to the transaction agree to exchange 2 series of interest rate cash flows (payments) based on a notional principal amount which is denominated in a single currency that is a specified currency 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 contract () means an OTC derivative transaction ~~in respect of a purchase~~ under the terms or conditions of which the 2 counterparties to the transaction agree that—

- (a) ~~1 counterparty is to purchase from the other counterparty a notional amount of a currency (the reference currency) by one party from the other and where the 2 counterparties to the transaction agree that~~ for settlement on a single date in the future (the value date);
- (b) on settlement of the transaction ~~(the value date), the settlement purchase is to be settled—~~
 - (i) ~~on a net cash payment basis (without physical delivery of the reference currency); and~~
 - (ii) ~~in an agreed currency (the settlement currency) that is not the same currency as the reference currency; and~~
- (c) the amount ~~of the payment referred to in paragraph (a) is to be calculated as~~ to be paid by 1 counterparty to the other counterparty is the difference between the values ~~in the settlement currency,~~ of the notional amount of the reference currency, denominated in the settlement currency, calculated using—
 - (i) ~~based on the an~~ agreed currency exchange rate or price, (whether express or implied); and
 - (ii) ~~based on the prevailing a~~ market currency exchange rate or price, (as determined in accordance with the terms or conditions of the transaction) that is prevailing on an agreed future date (*the fixing date*);

specified currency () means a currency ~~or precious metal~~ that is specified by the

Monetary Authority by notice in the Gazette (*a specified currency notice*);

specified floating interest rate index () means a floating interest rate index specified by the Monetary Authority by notice in the Gazette (*a specified floating interest rate index notice*).

2. Monetary Authority notices not subsidiary legislation

A specified currency notice and a specified floating interest rate index notice are not subsidiary legislation.

**Part 2
Specified Product Classes**

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
Item	Product class	Product class specification day
1.	Interest rate swap <u>agreement</u>	The day referred to in rule 1(1).
2.	Non-deliverable forward <u>contract</u>	The day referred to in rule 1(1).

**Part 3
Specified Product Types**

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>
Item	Product class	Product T type	Product type specification day
1.	Interest rate swap <u>agreement</u>	The 2 series of interest payments are calculated by reference to— (a) an agreed fixed interest rate applied to a <u>notional amount that is denominated in a</u> specified currency; and (b) a specified floating <u>interest</u> rate index applied to the same <u>notional amount</u> specified currency .	The day referred to in rule 1(1).
2.	Interest rate swap <u>agreement</u>	<u>The payments are calculated by reference to—</u> (a) <u>a specified floating</u>	The day referred to in rule 1(1).

- interest rate index applied to a notional amount that is denominated in a specified currency; and
 (b) another specified floating interest rate index applied to the same notional amount.

~~The 2 series of interest payments are calculated by reference to 2 specified floating rate indexes which are both denominated in the same specified currency.~~

3. Non-deliverable forward ~~contract~~ The reference currency is a specified currency and the settlement currency is a specified currency. The day referred to in rule 1(1).

Part 4

Thresholds for Product Classes

Item	Product class	Reporting threshold referred to in rule 16(4)	Exit threshold referred to in rule 16(4)
1.	Interest rate swap agreement	US\$3 billion	US\$2.1 billion
2.	Non-deliverable forward contract	US\$1 billion	US\$700 million

Transaction Information and Particulars to be ~~Reported~~ Submitted

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 ~~has been~~was, or is intended to be, cleared through a central counterparty;
 - (b) the central counterparty through which the transaction was cleared or is intended to be cleared; and
 - (c) any client clearing services provider involved in, or intended to be involved in, clearing the transaction.
6. Information relating to the valuation of the specified OTC derivative transaction, including particulars of—
 - (a) the basis on which the transaction is valued, including whether the transaction is valued on a mark-to-market basis or a mark-to-model basis;
 - (b) when the transaction was last valued and the ~~valuation~~value on that date; and
 - (c) the currency ~~used for valuing the transaction~~in which the value referred to in paragraph (b) is denominated.
7. 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 20(2)), including particulars of—
 - (a) the date on which the event occurred~~and any agreement relating to the event~~;
 - (b) the ~~nature~~type of the event;
 - (c) the changes to any of the matters ~~described~~referred to in any other item of this Schedule as a result of the event;
 - (d) the outstanding notional ~~principal~~ amount after the event; and

- (e) the ~~specified~~ currency in which the outstanding notional ~~principal~~ amount is denominated.
8. ~~Where~~If the specified OTC derivative transaction is an interest rate swap ~~agreement~~, particulars of—
- ~~(a) the series of interest payments to be paid by each counterparty;~~
 - ~~(b)~~ the notional ~~principal~~ amount;
 - ~~(c)~~ the ~~specified~~ currency in which the notional ~~principal~~ amount is denominated;
 - ~~(d)~~ the ~~specified~~ currency in which the ~~payments are to be made~~transaction is to be settled, if it is not the same currency as the currency referred to in paragraph ~~(e)~~;
 - ~~(e)~~ any~~each~~ agreed ~~fixed~~ interest rate or interest rate index, including the tenor and spread (if applicable); and
 - ~~(f)~~ for each agreed interest rate or interest rate index, the counterparty that has agreed to pay that rate or index; and
 - ~~(g)~~ all agreed floating rate indexes, tenors and spreads.
9. ~~Where~~If the specified OTC derivative transaction is a non-deliverable forward ~~contract~~, particulars of—
- ~~(a) the specified currencies to be exchanged by each counterparty~~ reference currency;
 - ~~(b)~~ the settlement currency;
 - ~~(c)~~ the notional amount of the reference currency ~~being purchased~~ –
 - ~~(i)~~ denominated in the reference currency; and
 - ~~(ii)~~ denominated in the settlement currency;
 - ~~(d)~~ the counterparty that is the purchaser of the reference currency;
 - ~~(e)~~ the counterparty from whom the reference currency is to be purchased;
 - ~~(f)~~ the agreed currency exchange rate;
 - ~~(g)~~ the agreed price;
 - ~~(h)~~ the fixing date; and
 - ~~(i)~~ the value date.
10. ~~Particulars of any~~The identifying references assigned to the specified OTC derivative transaction (being types of references that may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 20(2)).

Records to be ~~k~~Kept by Prescribed Persons

Part 1

~~Records to be Kept by Prescribed Persons (other than Hong Kong Persons)~~

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

Part 2

~~Records to be Kept by Hong Kong Persons~~

- ~~1. Records evidencing the existence of the transaction, and its main economic terms, including the confirmation and all agreements relating to, the transaction.~~
- ~~2. Records sufficient to demonstrate that the transaction information submitted to the Monetary Authority under Division 3 of Part 2 of these Rules was accurate.~~