

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 2024



HONG KONG MONETARY AUTHORITY
香港金融管理局



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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 2025. 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 17 May 2024 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 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 2024

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 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 Rules³ 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, 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 or outside Hong Kong) as an FSP if the SFC is satisfied that the person is likely to be 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 United States, 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 conducted an annual review of the FSP List following a consultation in 2018⁴. 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 2023 and proposes an updated FSP List to take effect on 1 January 2025.

Proposed changes to the FSP List based on the current review

7. Bank of Communications was named as a new GSIB by the Financial Stability Board in November 2023. Thus, Bank of Communications Co., Ltd, which is a group member of this new GSIB and a clearing member of an IRS CCP, is proposed to be added to the revised FSP List.
8. UniCredit was no longer on the GSIB list published in November 2023. However, some of its member entities that are currently FSPs remain members of an IRS CCP. It has been our approach that, once an entity is included in the FSP List and it remains a clearing member of an IRS CCP, it would remain on the list even if the group it belongs to is no longer a GSIB as the former GSIB status is an indication that its level of OTC derivative activities could still be substantial. Unless we receive a submission that the group has undergone a permanent change of its business model or has exited the OTC derivatives sphere, we propose to keep the FSP member entities of UniCredit on the updated FSP List in accordance with our existing approach. In addition, an update is proposed to reflect a change of the name of an existing FSP, UniCredit Bank AG, to UniCredit Bank GmbH since the last review.
9. To reduce the risk of regulatory arbitrage, it has been our approach 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 given a permanent change in its business model, it no longer conducts OTC derivative transactions. We have made remarks on these entities in the proposed revised FSP List.
10. The proposed revised FSP List, which consolidates all the proposed changes from the current review, is set out in the [Annex](#). These changes are also highlighted for ease of reference. We welcome comments about any of the entities included in the proposed revised FSP List.

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.

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

C. Timing for submission of comments

11. 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 on this consultation. Comments should reach the HKMA or SFC by 17 May 2024.

D. Way forward

12. As stated in the 2018 consultation, we will align the effective date of the revised FSP List with 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 2024. This means the nearest calculation period will be 1 March 2024 to 31 May 2024. Accordingly, the effective date of the revised FSP List will fall on 1 January 2025, which is the prescribed day for the calculation period of 1 March 2024 to 31 May 2024.

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, National Association	
4.	Bank of America Europe Designated Activity Company	
5.	Bank of China (UK) Ltd	
6.	Bank of Communications Co., Ltd	A member of a new GSIB group on the November 2023 GSIB list, and a member of an IRS CCP. We propose to include it in the revised FSP List.
7.	Banque Palatine S.A.	
8.	Barclays Bank Ireland Plc	
9.	Barclays Bank PLC	
10.	Barclays Bank UK PLC	
11.	Barclays Capital Inc.	
12.	BNP Paribas	
13.	BNP Paribas Fortis SA/NV	
14.	BNP Paribas Securities Corp.	
15.	BofA Securities, Inc.	
16.	BofA Securities Europe SA	
17.	BofA Securities Japan Co., Ltd	
18.	CACEIS Bank SA	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain clearing members. We have kept the entity on the FSP List.
19.	Citibank, N.A.	
20.	Citibank Europe Plc	
21.	Citigroup Global Markets Europe AG	

	Name of the entities	Notes
22.	Citigroup Global Markets Inc.	
23.	Citigroup Global Markets Japan Inc.	
24.	Citigroup Global Markets Limited	
25.	Credit Agricole Corporate and Investment Bank	
26.	Credit Foncier de France	
27.	Credit Suisse AG	Subject to monitoring of developments in the Credit Suisse group
28.	Credit Suisse Bank (Europe), S.A.	Subject to monitoring of developments in the Credit Suisse group
29.	Credit Suisse International	Subject to monitoring of developments in the Credit Suisse group
30.	Credit Suisse (Schweiz) AG	Subject to monitoring of developments in the Credit Suisse group
31.	Credit Suisse Securities (Japan) Limited	Subject to monitoring of developments in the Credit Suisse group
32.	Credit Suisse Securities (USA) LLC	Subject to monitoring of developments in the Credit Suisse group
33.	Deutsche Bank Aktiengesellschaft	
34.	Deutsche Bank Securities Inc.	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain clearing members. We have kept the entity on the FSP List.
35.	Goldman Sachs & Co. LLC	
36.	Goldman Sachs Bank Europe SE	
37.	Goldman Sachs Bank USA	
38.	Goldman Sachs Financial Markets Pty Ltd	
39.	Goldman Sachs International	
40.	Goldman Sachs Japan Co., Ltd.	
41.	HSBC Bank plc	
42.	HSBC Bank USA, National Association	

	Name of the entities	Notes
43.	HSBC Continental Europe	
44.	HSBC Securities (USA) Inc.	
45.	HSBC UK Bank plc	
46.	ING Bank N.V.	
47.	ING Bank Slaski S.A.	
48.	ING-DiBa AG	(Existing) Whilst no longer a clearing member of an IRS CCP, one or more other entities within the GSIB group remain clearing members. We have kept the entity on the FSP List.
49.	J.P. Morgan SE	
50.	J.P. Morgan Securities LLC	
51.	J.P. Morgan Securities plc	
52.	JPMorgan Chase Bank, National Association	
53.	JPMorgan Securities Japan Co., Ltd.	
54.	Merrill Lynch Capital Services Inc.	
55.	Merrill Lynch International	
56.	Mitsubishi UFJ Morgan Stanley Securities Co., Ltd.	
57.	Mizuho Bank, Ltd.	
58.	Mizuho Capital Markets LLC	
59.	Mizuho International plc	
60.	Mizuho Securities USA LLC	
61.	Morgan Stanley & Co. International plc	
62.	Morgan Stanley & Co. LLC	
63.	Morgan Stanley Capital Services LLC	
64.	Morgan Stanley Europe SE	
65.	Morgan Stanley MUFG Securities Co., Ltd.	
66.	MUFG Bank, Ltd.	
67.	MUFG Securities EMEA plc	
68.	National Westminster Bank Plc	
69.	NATIXIS	
70.	NatWest Markets N.V.	
71.	NatWest Markets plc	
72.	Nomura Financial Products & Services, Inc.	

	Name of the entities	Notes
73.	Nomura Financial Products Europe GmbH	
74.	Nomura Global Financial Products, Inc.	
75.	Nomura International plc	
76.	Nomura Securities Co., Ltd.	
77.	Nomura Securities International, Inc.	
78.	Nordea Bank Abp	
79.	RBC Capital Markets, LLC	
80.	RBC Europe Limited	
81.	Royal Bank of Canada	
82.	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 clearing members. We have kept the entity on the FSP List.
83.	Santander US Capital Markets LLC	
84.	SG Americas Securities LLC	
85.	SMBC Capital Markets Inc.	
86.	SMBC Nikko Securities Inc.	
87.	Societe Generale	
88.	Societe Generale International Limited	
89.	Standard Chartered Bank	
90.	Sumitomo Mitsui Banking Corporation	
91.	Sumitomo Mitsui Trust Bank, Limited	
92.	TD Bank, N.A.	
93.	TD Bank USA, N.A.	
94.	TD Global Finance Unlimited Company	
95.	The Bank of New York Mellon	
96.	Toronto-Dominion Bank	
97.	UBS AG	
98.	UBS Europe SE	
99.	UBS Securities LLC	
100.	UBS Switzerland AG	
101.	UniCredit Bank GmbH (previously stated as "UniCredit Bank AG")	Current FSP. Name changed since the last update.

	Name of the entities	Notes
		Part of a group that is no longer a G-SIB. However, it continues to be a clearing member of an IRS CCP. We propose to keep it on the FSP List.
102.	UniCredit Bank Austria AG	(Existing) Part of a group that is no longer a G-SIB. However, it continues to be a clearing member of an IRS CCP. We propose to keep it on the FSP List.
103.	UniCredit S.p.A.	(Existing) Part of a group that is no longer a G-SIB. However, it continues to be a clearing member of an IRS CCP. We propose to keep it on the FSP List.
104.	Wells Fargo Bank, National Association	
105.	Wells Fargo Securities, LLC	