



June 25, 2019

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
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

**Comments on the joint consultation paper on
enhancements to the OTC derivatives regulatory regime for Hong Kong**

Dear Sirs/Madams:

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on the joint consultation paper on enhancements to the OTC derivatives regulatory regime for Hong Kong issued on April 10, 2019 by the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC).

Although we recognise that the proposal to mandate the use of UTIs provides flexibility considering international trends, there is still room of further examination in terms of determining the UTI generation responsibility and the implementation timeline, as commented hereinafter. We respectfully expect that the following comments will contribute to your further discussion in finalising the proposals.

(1) Determining the UTI generation responsibility

We welcome the proposed bilateral agreement as it allows financial institutions to take flexible approaches at their discretion in a situation where national authorities are currently working to establish a UTI framework in their own jurisdictions. However, since it is considered that negotiations to reach a bilateral agreement will impose significant burdens on financial institutions in practice, the HKMA/SFC are requested to maintain close dialogue with

authorities in other jurisdictions on this issue to develop rules that automatically determine the responsibility for UTI generation in a manner that is internationally consistent and is sufficiently practicable.

(Rationale)

With respect to the well-intentioned rule for assigning responsibility for generating UTIs, the consultation paper proposes that:

1. Counterparties bilaterally agree on who would generate the UTI for their transactions (counterparties may also bilaterally agree to adopt the list of factors shown in Annex 1); and
2. In cases where a bilateral agreement cannot be reached or has not been reached, counterparties should follow Annex 1 that is based on the CPMI/IOSCO Technical Guidance.

We support this proposed rule as it provides flexible approaches to cross-border transactions while there is an uncertainty about specific requirements of UTI regulation that are expected to be released by other jurisdictions in due course. This rule, however, would require financial institutions to agree individually with all counterparties on who would be the UTI generator before executing a transaction or by the reporting deadline to a trade repository. This would impose significant burdens on financial institutions for their negotiations. Therefore, in order to avoid such burdens, it is preferable that the HKMA/SFC, in coordination with authorities in other jurisdictions, will develop rules that automatically assign the responsibility for UTI generation in a manner that is internationally harmonised and is sufficiently practicable. Nonetheless, it should be taken into account that practical concerns are being expressed for the CPMI/IOSCO generation party logic (i.e. Annex1) as noted in comments submitted by ISDA and GFMA, etc.¹

(2) Proposed requirements for reporting UTIs

We support the proposal that relevant rules of counterparties' jurisdiction are regarded as compliant with the Hong Kong UTI requirements. The HKMA/SFC, however, are requested to continue taking flexible approaches to help realise uniform rules that are harmonised internationally, including the Hong Kong requirements.

(Rationale)

We understand that the proposal that regards reliance on relevant rules of counterparties' jurisdiction as compliant with the Hong Kong UTI requirements is intended to implement the use of UTIs in a smooth manner under the current situation where national regulations are not harmonised across jurisdictions, and hence we support the proposal. However, from the

¹<https://www.gfma.org/wp-content/uploads/0/83/91/219/ea2b0439-1e17-4311-92ea-bbe720dd3f88.pdf>

perspective of financial institutions engaging in cross-border transactions, there is a concern that they will not be able to comply with all local regulations due to conflicts (e.g., fragmented jurisdiction-by-jurisdiction approach) if the global regulatory harmonisation is not achieved. Even if the absence of global regulatory harmonisation does not lead to such conflicts, different regulations across jurisdictions will require such financial institutions to understand and address not only the regulatory requirements that the reporting entity is subject to but also all of the regulatory requirements that respective counterparties are subject to (including the jurisdictions of the both parties' head office as well as the jurisdictions of their branches). Financial institutions would also need to develop operations, systems, and industry rules and to reach bilateral agreements that satisfy all requirements of those regulations, which would create an undue burden. Therefore eventually it is preferable to realise uniform rules that are harmonised internationally, including the Hong Kong requirements.

(3) Timeline

The HKMA/SFC are requested to provide a sufficient preparation period between the publication of the consultation conclusions and implementation date. As development of UTI rules is progressing in respective jurisdictions, financial institutions will need to undertake compliance efforts in consideration of developments in jurisdictions other than Asia as well. Given this, the implementation timeline could be changed to December 2020, which is the implementation deadline under the international agreement, or other appropriate time.

(Rationale)

The consultation paper describes that mandating the use of UTIs will be initiated from April 2020 for those transactions without a Unique Swap Identifier (USI) and a Unique Trade ID (TID), and consultation conclusions will be published at least six months prior to that proposed implementation date.

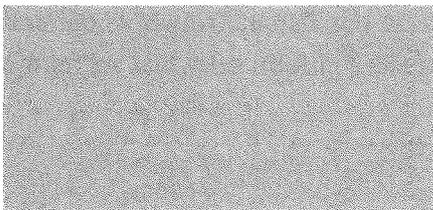
In practice, financial institutions will embark on system and operational preparations, as well as negotiations with counterparties to determine who generates UTIs and entering into an agreement with them, after conclusions are published and technical specifications are determined. Since it is certain that these preparations will take a considerable period of time, it is preferable to allow a certain preparation period from the publication of conclusions.

Furthermore, while there is a possibility that the content of rules that are currently under development in other jurisdictions may differ from that of Hong Kong's, different timeline may additionally cause confusion to market participants. We would like to mention that efforts made by each jurisdiction to align the implementation timelines of the margin requirements for OTC derivatives brought about successful avoidance of confusion. We request the HKMA/SFC to align the implementation timelines with not only jurisdictions in Asia but also other jurisdictions

to the extent possible.

Therefore, we would like to suggest that the timing of mandatory use of UTIs be changed to December 2020 (i.e. the implementation deadline under the international agreement) or other appropriate time, instead of the proposed April 2020.

Sincerely yours,



Vice Chairman and Senior Executive Director