

Joint consultation paper on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transactions

April 2021



HONG KONG MONETARY AUTHORITY
香港金融管理局



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

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FOREWORD

In line with global efforts, the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) have been working with the Government of the Hong Kong Special Administrative Region and other stakeholders to implement a regulatory regime for the over-the-counter (**OTC**) derivatives market in Hong Kong. The regime, which is now in place, provides for, among other things, the introduction of reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions.

This consultation is in respect of the annual review of the list of Financial Services Providers which will become effective on 1 January 2022. It should be read together with papers relating to earlier consultations on the implementation of the OTC derivatives regulatory regime, in particular the various consultations on mandatory clearing. All papers can be viewed on the websites of the HKMA and the SFC.

Interested parties are invited to submit written comments on the proposals. Comments should reach either the HKMA or the SFC on or before 14 May 2021 and may be submitted by any of the following methods:

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
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street, Central
Hong Kong

Supervision of Markets Division
Securities and Futures Commission
54/F, One Island East
18 Westlands Road
Quarry Bay, Hong Kong

Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

Please note that the names of commentators and the contents of their submissions may be published by the HKMA and the 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 this consultation paper.

You may not wish your name or submission to be published by the HKMA and the SFC. If this is the case, please state that you wish your name, your submission or both to be withheld from publication when you make your submission.

April 2021

PERSONAL INFORMATION COLLECTION STATEMENT

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the HKMA's and the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of collection

2. The personal data provided in your submission in response to this consultation paper may be used by the HKMA or the SFC for one or more of the following purposes:
 - (a) to administer –
 - (i) the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA; and
 - (ii) the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) to perform statutory functions under the provisions of the Banking Ordinance (Cap. 155), the Securities and Futures Ordinance (Cap. 571) and relevant provisions;
 - (c) for research and statistical purposes; or
 - (d) for other purposes permitted by law.

Transfer of personal data

3. Personal data may be disclosed by the HKMA or the SFC to members of the public in Hong Kong and elsewhere as part of this public consultation. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA and SFC websites and in documents to be published by the HKMA and SFC during the consultation period or at its conclusion.

Access to data

4. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA and the SFC have the right to charge a reasonable fee for processing any data access request.

¹ Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

² The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

Retention

5. Personal data provided to the HKMA and the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of their functions.

Enquiries

6. Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to:

HKMA

Personal Data Privacy Officer
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street
Central, Hong Kong

SFC

Data Privacy Officer
Securities and Futures Commission
54/F, One Island East
18 Westlands Road
Quarry Bay, Hong Kong

7. A copy of the Privacy Policy Statement adopted by the HKMA and the SFC is available upon request.

A. Introduction

1. To meet the G20 commitments to reform OTC derivatives markets, the HKMA and the SFC have implemented a regulatory regime for OTC derivatives in Hong Kong. The regime provides for, among other things, the introduction of reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions.
2. To date, we have implemented two phases of mandatory reporting and one phase of mandatory clearing (**Phase 1 Clearing**). Phase 1 Clearing took effect on 1 September 2016 to capture specified standardised interest rate swaps (**IRS**) between major dealers if certain conditions under the Clearing Rules³ are met.
3. Major dealers with a presence in Hong Kong are usually Authorized Institution (**Als**) or Licensed Corporations (**LCs**). They therefore fall under the scope of prescribed persons in the Clearing Rules. In order to capture transactions between prescribed persons and major dealers outside of Hong Kong which are not Als or LCs, the concept of a Financial Service Provider (**FSP**) was introduced.
4. Under the Clearing Rules, the SFC may, with the consent of the HKMA and by notice published in the Gazette, designate any person (whether incorporated in Hong Kong or outside Hong Kong) as an FSP if the SFC is satisfied that it is likely that the person is actively engaged in OTC derivative activities outside Hong Kong. The first list of FSPs was gazetted in August 2016 and came into effect on 1 September 2016.

B. Annual update to the List of Financial Services Providers under the Clearing Rules

Scope of an FSP

5. The two criteria to determine whether an entity comes within the scope of an FSP are:
 - (a) it belongs to a group of companies appearing on the list of global systemically important banks (**GSIBs**) published by the Financial Stability Board, or on the list of dealer groups which undertook to the OTC Derivatives Supervisors Group to work collaboratively with central counterparties, infrastructure providers and global supervisors to continue to make structural improvements to the global OTC derivatives markets (**G15-dealers**); and
 - (b) it is a member of the largest central counterparties (**CCPs**) offering clearing for interest rate swaps in the US, Europe, Japan and Hong Kong (**IRS CCPs**).

³ The Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.

6. To ensure that the list of FSPs (**FSP List**) remains relevant and appropriate, we have conducted an annual review of the FSP List following a consultation in 2018⁴. The policy adopted in the 2018 consultation was that we will take a snapshot of the entities falling within the FSP criteria in paragraph 5 above at the end of each calendar year, identify any changes and consult the market on any proposed amendments to the FSP List in the following year. This consultation reflects the result of the latest snapshot on 31 December 2020 and proposes an updated FSP List to take effect on 1 January 2022.

Proposed changes to the FSP List based on the current review

7. Since our last review, TD Global Finance Unlimited Company, which is a group member of a GSIB, has become a clearing member of an IRS CCP member. We thus propose to include it in the revised FSP List.
8. In respect of GSIB or G15-dealers member entities which are no longer clearing members of IRS CCPs, our approach has been to keep them on the FSP List, unless there is no longer any entity within the group which is a clearing member of an IRS CCP.
9. CACEIS Bank SA, a group member of a GSIB (Groupe Crédit Agricole), is no longer a clearing member of an IRS CCP. However, other entities within its group continue to be clearing members of IRS CCPs. Unless we receive a submission that there is a permanent change in its business models so that it no longer conducts OTC derivative transactions, we propose to keep CACEIS Bank SA on the revised FSP List in accordance with our stated approach.
10. DB Privat- und Firmenkundenbank AG (DBPF), a current FSP, merged in May 2020 into another group entity, which is also a current FSP. It is thus proposed to revoke the FSP designation of DBPF and remove it from the FSP List. In addition, updates are proposed to reflect changes to the names of some FSPs since the last review.
11. The proposed revised FSP List, consolidating all the proposed changes as explained above, is set out in the [Annex](#). The proposed changes are also highlighted for ease of reference. We welcome any comments or concerns about any of the entities included in the proposed revised FSP List.

Question: Do you have any comments or concerns about our proposed revised FSP List? If you do, please provide specific details.

⁴ See the *Joint consultation paper on enhancements to the OTC derivatives regime for Hong Kong to– (1) mandate the use of Legal Entity Identifiers for the reporting obligation, (2) expand the clearing obligation and (3) adopt a trading determination process for introducing a platform trading obligation* issued in March 2018 and the consultation conclusions paper published in June 2018.

C. Timing for submission of comments

12. The proposed update to the FSP List is formed in accordance with the established policy and process communicated to market participants. As with previous annual updates, we believe market participants are familiar with the policy and process involved in the annual update and they will have anticipated the substance of our proposals. In view of the above, we propose to allow around one month for the submission of comments on this consultation. Comments should reach the HKMA or the SFC by no later than 14 May 2021.

D. Way forward

13. As stated in our 2018 consultation, we will align the effective date of the revised FSP List to the prescribed day⁵ of the calculation period⁶ nearest to when the consultation conclusions paper is published. We intend to publish the conclusion paper for this consultation in June 2021. This means the nearest calculation period will be 1 March 2021 to 31 May 2021. Accordingly, the effective date of the revised FSP List will fall on 1 January 2022, which is the prescribed day for the calculation period of 1 March 2021 to 31 May 2021.

⁵ The prescribed day in relation to a calculation period is the day which is seven months after the end of the calculation period.

⁶ The calculation period is the period in which a person's applicable position in OTC derivatives is calculated to determine whether it has reached the clearing threshold. The applicable clearing threshold for each calculation period is set out in Schedule 2 to the Clearing Rules.

ANNEX – Proposed revised list of Financial Services Providers

The following entities have been designated, or are proposed to be designated, as FSPs for the purposes of the Clearing Rules. Proposed changes from the current FSP List are highlighted and explained as tabled below:

	Name of the entities	Notes
1.	Agricultural Bank of China Limited	
2.	Banco Santander S.A.	
3.	Bank of America, N.A.	
4.	<u>Bank of America Europe Designated Activity Company (previously stated as “Bank of America Merrill Lynch International Designated Activity Company”)</u>	Current FSP. Name changed since the last update.
5.	Bank of China (UK) Ltd	
6.	Banque Palatine S.A.	
7.	Barclays Bank Ireland Plc	
8.	Barclays Bank PLC	
9.	Barclays Bank UK PLC	
10.	Barclays Capital Inc.	
11.	BNP Paribas Fortis SA/NV	
12.	BNP Paribas SA	
13.	BNP Paribas Securities Corp.	
14.	BofA Securities, Inc.	
15.	BofA Securities Europe SA	
16.	<u>BofA Securities Japan Co., Ltd (previously stated as “Merrill Lynch Japan Securities Co., Ltd.”)</u>	Current FSP. Name changed since the last update.
17.	CACEIS Bank SA	Whilst no longer a clearing member of an IRS CCP, other entities within the GSIB group remain as clearing members. We propose to keep it on the FSP List.
18.	Citibank, N.A.	
19.	Citibank Europe Plc	
20.	Citigroup Global Markets Europe AG	
21.	Citigroup Global Markets Inc.	

	Name of the entities	Notes
22.	Citigroup Global Markets Japan Inc.	
23.	Citigroup Global Markets Limited	
24.	Credit Agricole Corporate and Investment Bank	
25.	Credit Foncier de France	
26.	Credit Suisse (Schweiz) AG	
27.	Credit Suisse AG	
28.	Credit Suisse International	
29.	Credit Suisse Securities (Japan) Limited	
30.	Credit Suisse Securities (USA) LLC	
31.	Credit Suisse Securities Sociedad de Valores, S.A.	
	DB Privat- und Firmenkundenbank AG	The entity merged into Deutsche Bank AG (item 32 below). Accordingly, it is proposed to be removed from the FSP List.
32.	Deutsche Bank AG	
33.	Deutsche Bank Securities Inc.	
34.	Goldman Sachs & Co. LLC	
35.	Goldman Sachs Bank Europe SE	
36.	Goldman Sachs Bank USA	
37.	Goldman Sachs Financial Markets Pty Ltd	
38.	Goldman Sachs International	
39.	Goldman Sachs Japan Co., Ltd.	
40.	HSBC Bank plc	
41.	HSBC Bank USA, N.A.	
42.	HSBC <u>Continental Europe (previously stated as "HSBC France")</u>	Current FSP. Name changed since the last update.
43.	HSBC Securities (USA) Inc.	
44.	HSBC UK Bank plc	
45.	ING Bank N.V.	
46.	ING Bank Slaski S.A.	
47.	ING-DiBa AG	
48.	J.P. Morgan AG	
49.	J.P. Morgan Securities LLC	

	Name of the entities	Notes
50.	J.P. Morgan Securities plc	
51.	JPMorgan Chase Bank, N.A.	
52.	JPMorgan Securities Japan Co., Ltd.	
53.	Merrill Lynch Capital Services Inc.	
54.	Merrill Lynch International	
	Merrill Lynch Japan Securities Co., Ltd.	Renamed since the last update and is now listed as item 16
55.	Mitsubishi UFJ Morgan Stanley Securities Co., Ltd.	
56.	Mizuho Bank, Ltd.	
57.	Mizuho Capital Markets LLC	
58.	Mizuho International plc	
59.	Mizuho Securities USA LLC	
60.	Morgan Stanley & Co. International plc	
61.	Morgan Stanley & Co. LLC	
62.	Morgan Stanley Capital Services LLC	
63.	Morgan Stanley Europe SE	
64.	Morgan Stanley MUFG Securities Co., Ltd.	
65.	MUFG Bank, Ltd.	
66.	MUFG Securities EMEA plc	
67.	National Westminster Bank Plc	
68.	NATIXIS	
69.	NatWest Markets N.V.	
70.	NatWest Markets plc	
71.	Nomura Financial Products & Services, Inc.	
72.	Nomura Global Financial Products, Inc.	
73.	Nomura International plc	
74.	Nomura Securities Co., Ltd.	
75.	Nomura Securities International, Inc.	
76.	Nordea Bank Abp	
77.	RBC Capital Markets, LLC	
78.	RBC Europe Limited	
79.	Royal Bank of Canada	
80.	Santander Financial Services Plc	

	Name of the entities	Notes
81.	Santander Investment Securities Inc.	
82.	SG Americas Securities LLC	
83.	SMBC Capital Markets Inc.	
84.	SMBC Nikko Securities Inc.	
85.	Societe Generale	
86.	Societe Generale International Limited	
87.	Standard Chartered Bank	
88.	Sumitomo Mitsui Banking Corporation	
89.	Sumitomo Mitsui Trust Bank, Limited	
90.	TD Bank, N.A.	
91.	TD Bank USA, N.A.	
92.	<u>TD Global Finance Unlimited Company</u>	A member of an existing GSIB group and a new clearing member of an IRS CCP. We propose to include it in the revised FSP List.
93.	The Bank of New York Mellon	
94.	The Toronto-Dominion Bank	
95.	UBS AG	
96.	UBS Europe SE	
97.	UBS Securities LLC	
98.	UBS Switzerland AG	
99.	UniCredit Bank AG	
100.	UniCredit Bank Austria AG	
101.	UniCredit S.p.A.	
102.	Wells Fargo Bank, N.A.	
103.	Wells Fargo Securities, LLC	