

*Legislative Council
Panel on Financial Affairs*

Proposed Implementation of the
Securities and Futures
(OTC Derivative Transactions –
Reporting and Record Keeping
Obligations) Rules

5 January 2015



中華人民共和國香港特別行政區政府
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

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1. Background

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Background of Regulatory Developments

October
2011

HKMA and SFC issued a joint public consultation paper on the proposed regulatory regime for the OTC derivatives market

July
2012

HKMA and SFC issued a joint supplemental public consultation paper on the proposed licensing regime for the new/expanded regulated activities and the oversight of systemically important participants

26 March
2014

Legislative Council ("LegCo") enacted the Securities and Futures (Amendment) Ordinance 2014 ("Amendment Ordinance")

July
2014

HKMA and SFC issued a joint public consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules ("Reporting Rules")

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Phased Implementation

Amendment Ordinance

- Amendment Ordinance provides for new regulatory regime with mandatory reporting, clearing and trading obligations
- Amendment Ordinance will commence in phases.
- First Commencement Notice (for commencing the relevant provisions for mandatory reporting, record keeping and the general framework of the regime) will be tabled for negative vetting by LegCo in Q1 2015

Subsidiary legislation

- First phase starting with mandatory reporting and related record keeping obligations
- First batch of subsidiary legislation, including the Reporting Rules, will be tabled for negative vetting by LegCo in Q1 2015
- Mandatory clearing and its related record keeping obligations will be implemented in a later phase.

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2. Main Proposals for Mandatory Reporting

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Main Proposals for Mandatory Reporting

- **Reportable transactions at the initial stage:**

Product class	Product type
Interest rate swaps ("IRS")	<ul style="list-style-type: none">- plain vanilla IRS (floating vs. fixed)- plain vanilla basis swap (floating vs. floating) <p>in each case, in currencies and floating rate indices to be specified by the HKMA</p>
Non-deliverable forwards ("NDF")	<ul style="list-style-type: none">- NDF in currencies to be specified by the HKMA

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Main Proposals for Mandatory Reporting

- **Reporting entities in the first phase:**

- Authorized institutions ("AIs")
- Approved money brokers ("AMBs")
- Licensed corporations ("LCs")
- Central counterparties that provide clearing services to persons in Hong Kong ("CCPs")

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Main Proposals for Mandatory Reporting

- **Reporting obligation – AIs, AMBs and LCs:**
 - To report transactions that they are a counterparty to
 - To report transactions that they have conducted in Hong Kong on behalf of an affiliate
- **Reporting obligation – CCPs:**
 - RCHs to report transactions that they have entered into as a counterparty (as part of the clearing process)
 - Authorized providers of ATS to report transactions that they have entered into as a counterparty (as part of the clearing process) and only where the other counterparty is a Hong Kong incorporated company

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Main Proposals for Mandatory Reporting

- **Reporting to include:**
 - Report new transactions (i.e. reportable transactions entered into after the Reporting Rules come into effect)
 - Backload outstanding historical transactions (i.e. reportable transactions entered into before the Reporting Rules come into effect but which are still outstanding at that time) – applicable to counterparty transactions only
 - Report subsequent events

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Main Proposals for Mandatory Reporting

- **Information to be reported:**
 - As set out in the Reporting Rules
 - Valuation transaction information to be reported daily after 2015, pending system development

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Main Proposals for Mandatory Reporting

Exemptions:

- AIs, AMBs and LCs taken to have complied if their affiliate has confirmed in good faith that it has reported transactions that they have “conducted in Hong Kong” for the affiliate
- Exempt person relief for small players that are not active in the OTC derivatives market – notional outstanding \leq USD 30 million
- No substituted compliance, must report to HKTR

Concession Period and grace period:

- Concession period of 6 months for setting up system
- Another 3 months thereafter for backloading (total grace period of 9 months)
- New concession period and grace period available when a new ¹² type of transaction is made reportable in the future



Main Proposals for Mandatory Reporting

- **Use and disclosure of data collected by HKTR:**
 - Regulatory and market surveillance purposes
 - Share with overseas regulators and trade repositories where appropriate
 - Public disclosure will be in summary form



3. Main Proposals for Mandatory Record Keeping



Main Proposals for Mandatory Record Keeping

- To supplement the mandatory reporting obligation
- For effective monitoring and ascertaining compliance
- Reporting entities to keep sufficient records to demonstrate compliance/ entitlement to exemptions or reliefs
- Record retention period of 5 years from maturity or termination of transactions

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Market Views

Respondents to the Consultation

- Financial institutions
- Providers of market infrastructure
- Consulting firms
- Industry bodies
- A professional body
- An end-user

Market feedback mainly focused on

- the timing for implementation of the Reporting Rules
- the duration of the concession period
- implementing reporting in phases (by the types of counterparties)
- extending the types of exemptions and reliefs, including permitting substituted compliance
- relaxing certain exemptions and reliefs
- relaxing the record keeping requirements
- technical comments and clarifications

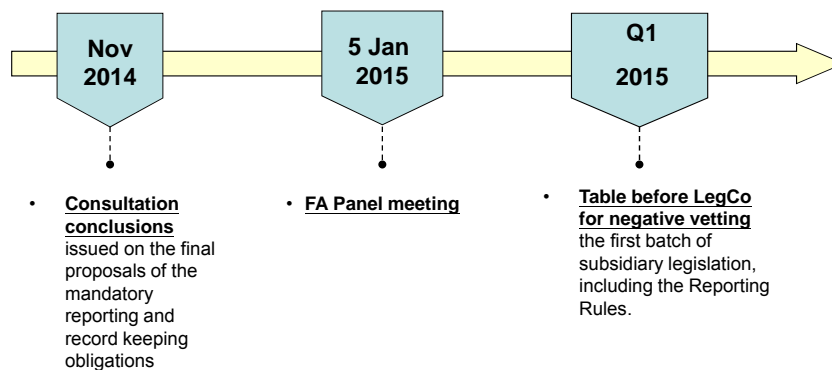
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3. Way Forward



Timeline: Regulatory Developments



Thank You