THE
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BY EMAIL ONLY

14 May 2024

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

Dear Sirs,

Joint further consultation on enhancements to the OTC derivatives reporting regime for Hong Kong to mandate – (1) the use of Unique Transaction Identifier, (2) the use of Unique Product Identifier and (3) the reporting of Critical Data Elements

We refer to the captioned consultation, and enclose the Law Society's submissions on the subject matter for your attention.

We have no objection to our submissions being published on your website or on the HKMA's website.

Yours faithfully,

Encl.

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THE LAW SOCIETY OF HONG KONG 香港律師會

JOINT FURTHER CONSULTATION ON ENHANCEMENTS TO THE OTC DERIVATIVES REPORTING REGIME FOR HONG KONG TO MANDATE – (1) THE USE OF UNIQUE TRANSACTION IDENTIFIER, (2) THE USE OF UNIQUE PRODUCT IDENTIFIER AND (3) THE REPORTING OF CRITICAL DATA ELEMENTS

THE LAW SOCIETY'S SUBMISSIONS

The Hong Kong Monetary Authority ("HKMA") and the Securities and Futures Commission ("SFC") jointly issued the "Joint Further Consultation on enhancements to the OTC derivatives reporting regime for Hong Kong to mandate – (1) the use of Unique Transaction Identifier; (2) the use of Unique Product Identifier and (3) the reporting of Critical Data Elements" on 22 March 2024 ("Consultation Paper").

In response, the Law Society provides the following submissions. Unless otherwise defined, the same abbreviations, definitions and references appearing in the Consultation Paper are used in this paper.

Question 1

The HKMA and the SFC are seeking views on the proposal to mandate the use of UTI[1] in submitting transactions to the HKTR[2] from 29 September 2025. If you foresee any operational difficulties in meeting the implementation timeline, please provide specific details.

Law Society's response:

We agree with the proposal to mandate the use of UTI in submitting transactions to the HKTR with effect from 29 September 2025.

Impacted financial institutions will require sufficient time in order to practically implement internal systems and arrangements (including the training of staff) to

[1] Unique Transaction Identifier
[2] Hong Kong Trade Repository

accommodate the mandatory reporting requirement. We consider that the proposed transition date of 29 September 2025 provides a reasonable period of time in which to complete the necessary upgrading.

Question 2

Do you have any comments or concerns about the proposed steps for counterparties to determine the entity responsible for UTI generation? If you foresee any operational difficulties in implementing the proposals, please provide specific details.

Law Society's response:

We understand the desire to avoid a risk of generating multiple UTIs for the same reportable OTC transaction – hence the preference to have the TG Waterfall[3] as the default generation method.

We agree with the formal removal of bilateral agreement as the default route for UTI generation (and replacement with the TG Waterfall as the methodology for assigning responsibility), subject to there being no restriction on the ability of the parties to (separately) commercially agree as to which party is responsible for generation – i.e. notwithstanding the TG Waterfall, the parties have the freedom to make their own arrangements for responsibility for UTI generation. A party having primary responsibility for UTI generation under the TG Waterfall (while remaining primarily responsible under the TG Waterfall) should have the freedom to sub-contract that responsibility to the other transaction party (or any third party).

There may be circumstances with respect to a particular transaction in which a specific party is better placed to be responsible for UTI generation, and in such circumstances, it perhaps makes good commercial sense for the parties to have the ability to agree that such party takes responsibility.

Question 3

Do you have any comments or concerns about the proposals to require reporting entities to:

(a) make reasonable efforts to provide or obtain a UTI in a timely manner;

Law Society's response:

We have no comments or concerns.

[3] The proposed steps to generate UTI are based on the waterfall of factors as set out in the UTI Technical Guidance.

(b) report an interim-UTI where it is unable to obtain the UTI despite having made reasonable efforts; and

Law Society's response:

We have no comments or concerns.

(c) subsequently report the UTI within two business days after obtaining the UTI?

Law Society's response:

We have no comments or concerns. We understand the reference to "business day" to be a reference to a Hong Kong business day.

If you foresee any operational difficulties in implementing the proposals or have other comments, please provide specific details.

Law Society's response:

We have no comments or concerns.

Question 4

The HKMA and the SFC are seeking views on the proposed approaches to the UPIs:

(a) the proposal to fully adopt the UPI[4] Technical Guidance and the ISO 4914 standard for the structure and format of UPI to be implemented in Hong Kong; and

Law Society's response:

We consider this approach to be sensible, given that it will align Hong Kong with existing international standards.

(b) the proposal to mandate the use of the UPI for the underlying derivatives of each submitted reportable transaction to the HKTR from 29 September 2025.

Law Society's response:

No comment.

If you foresee any operational difficulties in meeting the implementation timeline or have other comments, please provide specific details.

[4] Unique Product Identifier

Law Society's response:

No comment.

Question 5

The HKMA and the SFC are seeking comments on the proposed data elements and their definitions, formats and allowable values as set out in Appendix B. If there are data elements that you consider should be excluded or modified, or that you foresee any operational difficulties in implementing the proposal, please provide specific details and elaborate on the rationale.

Law Society's response:

Our only comment regarding Appendix B is to question whether there is a genuine need behind collecting more than 200 data points on each OTC trade. In our view, this is excessive.

In an industry already burdened by a high level of market regulation, regulators should ensure that the regulatory burden placed on market participants is no greater than that actually necessary in order to achieve: (i) at a general level, efficient and well-regulated markets, and (ii) specifically, the underlying purpose(s) of the UTI/UPI/reporting regime.

The cost of regulatory compliance can be a challenge for financial institutions (certainly at the smaller end of the market) and could incentivise parties to move business to other jurisdictions.

If any of these data points not essential, they should be removed.

Question 6

Do you consider there are other data elements that the HKMA and the SFC should include in Appendix B? If so, please suggest the data elements together with the purposes, definitions, formats and allowable values of the suggested data elements.

Law Society's response:

No comment.

Question 7

The HKMA and the SFC are seeking comments on the proposals regarding the above data elements for Hong Kong's reporting requirements. If you foresee any operational difficulties in implementing the proposal or have other comments, please provide specific details.

Law Society's response:

No comment.

Question 8

Do you foresee any difficulties in implementing the list of proposed data elements specified in Appendix B for OTC derivatives trade reporting on the implementation date? If so, please specify the data field(s) and provide specific details and reasons.

Law Society's response:

No comment.

Question 9

Do you have any comments or concerns on the below?

(a) The proposed approach of requiring re-reporting of live legacy transactions with maturity of more than one year as at the implementation date, and providing a six-month transition period for these reportable legacy transactions to be re-reported; and

Law Society's response:

No comment.

(b) Are there any particular data fields that a reporting entity may find challenging in re-reporting a legacy transaction? If so, please specify the data field(s) and provide specific details.

Law Society's response:

No comment.

Question 10

The HKMA and the SFC are seeking comments on the adoption of the ISO 20022 XML message standard for OTC derivatives reporting to the HKTR and on implementing ISO 20022 XML message standard at the same time when we implement the UTI, UPI and CDE[5]. If you foresee any operational difficulties in implementing the proposals, please provide specific details.

Law Society's response:

We consider this approach to be sensible, given that it would achieve alignment of Hong Kong's approach with internationally adopted standards and methodologies.

There will, of course, be operational challenges in implementing the proposals, however, we consider that this concern can be somewhat mitigated by: (i) the fact that these are international standards (and there is likely to be existing familiarity/know-how amongst market participants); and (ii) the proposed time period for adoption in Hong Kong, which allows for operational difficulties to be worked through.

The Law Society of Hong Kong
14 May 2024

[5] critical OTC derivatives data elements