



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

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

15th August 2014

Dear sir/madam,

Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules – Submission by GreySpark Partners

GreySpark Partners thanks the HKMA and SFC for the opportunity to comment on its OTC Derivative Transactions – Reporting and Record Keeping proposals paper.

GreySpark Partners is a global capital markets consultancy firm, with offices in London, Hong Kong and Sydney. GreySpark provides expertise in risk, e-trading and market structure and offers business, management and technology consulting services. GreySpark offers the aforementioned services alongside additional services within the market structure remit in OTC reforms, to assist clients in preparing for the impacts of regulatory change. In this deeply client focussed role, GreySpark feels it has both a duty and an obligation to respond to the HKMA and SFC's request for comments and feedback.

Q1. *Do you have any comments or concerns about the proposed definition of “Hong Kong person”, “RCH” and “ATS-CCP”?*

Response to question 1: We have no additional comments on this definition and no concerns to raise with respect to this.

Q2. *Do you have any comments or concerns about the proposed types of IRS and NDF that will be subject to the mandatory reporting obligation in the initial phase of implementation?*

Response to question 2: We have no additional comments on this definition and no concerns to raise with respect to this. More generally, we agree this scope will be adequate until such time that a subsequent proposals paper is raised to expand the scope of the trade reporting obligation.



Q3. *Do you have any comments or concerns as to how IRS and NDF are proposed to be defined in Part 1 of Schedule 1 to the Draft Rules, or how the reportable transactions, or the class to which they belong, have been described in Part 3 of Schedule 1?*

Response to question 3: We have no additional comments on this definition and no concerns to raise with respect to this.

Q4. *Do you have any comments or concerns about how the terms “conducted in Hong Kong” and “affiliate” are proposed to be construed, or how this limb of the reporting obligation is cast? In particular, do you have concerns as to how this proposal might impact entities that keep a global book?*

Response to question 4: The only concern to raise here is the possibility that global multinational companies who operate several legal entities and books across the globe may find ways to organize the trade using a non-HK based book, entity or trader in order to avoid the reporting obligation on one or multiple trades. For example, despite organizing the trade in HK, the trade may well be input into an overseas legal entity’s books under an overseas trader’s names to ensure it is kept outside the scope of reporting. While we realize that it is very difficult to identify cases such as this, it is important for the rules to be comprehensive enough to not allow loopholes in this matter, as were seen under the Dodd-Frank rules previously.

Q5. *Do you have any comments or concerns about how we have cast the proposal that AIs and LCs that are registered/licensed for Type 9 RA must report transactions that they have entered into in their capacity as fund managers?*

Response to question 5: We feel the specific AIs, AMBs and LCs would be able to comment more accurately on this point. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q6. *Do you envisage any specific difficulties if this proposal were to be extended to also require an AI or LC that is registered/licensed for Type 9 RA 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? If so, please provide details of the specific difficulties envisaged.*

Response to question 6: We feel the specific AIs, AMBs and LCs would be able to comment more accurately on this point. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q7. *Do you have any comments or concerns about how the reporting obligation in respect of CCPs has been cast?*

Response to question 7: We agree that CCPs should be required to report trades in this context, as it would ensure alignment with global standards as set by the US and EU as well as



ensure that a comprehensive picture of IRS and NDF volumes is obtained by the SFC and HKMA. We have no concerns around this point and no additional comments.

***Q8.** Do you have any comments or concerns about the proposed approach to be taken in respect of the different types of Hong Kong persons?*

Response to question 8: With respect to transactions in respect of non-Hong Kong companies, we feel that this approach may not adequately capture the full spectrum of IRS and NDF activity in the region. Several multinationals, for instance, may not classify as a Hong Kong person and may have transactions executed outside Hong Kong but may have impacts on the strength of the Hong Kong economy. While it is prudent to review this regulation going forward, it would also be useful to take steps in defining substituted compliance aspects that would apply in this regard, specifically around which overseas regulator's rules would apply instead of local rules in certain situations.

***Q9.** Do you have any comments or concerns about how the reporting obligation will apply to funds? Do you envisage that funds may face practical difficulties in complying with this obligation? If so, please provide details of the specific difficulties envisaged.*

Response to question 9: We anticipate that the more sophisticated funds will have no trouble with complying with such a mandate. However, smaller and less sophisticated funds may need some hand-holding and assistance with readiness in preparing to comply with a mandate. It has been our first-hand experience in providing operational resources for global OTC reform projects that some buy-side firms may not have the in-house legal, compliance and project delivery resources necessary to prepare quickly for trade reporting, so it would be prudent for funds to begin preparations early to ensure that they do not experience bottlenecks and are ready in good time for a mandate.

***Q10.** Do you have any comments or concerns about the proposed methodology for calculating if the reporting threshold or exit threshold has been reached?*

Response to question 10: We have no additional comments on this definition and no concerns to raise with respect to this. We are confident that the data sources and methodology used to define the thresholds have resulted in an accurate result.

***Q11.** Do you have any comments or concerns about the proposed levels of the reporting threshold and exit threshold?*

Response to question 11: We have no additional comments on this definition and no concerns to raise with respect to this. We are confident that the data sources and methodology used to define the thresholds have resulted in an accurate result.



Q12. *Do you have any comments or concerns about the proposed reductions to the reporting threshold and exit threshold at a later stage?*

Response to question 12: We agree that lowering the reporting and exit thresholds as early as 2017 should allow the industry enough time to prepare and comply. The scaled down thresholds would indeed capture more market participants and would result in a much more accurate representation of trading across the industry. We have no additional comments on this definition and no concerns to raise with respect to this.

Q13. *Do you have any comments or concerns about the proposed application of the mandatory reporting obligation to cross-border transactions? If so, please provide specific details.*

Response to question 13: We agree with this proposal and have no additional comments on this definition and no concerns to raise with respect to this.

Q14. *Do you have any comments or concerns about the proposed exemptions and reliefs, and the criteria for triggering them?*

Response to question 14: We have a concern to raise with respect to paragraph 102 and the point regarding relief being lost permanently should an AI, AMB or LC not meet the set criteria on one occasion. We feel a permanent loss of exemption would be too harsh, as there may be unique situations in which derivatives trading spikes/increases for a short period but does not remain high over time. We feel a better option would be to put in place a period of time (for example, one year) following the loss of exemption, during which the market participant's adherence to exemption criteria should be tracked – this can be done by the market participant themselves. They could then present their case for exemption to be granted again – this could include the provision of a “cooling off” period where they are not allowed to lose their exemption for a set period of time. If they lose their exemption during this time, it would then be permanently revoked. This approach would be fairer to market participants who, due to their speed of growth, may require some flexibility in applying for exemptions.

Q15. *Do you have any comments or concerns about the proposal to exclude from the exempt person relief for IRS and NDF those licensed banks which have already reported to the HKMA via the HKTR under the interim reporting requirement and have outstanding reportable transactions on the commencement of the Draft Rules?*

Response to question 15: We agree with this proposal and have no additional comments on this definition and no concerns to raise with respect to this.



Q16. *With respect to the relief for AIs, AMBs and LCs that are less active in the OTC derivatives market, do you consider the proposed criteria of 5 transactions per product class, and aggregate gross notional value of US\$30 million to be appropriate? If not, please provide specific details of why they may be inappropriate and what alternative criteria should be adopted.*

Response to question 16: We feel the specific AIs, AMBs and LCs would be able to comment more accurately on this point. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q17. *Do you have any comments or concerns about how the proposed backloading requirement will apply to transactions outstanding on the starting day? If so, please provide specific details.*

Response to question 17: We agree with this proposal as it would certainly be in line with international rules and would give a more accurate picture of outstanding transactions. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q18. *Do you have any comments or concerns about the proposal to have different starting days in respect of different types of reportable transactions? If so, please provide specific details.*

Response to question 18: We agree with this proposal as it is fair and would allow market participants enough time to comply. Previous international regulations have shown that a staggered approach has been more successful in reducing the number of teething issues related to going live with such changes. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q19. *Do you have any comments or concerns about how the starting day might impact AIs, AMBs and LCs that previously qualified for the exempt person relief? If so, please provide specific details.*

Response to question 19: We feel the specific AIs, AMBs and LCs would be able to comment more accurately on this point, based on their internal systems, procedures and preparations for the reporting mandate in spite of their earlier exemption. Therefore, we have no additional comments on this definition and no concerns to raise with respect to this.

Q20. *Do you have any comments or concerns about how the concession period and grace period are proposed to operate?*

Response to question 20: We have no additional comments on this definition and no concerns to raise with respect to this.



Q21. *Do you have any comments or concerns about how the grace periods will vary in respect of entities that become an AI, AMB or LC at a later date, or that cease to be an exempt person at a later date?*

Response to question 21: We have no additional comments on this definition and no concerns to raise with respect to this.

Q22. *Do you have any comments or concerns about the proposed types of transaction information required to be reported for the purposes of the reporting obligation, or as to how these have been expressed in Schedule 2?*

Response to question 22: The only concern we have is that the data format required per field is not specified within the scope of the proposals paper. For completeness and to ensure accuracy of the data reported, it would be ideal if the paper stated which fields would need to contain alphanumeric, numeric, date formats, etc and specifically which format they should follow where possible to specify (for example, DD/MM/YYYY, 123,000.00, etc).

Q23. *Do you have any comments or concerns about the proposal to require the reporting of valuation transaction information in the future?*

Response to question 23: We agree with this proposal and have no additional comments on this definition and no concerns to raise with respect to this.

Q24. *Do you have any comments or concerns about our proposals on how subsequent events are to be reported, and when they will cease to be reportable?*

Response to question 24: We agree with this proposal and have no additional comments on this definition and no concerns to raise with respect to this.

Q25. *Do you have any comments or concerns about the proposals on masking counterparty information under certain circumstances as a temporary measure?*

Response to question 25: We agree with this proposal and have no additional comments on this definition and no concerns to raise with respect to this.

Q26. *Do you have any comments or concerns about the proposals for subsequently reporting information when the pre-requisites for masking cease to exist?*



Response to question 26: We have no additional comments on this definition and no concerns to raise with respect to this.

Q27. Do you have any comments or concerns about the proposal that an AI's reporting obligations in respect of transactions entered into by its specified subsidiaries should be the same as its reporting obligations in respect of transactions to which it is a counterparty itself?

Response to question 27: We have no additional comments on this definition and no concerns to raise with respect to this.

Q28. Do you have any comments or concerns about the proposed record keeping requirements in relation to mandatory reporting?

Response to question 28: We have no additional comments on this definition and no concerns to raise with respect to this.

Q29. Do you have any comments or concerns about the types of records proposed to be kept, and the manner in which they are to be kept?

Response to question 29: We have no additional comments on this definition and no concerns to raise with respect to this.

Q30. Do you have any comments or concerns about the duration for which the records are proposed to be kept?

Response to question 30: We have no additional comments on this definition and no concerns to raise with respect to this.

About GreySpark Partners

GreySpark is a global consultancy providing services exclusively to Capital Markets businesses. We are the trusted advisors to the world's leading finance houses. We help the leaders to make substantial, lasting improvements to the performance of their organisations.

We assist our clients throughout business and project lifecycles, from inception to completion, offering services in:

- Business Consulting
- Management Consulting
- Technology



For any questions regarding this submission, please contact

For further information about GreySpark please visit our website: www.greyspark.com.