



Room 525, 5/F., Prince's Building, Central, Hong Kong
Telephone: 2521 1160, 2521 1169 Facsimile: 2868 5035
Email: info@hkab.org.hk Web: www.hkab.org.hk

香港中環太子大廈5樓525室
電話：2521 1160, 2521 1169 圖文傳真：2868 5035
電郵：info@hkab.org.hk 網址：www.hkab.org.hk

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By post and email: fss@hkma.gov.hk

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

Dear Sir,

Response to consultation conclusions and further consultation on introducing mandatory clearing and expanding mandatory reporting ("Consultation Conclusions")

Thank you very much for taking the comments of the Hong Kong Association of Banks ("HKAB") into account in the publishing of the Consultation Conclusions.

Our membership maintains an active interest in Hong Kong's clearing and reporting regime. We appreciate the continued efforts of the HKMA in keeping us informed of developments in this area. While we appreciate that the Consultation Conclusions have not requested general comments, we wish to take the opportunity to raise the following issues.

1 Complying with the clearing obligations

1.1 T+1 clearing and public holidays

We have received varying views on the role of public holidays and the clearing obligation of T+1. We understand that the clearing obligation of T+1 in Hong Kong takes into account the definition of "business day" in Hong Kong as defined under the Securities and Futures Ordinance (Cap 571) - that is, if a transaction occurs on Monday and the Tuesday is a public holiday in Hong Kong, the transaction does not need to be cleared until the Wednesday. However, public holidays of offshore jurisdictions will be taken into account and, to the extent that a Hong Kong entity uses offshore jurisdictions to undertake back office functions, those entities are expected to maintain appropriate coverage on these days.

Could you please confirm that our understanding is correct?

Chairman Standard Chartered Bank (Hong Kong) Ltd
Vice Chairman Bank of China (Hong Kong) Ltd
The Hongkong and Shanghai Banking Corporation Ltd
Secretary

主席 渣打銀行(香港)有限公司
副主席 中國銀行(香港)有限公司
香港上海滙豐銀行有限公司
秘書



1.2 Central list of prescribed persons

HKAB respectfully requests that the SFC and HKMA reconsider the decision not to publish a list of prescribed persons that have reached the clearing threshold. Publishing such a list would address the following practical difficulties which will be faced by prescribed persons:

- (a) it will be difficult to obtain confirmation from entities whether or not they have crossed the Hong Kong clearing threshold; and
- (b) in the event that a response is not obtained from the counterparty in respect of the relevant threshold, the Hong Kong regulated entity will be placed in a difficult compliance position.

2 Substituted compliance – list of comparable jurisdictions

We note that the Consultation Conclusions states that the list of comparable jurisdictions remains unchanged, however, it is expected that the list of comparable jurisdictions will grow over time.

We note that the list of comparable jurisdictions that was included in the Consultation Paper has been omitted from the Consultation Conclusions. The HKMA respectfully requests confirmation of where the finalised list of comparable jurisdictions will be published.

3 IRS subject to clearing

We note that the Consultation Conclusions detail the IRS products subject to clearing. In the event that there is inconsistency between how counterparties characterise a particular transaction, could you please confirm what process should be undertaken?

4 Intra-Company Transactions

We note that the Consultation Conclusions states that intra-group and intra-company transactions should be included in the clearing threshold calculation. We respectfully request that this be reconsidered, particularly in respect of intra-company transactions, as the effect of this would be to effectively lower the threshold calculation for foreign entities that book their transaction through their Hong Kong branch and then pass the management of the position onto their head office. This process would result in the same risk being double counted and may bring entities with limited positions booked in Hong Kong within the scope of the clearing rules.

5 Clearing through third parties

The HKAB respectfully requests clarification of whether clearing through a third party client clearing service will be allowed as part of phase 1 of the clearing regime.



6 Masking

We respectfully request clarification that the statement at paragraph 137 of the Consultation Conclusions that “the retail client’s identity may not need to be masked” does not affect the existing masking relief. That is, if the client’s identity does need to be masked because of applicable law, this does not need to be disclosed under the reporting requirements.

Furthermore, we would respectfully request that the HKMA consider the difficulties that are specific to individual retail clients. Individual retail clients are often protected by increased levels of personal data privacy protection, similar to Hong Kong’s Personal Data (Privacy) Ordinance. With the requirement for reporting of trades “conducted in Hong Kong” against individual retail clients that are located abroad, offshore personal data privacy laws may present a problem for reporting without masking. We respectfully suggest that a blanket exemption allowing for masking of individual retail clients would address this practical issue, rather than applying a jurisdiction by jurisdiction exemption. Additionally, individual retail clients’ trades would not represent a systemically important level to warrant stringent unmasking of identity.

7 Definition of specified subsidiary

We respectfully request clarification of whether an overseas branch is considered to be a specific subsidiary for the purpose of section 32 of the Reporting Rules.

We welcome the opportunity to discuss these comments further. Please let us know if you have any questions.

Yours faithfully