

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

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April 2023



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 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 2024. 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 SFC.

Interested parties are invited to submit written comments on the proposals. Comments should reach either the HKMA or SFC on or before 19 May 2023 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](mailto:fss@hkma.gov.hk) or [otcconsult@sfc.hk](mailto: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 respondents and their submissions may be published by the HKMA and 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 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 2023

## 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 Data<sup>1</sup> 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 provisions<sup>2</sup> 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.

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

<sup>2</sup> 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 over-the-counter (OTC) derivatives markets, the HKMA and 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 Rules<sup>3</sup> are met.
3. Major dealers with a presence in Hong Kong are usually Authorized Institution (**AIs**) 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 Hong Kong which are not AIs or LCs, the concept of a Financial Services Provider (**FSP**) was introduced.
4. Under the Clearing Rules, the SFC may, with the consent of the Monetary Authority 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 clearing member of the largest central counterparties (**CCPs**) offering clearing for interest rate swaps in the US, Europe, Japan and Hong Kong (**IRS CCPs**).

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<sup>3</sup> 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 conducted an annual review of the FSP List following a consultation in 2018<sup>4</sup>. The policy adopted in the 2018 consultation was that we would 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 review of the snapshot on 31 December 2022 and proposes an updated FSP List to take effect on 1 January 2024.

### ***Proposed changes to the FSP List based on the current review***

7. Since our last review, updates are proposed to reflect change of the name of an existing FSP, J.P. Morgan AG, to J.P. Morgan SE, and the merger of Santander Investment Securities Inc., an existing FSP, with another entity to form Santander US Capital Markets LLC. In the latter case, it is proposed to revoke the designation of Santander Investment Securities Inc. as an FSP and to designate the merged entity as an FSP.
8. To reduce the risk of regulatory arbitrage, our approach has been to keep any GSIB or G15-dealer member entity on the FSP List which is no longer a clearing member of any IRS CCPs unless there is no longer any entity within the group which is a clearing member of an IRS CCP, or we receive a submission from the entity that there is a permanent change in its business model so that it no longer conducts OTC derivative transactions. We have made remarks on these entities in the proposed revised FSP List.
9. The proposed revised FSP List, consolidating all the proposed changes from the current review, is set out in the [Annex](#). The proposed changes are also highlighted for ease of reference. We welcome any comments about any of the entities included in the proposed revised FSP List.

<p><b>Question: Do you have any comments about our proposed revised FSP List? If you do, please provide specific details.</b></p>
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### **C. Timing for submission of comments**

10. The proposed update to the FSP List is made in accordance with the established policy and process communicated to market participants. As with previous annual updates, we believe that market participants are familiar with the policy and process involved in the annual update and they will have anticipated the substance of our proposals. We propose to allow around one month for the submission of comments

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<sup>4</sup> 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.

on this consultation. Comments should reach the HKMA or SFC by no later than 19 May 2023.

#### **D. Way forward**

11. As stated in the 2018 consultation, we will align the effective date of the revised FSP List with the prescribed day<sup>5</sup> of the calculation period<sup>6</sup> nearest to when the consultation conclusions paper is published. We intend to publish the conclusion paper for this consultation in June 2023. This means the nearest calculation period will be 1 March 2023 to 31 May 2023. Accordingly, the effective date of the revised FSP List will fall on 1 January 2024, which is the prescribed day for the calculation period of 1 March 2023 to 31 May 2023.

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

<sup>6</sup> 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, National Association	
4.	Bank of America Europe Designated Activity Company	
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.	<b>BNP Paribas</b>	Re-ordered to align with the latest gazetted FSP List
12.	<b>BNP Paribas Fortis SA/NV</b>	Re-ordered to align with the latest gazetted FSP List
13.	BNP Paribas Securities Corp.	
14.	BofA Securities, Inc.	
15.	BofA Securities Europe SA	
16.	BofA Securities Japan Co., Ltd	
17.	CACEIS Bank SA	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List.
18.	Citibank, N.A.	
19.	Citibank Europe Plc	
20.	Citigroup Global Markets Europe AG	
21.	Citigroup Global Markets Inc.	
22.	Citigroup Global Markets Japan Inc.	

	<b>Name of the entities</b>	<b>Notes</b>
23.	Citigroup Global Markets Limited	
24.	Credit Agricole Corporate and Investment Bank	
25.	Credit Foncier de France	
26.	<b>Credit Suisse AG</b>	Subject to monitoring of developments in the Credit Suisse group  Re-ordered to align with the latest gazetted FSP List
27.	<b>Credit Suisse Bank (Europe), S.A.</b>	Subject to monitoring of developments in the Credit Suisse group  Re-ordered to align with the latest gazetted FSP List
28.	Credit Suisse International	Subject to monitoring of developments in the Credit Suisse group
29.	<b>Credit Suisse (Schweiz) AG</b>	Subject to monitoring of developments in the Credit Suisse group  Re-ordered to align with the latest gazetted FSP List
30.	<b>Credit Suisse Securities (Japan) Limited</b>	Subject to monitoring of developments in the Credit Suisse group  Re-ordered to align with the latest gazetted FSP List
31.	<b>Credit Suisse Securities (USA) LLC</b>	Subject to monitoring of developments in the Credit Suisse group  Re-ordered to align with the latest gazetted FSP List
32.	Deutsche Bank Aktiengesellschaft	
33.	Deutsche Bank Securities Inc.	(Existing) Whilst no longer a clearing

	Name of the entities	Notes
		member of an IRS CCP, one or more other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List.
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, National Association	
42.	HSBC Continental Europe	
43.	HSBC Securities (USA) Inc.	
44.	HSBC UK Bank plc	
45.	ING Bank N.V.	
46.	ING Bank Śląski S.A.	
47.	ING-DiBa AG	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List.
48.	<u>J.P. Morgan SE</u> (previously stated as "J.P. Morgan AG")	Current FSP. Name changed since the last update.
49.	J.P. Morgan Securities LLC	
50.	J.P. Morgan Securities plc	
51.	JPMorgan Chase Bank, National Association	
52.	JPMorgan Securities Japan Co., Ltd.	
53.	Merrill Lynch Capital Services Inc.	
54.	Merrill Lynch International	
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	

	Name of the entities	Notes
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.	Re-ordered to align with the latest gazetted FSP List
72.	Nomura Financial Products Europe GmbH	Re-ordered to align with the latest gazetted FSP List
73.	Nomura Global Financial Products, Inc.	
74.	Nomura International plc	
75.	Nomura Securities Co., Ltd.	
76.	Nomura Securities International, Inc.	
77.	Nordea Bank Abp	
78.	RBC Capital Markets, LLC	
79.	RBC Europe Limited	
80.	Royal Bank of Canada	
81.	Santander Financial Services Plc	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List.
<del>82.</del>	<del>Santander Investment Securities Inc.</del>	Propose to revoke the designation of Santander Investment Securities Inc. as an FSP, in view that it had merged with another entity to form Santander US Capital Markets LLC (which is proposed to be designated as an FSP - see next row)

	<b>Name of the entities</b>	<b>Notes</b>
82.	<u>Santander US Capital Markets LLC</u>	Proposed to add as FSP (see Notes on “Santander Investment Securities Inc.” in the above row).
83.	SG Americas Securities LLC	
84.	SMBC Capital Markets Inc.	
85.	SMBC Nikko Securities Inc.	
86.	Societe Generale	
87.	Societe Generale International Limited	
88.	Standard Chartered Bank	
89.	Sumitomo Mitsui Banking Corporation	
90.	Sumitomo Mitsui Trust Bank, Limited	
91.	TD Bank, N.A.	
92.	TD Bank USA, N.A.	
93.	TD Global Finance Unlimited Company	
94.	The Bank of New York Mellon	
95.	Toronto-Dominion Bank	
96.	UBS AG	
97.	UBS Europe SE	
98.	UBS Securities LLC	
99.	UBS Switzerland AG	
100.	UniCredit Bank AG	
101.	UniCredit Bank Austria AG	
102.	UniCredit S.p.A.	
103.	Wells Fargo Bank, National Association	
104.	Wells Fargo Securities, LLC	