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London, 27 April 2018

Joint consultation paper on enhancements to the OTC derivatives regime for Hong Kong

Dear Sir/Madam,

Tradeweb Europe Limited ("***Tradeweb***") welcomes the opportunity to respond to the Hong Kong Monetary Authority ("***HKMA***") and Securities and Futures Commission ("***SFC***") Joint Consultation Paper on *Enhancements to the OTC derivatives regime for Hong Kong*[1] (the "***Consultation Paper***" or the "***CP***") and to contribute to the ongoing work of HKMA and SFC to implement a comprehensive regulatory regime for the over-the-counter (OTC) derivatives market in Hong Kong.

Introduction

The Tradeweb group[2] is a leading global provider of electronic trading platforms for derivatives, fixed income instruments, and ETFs bringing greater transparency and efficiency to these markets. Our trading platforms connect more than 2,000 global buy side institutional clients and over 50 dealers across Europe, the US and Asia, and support more than 25 asset classes in more than 55 countries with a notional of more than USD 350 billion trading on average every day.

In Hong Kong, Tradeweb is an Alternative Trading System (ATS). Importantly in the context of this Consultation Paper, we operate regulated trading venues in a number of jurisdictions that have already implemented a derivatives trading obligation, including an Electronic

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1 http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=18CP2
2 Please check out www.tradeweb.com for further information.

Tradeweb

Trading Platform (ETP) in Japan, a Multilateral Trading Facility (MTF) in Europe, and two Swap Execution Facilities (SEFs) in the United States.

We support the policy objectives to encourage trading of financial instruments on venues that create a level playing field between different modes of execution and implement the 2007 G20 Pittsburgh commitment that all standardised OTC derivatives contracts should be traded on regulated trading platforms, where appropriate. We stand behind the benefits of on-venue trading that regulators have identified, including greater competition, enhanced transparency, operational efficiency and monitoring against market abuse,[3] and that a properly calibrated trading mandate "improves liquidity and lowers execution costs for end users."[4]

We recommend HKMA and SFC appropriately consider this range of benefits when considering the introduction of a platform trading obligation in Hong Kong.

Comments

Please find below our responses to the questions asked by HKMA and SFC in the CP. As the topic of a platform trading obligation is most pertinent to Tradeweb, we respond exclusively to the relevant question in the CP (Question 12) which asks for comments or concerns regarding the proposed trading determination process and criteria.

Q12. Do you have any comments or concerns regarding our proposed trading determination process and criteria? If you do, please provide specific details.

As a globally active trading platform in the derivatives markets, we have gathered extensive experience related to the introduction of Derivatives Trading Obligations ("***DTO***") in various jurisdictions, including establishing and operating two SEFs in the US and an MTF in Europe that offer the full range of interest rate swaps (IRS) subject to the DTO in these jurisdictions.

We generally believe that a broad alignment of the scope of instruments that would be subject to a DTO in Hong Kong with the existing US and EU DTO regimes is desirable. Such approach will help avoid unnecessary complexity and fragmenting a market that is inherently global, it can hence form the basis for allowing market participants with continued seamless access to liquidity. Alignment of any proposed platform trading obligation with other existing DTOs already implemented under the US and EU regimes will also avoid market participants being subject to conflicting or duplicative regulatory regimes and reduce the risk of regulatory arbitrage.

As Hong Kong develops its proposal on a platform trading obligation it may wish to consider that DTOs in other jurisdictions may differ somewhat, both in terms of maturities and firms subject to the DTO, but also that in such jurisdictions significant trading on electronic platforms occurs beyond the products that have been mandated.[5] On that basis we are

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[3] Paragraph 89, ESMA Consultation Paper on *The trading obligation for derivatives under MiFIR; 19 June 2017.*
[4] Paragraph 90, Ibid.
[5] E.g. around 40% of trading volumes on the Tradeweb SEFs occur in non-mandated products.

encouraged by HKMA's and SFC's pragmatic approach around the trading determination process as described in the CP, which will enable a process to review the scope of the platform trading obligation in Hong Kong to consider what instruments are suitable and should hence be subject to any new proposed local regime.

Equivalence

Following the 2007 G20 Pittsburgh commitments DTO regimes have been successfully implemented in many major jurisdictions, including the US, Japan and Europe, with the US regime having been in place since 2014. Also, the MAS closed a similar consultation on the implementation of a DTO in Singapore last month. On that basis, there appears to be little reason for HKMA and the SFC to delay much longer the implementation of a DTO regime for Hong Kong.

That said, it will be crucially important for the commencement of a DTO in Hong Kong to be accompanied by equivalence decisions between Hong Kong and the other major jurisdictions where a DTO already applies, most importantly with Europe and the United States. If a DTO in Hong Kong was not accompanied by such equivalence determinations it could result in the fragmentation of liquidity and, in the extreme, the inability of firms to enter into derivatives transactions, for example where their jurisdictional status resulted in them being subject to several DTOs at the same time.

Timely equivalence determinations will allow firms that are in scope of the DTO in Hong Kong to fulfil their trading obligations also on US or European venues. Similarly, European or US firms might want to fulfil their MiFIR or Dodd Frank related trading obligations by executing locally on a trading venue in Hong Kong. Importantly, any such equivalence determinations should not only result in allowing Hong Kong based firms to use a foreign venue to satisfy the Honk Kong DTO but also extend to (1) firms' transparency/reporting-related obligations and (2) the ability of platforms to be offered in the foreign jurisdiction (licensing).

Tradeweb operates an SFC-regulated ATS in Hong Kong that offers relevant products under the proposed HKMA and SFC platform trading obligation regime. We also offer two SEFs (DW SEF and TW SEF) that have been recognised by the European Commission as equivalent in the context of the MiFIR DTO, as well as an MTF that has been recognised by the CFTC as equivalent to comply with the US DTO. Those platforms are currently used by firms in Hong Kong and, as such, HKMA and SFC should expect firms in Hong Kong that may, in the future, be subject to its DTO to want to use all such Tradeweb venues.

A timely equivalence determination will provide the affected firms with sufficient flexibility to continue using their preferred trading platform and will allow for a timely and less complex implementation of a DTO in Hong Kong. We therefore encourage HKMA and SFC to actively engage with European and US authorities to achieve equivalence determinations for relevant platforms ahead of the implementation of a DTO in Hong Kong.

Scope and possible exemptions

We generally agree with the criteria set out in the CP for the trading determination process. In addition, we encourage HKMA and SFC to carefully consider the extent to which certain types of transactions should (or should not) be subject to the DTO:

- We believe it is sensible to exempt intra-group transactions from platform trading obligations.

- HKMA and SFC will need to consider to what extent "package" transactions should be subject to the DTO. They should note that other jurisdictions have taken somewhat different approaches to this question: In the US, the CFTC initially granted a number of exemptions for specified packages, which have now expired. In Europe, ESMA recently issued an opinion[6] stating that several defined types of packages should be subject to the trading obligation in Europe whilst others should not. Some jurisdictions have proposed to exempt package transactions from a DTO.[7] In this context, the HKMA and SFC should know that most common packages for IRS (and other asset classes) are offered on trading venues today.[8] Further, execution protocols of "pre-arranged" trading allow firms to agree on a package transaction on the phone with the required components then being executed fully on a trading venue thereafter. We stand ready to discuss these issues in more detail with HKMA and SFC.

- Some market participants may comment that compression activity should receive an exemption from any future DTO. It is worth noting though that participants trading those transactions on an electronic platform will enjoy greater ease and efficiency in conducting those transactions. Even if an exemption was considered for compression activities, we recommend this should not deter market participants from being able to perform these trades on a venue.

Other Considerations

- **Implementation timing**

Based on our experience, market participants that may be subject to a DTO for the first time will need be provided with sufficient time to set up and implement the required technological as well as legal framework to support their trading activities going forward. During the implementation of SEFs in the US in 2013/2014, a period of six months seemed reasonable for the industry (market participants as well as technological support providers and others) to prepare for the go-live of new trading obligations. However, the required length of this period today will depend on the number of firms affected by the platform trading obligation and their level of preparedness. However, it is worth noting that most of the larger market participants

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[6] Issued 21 March 2018, available here: https://www.esma.europa.eu/sites/default/files/library/esma70-156-322_opinion_packages_and_to.pdf

[7] Section 6.2, p. 10: http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2010/Consultation-Paper-on-Draft-Regulations-for-Mandatory-Trading-of-Derivatives-Contracts.aspx

[8] A list of the most common packages available on the Tradeweb platform can be found here: http://www.tradeweb.com/About-Us/MTF-Center/

today will require much less lead time to prepare as they might already be subject to a DTO in other jurisdictions or are trading on electronic platforms.

We support the alignment of any introduction of a DTO in Hong Kong with the clearing obligations (as aligned with those set out under the US and EU clearing obligations) and would welcome further clarity from HKMA and SFC as to the proposed commencement date of instruments falling under a DTO with respect to the clearing obligation.

- **Tenors**

HKMA and SFC should be aware that there have been some discussions in other jurisdictions about how to clearly define which tenors of instruments are subject to the DTO. Whilst the CFTC defined just a benchmark tenor and added anti-avoidance language to address the risk of firms slightly changing their maturity dates or start dates to avoid the DTO, MiFIR in Europe uses a +/- 5 days range around the exact maturity date.

That said, we recommend that HKMA and SFC specify the approach to be taken in Hong Kong to create clarity for market participants and we are happy to discuss this aspect in more detail.

We appreciate the opportunity to respond to this joint Consultation Paper. We stand ready to discuss in greater detail with HKMA and SFC any of the points we have made above. Please do not hesitate to get in touch with us in case you have any questions.

Kind regards,

Head of Regulatory Affairs & Market Structure
Tradeweb Europe Ltd.