

The DTC Association

(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

存款公司公會

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27th April, 2018 (Fri)

Hong Kong Monetary Authority
55th Floor, Two International Finance Centre,
8 Finance Street, Central, HONG KONG.

Dear

**Joint Hong Kong Monetary Authority -
Securities and Futures Commission**
Consultation on the OTC derivatives regulatory regime

Thank you for your email of 27th March, 2018 (Tue) consulting our Association members on the captioned subject.

We have received a response from one of our Association members. The content of this reply is herewith attached as appendix to the present letter.

Thank you for your kind attention,

Yours Sincerely

Association Secretary

General: Given that certain key financial markets have not mandated the use of LEI, the HKMA's proposal to mandate the use of LEI is likely to create an unlevel playing field for market participants in HK, which may result in unintended consequences including compliance burden and regulatory arbitrage, which will impact the competitiveness of HK as an international financial centre.

LEIs are currently bought through issuer/s or provider/s commercially. By mandating the use of LEIs, the HKMA is effectively endorsing the market to use these providers. Overtime, LEI will become a key data element that identifies a legal entity and in the relevant trade repositories. We urge the HKMA to inform the market of the basis of its endorsement of LEI service providers, including its assessment as to the governance of LEI providers, e.g. the issuance, maintenance, distribution, control of the identifiers; their sustainability, policies and controls around data privacy; audit arrangement etc. It will also be helpful if the HKMA could share its assessment of potential risks to market participants associated with the mandatory purchase/use of LEI; and the basis that the HKMA is comfortable that these risks are appropriately addressed by the relevant service providers. Potential areas include cyber-attacks/resilience, misuse of entity data/trade information, data integrity, change/system management, resolution of LEI providers, and any other issues that the HKMA may consider appropriate.

It is important that the HKMA continues to engage with market participants and keep them informed as to how it intends to use LEI information or trade reporting data to enhance transparency of the OTC derivatives market.

We urge the HKMA to reconsider the timing for proposing the mandatory use of LEI. We consider it will be more mature when other key financial markets including the US, UK and Japan have fully implemented the use of LEI, subject to the above comments.

Q1. In relation to paragraph 32, even when market participants reach out to clients to obtain the LEI, there may be certain circumstances where the client does not obtain such LEI in time. Therefore, if there is a lifecycle event for an existing trade, the reporting entity may be held liable for incorrect reporting due to the actions of a transacting party that it cannot control. We would suggest that the LEI requirement for existing trades to continue as is if possible.

In addition, the consultation paper does not address the situation where there is an order placer. We invite HKMA to clarify whether LEI of the transaction party refers to the LEI at the principal level or the order placer level, taking into account global consistency.

Proposal in paragraph 38 set out that after the two phases of implementation, if a reporting entity is unable to identify its transaction party by an LEI, it should refrain from entering into the transaction. Where there is a requirement for the transacting party to provide an LEI before entering into a transaction, the global practice is to seek an LEI from the order placer. The current industry practice does not require an order placer to identify the LEI of all principals at the time of transaction execution. If a reporting entity identify the LEI of the order placer at the time of execution and subsequently identify LEI of the principal within T+2 for transaction reporting, would the reporting entity still be able to satisfy the proposed requirement in paragraph 38?

Q2. If possible, HKMA may consider aligning the requirements with other major markets (eg, EMEA) and/or their implementation period (eg, Japan) to provide lead time to build out operation and IT infrastructure to accommodate this requirement.