

**L.N. 96 of 2015**

**Securities and Futures (OTC Derivative Transactions—  
Reporting and Record Keeping Obligations) Rules**

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## **Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules**

(Made by the Securities and Futures Commission under sections 101L and 101P of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary)

### **Part 1**

#### **Preliminary**

##### **1. Commencement**

- (1) Subject to subrule (2), these Rules come into operation on 10 July 2015.
- (2) Rule 15 comes into operation on a day to be appointed by the Securities and Futures Commission by notice published in the Gazette.

##### **2. Interpretation**

In these Rules—

**affiliate** (聯屬公司), in relation to a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker, means a corporation that is in the same group of companies as the person, except a corporation that is a collective investment scheme;

**ATS-CCP** (自動化交易服務中央對手方) means a person authorized under section 95(2) of the Ordinance to provide automated trading services, but only when the person is—

- (a) providing services that it is authorized to provide; and
- (b) acting in its capacity as a central counterparty;

**electronic reporting system** (電子匯報系統) means the electronic system operated by or on behalf of the Monetary Authority for submitting and receiving reports on specified OTC derivative transactions for the purposes of these Rules and section 101B of the Ordinance;

**exempt person** (獲豁免人士) has the meaning given by rule 3;

**local branch** (本地分行), in relation to a prescribed person that is an authorized financial institution incorporated outside Hong Kong, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155) except that it includes its principal place of business in Hong Kong;

**outstanding** (未完結), in relation to an OTC derivative transaction on a particular day, means the transaction has not, as at that day, matured or been terminated;

**product class** (產品類別) means a class of OTC derivative transactions specified in column 2 of Part 2 of Schedule 1;

**product class specification day** (產品類別指明日期), in relation to a product class, means the day specified in column 3 of Part 2 of Schedule 1;

**product type** (產品類型) means a type of OTC derivative transaction within a product class, specified in column 3 of Part 3 of Schedule 1;

**product type specification day** (產品類型指明日期), in relation to a product type, means the day specified in column 4 of Part 3 of Schedule 1;

**RCH** (認可結算所) means a person that is a recognized clearing house, but only when the person is acting in its capacity as a central counterparty;

***regulated prescribed person*** (受規管訂明人士), in relation to a product type, means the following prescribed persons—

- (a) a licensed corporation that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (b) an authorized financial institution that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (c) an approved money broker that is not an exempt person in relation to a specified OTC derivative transaction within the product class to which the product type belongs;
- (d) an RCH;
- (e) an ATS-CCP;

***specified OTC derivative transaction*** (指明場外衍生工具交易) has the meaning given by section 101A of the Ordinance;

***starting day*** (開始日期), in relation to a specified OTC derivative transaction to which a regulated prescribed person is a counterparty, means the later of—

- (a) the product type specification day for the product type to which the transaction belongs; and
- (b) the day on which the person becomes a regulated prescribed person in relation to the product type;

***subsequent event*** (其後事件), in relation to a specified OTC derivative transaction, means an event that occurs after the transaction was entered into, and which affects the terms and conditions on which the transaction was entered into or the persons involved in entering into the transaction;

***terminated*** (被終止), in relation to an OTC derivative transaction, means the transaction is terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction, before the transaction matures;

***transaction information*** (交易資料), in relation to a specified OTC derivative transaction, means the information and particulars specified in Part 4 of Schedule 1 relating to the transaction (including information and particulars relating to a subsequent event), and the persons involved in the transaction, which must be submitted to the Monetary Authority for complying with the reporting obligation.

### 3. When prescribed person to be regarded as exempt person

- (1) Subject to subrule (4), for the purposes of rules 10(1)(a), 11(1)(a), 12(1)(a) and 13(1)(a), a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is to be regarded as an exempt person in relation to a specified OTC derivative transaction within a product class if the person satisfies the requirements in subrule (2).
- (2) The requirements are that, on or at any time after the product class specification day—
  - (a) the sum of the notional amounts of all outstanding OTC derivative transactions within the product class (whether or not the transactions are specified OTC derivative transactions) to which the prescribed person is a counterparty does not exceed US\$30 million;
  - (b) rule 10(1)(b), 11(1)(b), 12(1)(c) or 13(1)(b) (as applicable) does not apply to the prescribed person in relation to a specified OTC derivative transaction within the product class; and



- (c) if the prescribed person is an authorized financial institution incorporated outside Hong Kong, rule 12(1)(b) does not apply to the person in relation to a specified OTC derivative transaction within the product class.
- (3) For the purposes of subrule (2)(a), a prescribed person that is an authorized financial institution incorporated outside Hong Kong is to be regarded as a counterparty to an OTC derivative transaction if the person is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch of the person.
- (4) Despite subrule (1), a prescribed person that is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is not to be regarded as an exempt person for the purposes of rule 11(1)(a) or 12(1)(a) (as applicable) in relation to a specified OTC derivative transaction within a product class if the person is taken to have submitted the transaction information for a specified OTC derivative transaction within the product class under rule 22(6).
- (5) A prescribed person that ceases to satisfy a requirement in subrule (2)—
  - (a) is not eligible to be regarded as an exempt person in relation to any other specified OTC derivative transaction within the same product class; and
  - (b) is to be regarded as becoming a regulated prescribed person in relation to a product type within the product class on the day on which the person ceases to satisfy the requirement.

**4. When prescribed person to be regarded as having conducted transaction in Hong Kong on behalf of affiliate**

- (1) For the purposes of rules 10(1)(b), 11(1)(b), 12(1)(c) and 13(1)(b), a prescribed person is to be regarded as having conducted a specified OTC derivative transaction in Hong Kong on behalf of an affiliate of the person if—
- (a) the affiliate is a counterparty to the transaction; and
  - (b) one of the individuals who made the decision for the affiliate to enter into the transaction—
    - (i) acted in his or her capacity as a trader; and
    - (ii) was employed or engaged by the person to perform his or her duties predominantly in Hong Kong.
- (2) Subrule (1) applies to a prescribed person in relation to a specified OTC derivative transaction even if the transaction was conducted wholly or partially outside Hong Kong.

**5. Persons specified as prescribed persons for reporting obligation**

For the purposes of paragraph (a)(iv) of the definition of *prescribed person* in section 101A of the Ordinance, the following persons are specified as being subject to the reporting obligation—

- (a) an RCH;
- (b) an ATS-CCP.

**6. Persons specified as prescribed persons for record keeping obligation**

For the purposes of paragraph (d)(iv) of the definition of *prescribed person* in section 101A of the Ordinance, the persons specified as being subject to the record keeping obligation are the persons specified under rule 5 as being subject to the reporting obligation.

**7. Transactions that are specified OTC derivative transactions for purposes of reporting obligation**

For the purposes of paragraph (a) of the definition of *specified OTC derivative transaction* in section 101A of the Ordinance, an OTC derivative transaction in a product type is specified for the purposes of the reporting obligation.

**8. Transactions that are specified OTC derivative transactions for purposes of record keeping obligation**

For the purposes of paragraph (d) of the definition of *specified OTC derivative transaction* in section 101A of the Ordinance, an OTC derivative transaction in a product type is specified for the purposes of the record keeping obligation.

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## **Part 2**

### **Reporting Obligation**

#### **Division 1—Reporting by Prescribed Persons**

##### **9. When reporting obligation arises**

- (1) A prescribed person that is required by rule 10, 11, 12, 13, 14 or 15 to report a specified OTC derivative transaction to the Monetary Authority must report the transaction to the Monetary Authority in accordance with rule 20 in the circumstances specified in subrule (2).
- (2) The circumstances are—
  - (a) when rule 10, 11, 12, 13, 14 or 15 first begins to apply to the prescribed person in relation to the specified OTC derivative transaction; and
  - (b) if applicable, each time a subsequent event occurs while the transaction is still outstanding.

##### **10. Reporting by licensed corporations**

- (1) A prescribed person that is a licensed corporation must report a specified OTC derivative transaction to the Monetary Authority if the person—
  - (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.

- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.

**11. Reporting by authorized financial institutions incorporated in Hong Kong**

- (1) A prescribed person that is an authorized financial institution incorporated in Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—
- (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.

**12. Reporting by authorized financial institutions incorporated outside Hong Kong**

- (1) A prescribed person that is an authorized financial institution incorporated outside Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—
- (a) subject to subrule (3), is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch of the person;
  - (b) is a counterparty to the transaction and—

- (i) the transaction is recorded in the form of an entry in the books of—
    - (A) the principal place of business outside Hong Kong of the person; or
    - (B) a branch (other than a local branch) of the person; and
  - (ii) one of the individuals who made the decision for the person to enter into the transaction—
    - (A) acted in his or her capacity as a trader; and
    - (B) was employed or engaged by the person to perform his or her duties predominantly in Hong Kong; or
  - (c) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.

### **13. Reporting by approved money brokers**

- (1) A prescribed person that is an approved money broker must report a specified OTC derivative transaction to the Monetary Authority if the person—
- (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).

- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (3) Subrule (1)(a) does not apply to a prescribed person that is an exempt person in relation to the specified OTC derivative transaction.

**14. Reporting by RCHs**

- (1) A prescribed person that is an RCH must report a specified OTC derivative transaction to the Monetary Authority if the person is a counterparty to the transaction.
- (2) The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

**15. Reporting by ATS-CCPs**

- (1) A prescribed person that is an ATS-CCP must report a specified OTC derivative transaction to the Monetary Authority if the person is a counterparty to the transaction and the other counterparty to the transaction is a company.
- (2) The transaction referred to in subrule (1) includes a transaction that is still outstanding on the starting day.

**16. Reporting obligation applies even if counterparty, or transaction entered into, outside Hong Kong**

For the purposes of this Division, a prescribed person must report a specified OTC derivative transaction to the Monetary Authority even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into wholly or partially outside Hong Kong.

## **Division 2—Circumstances in which Reporting Obligation is Taken to have been Complied with**

- 17. Licensed corporations, authorized financial institutions or approved money brokers taken to have reported entering into of transaction if affiliate has reported**
- (1) If a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is required by rule 10(1)(b), 11(1)(b), 12(1)(c) or 13(1)(b) to report a specified OTC derivative transaction to the Monetary Authority in a circumstance specified in rule 9(2)(a), the person is taken to have complied with the reporting obligation in that circumstance if the person satisfies the requirement in subrule (2).
  - (2) The requirement is that the prescribed person has received, in good faith, a written confirmation from the affiliate of the person on whose behalf the person conducted the specified OTC derivative transaction in Hong Kong that the affiliate has reported the entering into of the transaction to the Monetary Authority (whether directly or indirectly) in accordance with rule 20 (as that rule applies to the person in relation to the circumstance).
- 18. Licensed corporations, authorized financial institutions or approved money brokers taken to have reported subsequent event if affiliate has reported**
- (1) If a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker is required by rule 10(1)(b), 11(1)(b), 12(1)(c) or 13(1)(b) to report a specified OTC derivative transaction to the Monetary Authority in a circumstance specified in rule 9(2)(b), the person is taken to have complied with the



reporting obligation in that circumstance if the person satisfies the requirement in subrule (2).

- (2) The requirement is that the prescribed person has received, in good faith, a written confirmation from the affiliate of the person on whose behalf the person conducted the specified OTC derivative transaction in Hong Kong that the affiliate has reported the subsequent event to the Monetary Authority (whether directly or indirectly) in accordance with rule 20 (as that rule applies to the person in relation to the circumstance).

### **Division 3—Reporting to Monetary Authority**

#### **19. Interpretation of Division 3**

In this Division—

***concession period*** (延緩期), in relation to a specified OTC derivative transaction in a product type that is required to be reported by a prescribed person that—

- (a) is a regulated prescribed person in relation to the product type on the product type specification day, means the period of 6 months beginning on the product type specification day; and
- (b) becomes a regulated prescribed person in relation to the product type within 6 months after the product type specification day, means the period beginning on the day on which the person becomes a regulated prescribed person and ending on the day that is 6 months after the product type specification day;

***grace period*** (寬限期), in relation to a specified OTC derivative transaction in a product type that is required to be reported by a prescribed person that—

- (a) is a regulated prescribed person in relation to the product type on the product type specification day, means the period of 9 months beginning on the product type specification day;
- (b) becomes a regulated prescribed person in relation to the product type within 6 months after the product type specification day, means the period beginning on the day on which the person becomes a regulated prescribed person and ending on the day that is 9 months after the product type specification day; and
- (c) becomes a regulated prescribed person in relation to the product type more than 6 months after the product type specification day, means the period of 3 months beginning on the day on which the person becomes a regulated prescribed person.

**20. Transaction information to be submitted to Monetary Authority in accordance with this Division**

A prescribed person that is required by rule 9(1) to report a specified OTC derivative transaction to the Monetary Authority must submit the transaction information for the transaction to the Monetary Authority in accordance with this Division.

**21. Reporting by means of electronic reporting system**

- (1) The transaction information for a specified OTC derivative transaction that is required to be submitted to the Monetary Authority under these Rules is to be regarded as duly submitted only if it is submitted—
  - (a) by means of the electronic reporting system; and
  - (b) in accordance with the directions and instructions referred to in subrule (2).

- (2) The Monetary Authority must publish, in the manner the Monetary Authority considers appropriate, directions and instructions for the use of the electronic reporting system and the submission of the transaction information for a specified OTC derivative transaction by means of the system.

**22. Reporting outstanding transactions and transactions entered into during concession period**

- (1) Subject to subrules (5) and (6), a prescribed person referred to in subrule (2) and to which the requirement in subrule (3) applies must submit the transaction information for a specified OTC derivative transaction to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to a prescribed person that—
  - (a) is a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs on the product type specification day; or
  - (b) becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs within 6 months after the product type specification day.
- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction—
  - (a) that is still outstanding on the first day of the grace period; or
  - (b) that is entered into during the concession period.
- (4) The transaction information for a specified OTC derivative transaction referred to in subrule (1) is—

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- (a) if the transaction information is submitted during the concession period, the transaction information as at a day which is not earlier than 2 business days before the day on which the transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into; or
  - (b) if the transaction information is submitted after the concession period, the transaction information comprising—
    - (i) the transaction information as at the end of the concession period, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into; and
    - (ii) in chronological order, the transaction information for each subsequent event that has occurred since the end of the concession period until a day which is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) A prescribed person is not required to submit the transaction information for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period to the Monetary Authority.
- (6) A prescribed person that is an authorized financial institution is taken to have submitted the transaction information for a specified OTC derivative transaction referred to in subrule (3)(a) to the Monetary Authority under subrule (1) on the day on which these Rules commence if—
- (a) the person is a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155); and

- (b) before the day on which these Rules commence, the person has submitted the transaction information (or information and particulars which in the opinion of the Monetary Authority are substantially similar to the transaction information) for the transaction to the Monetary Authority.

**23. Reporting outstanding transactions where no concession period**

- (1) Subject to subrule (5), a prescribed person referred to in subrule (2) and to which the requirement in subrule (3) applies must submit the transaction information for a specified OTC derivative transaction to the Monetary Authority no later than the last day of the grace period.
- (2) Subrule (1) applies to a prescribed person that becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs more than 6 months after the product type specification day.
- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction that is still outstanding on the first day of the grace period.
- (4) The transaction information for a specified OTC derivative transaction referred to in subrule (1) is the transaction information comprising—
  - (a) the transaction information as at the first day of the grace period, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into; and

- (b) in chronological order, the transaction information for each subsequent event that has occurred since the first day of the grace period until a day which is not earlier than 2 business days before the day on which the transaction information is submitted.
- (5) A prescribed person is not required to submit the transaction information for a specified OTC derivative transaction that has matured or been terminated before the end of the grace period to the Monetary Authority.

**24. Reporting transactions entered into after concession period, or where no concession period**

- (1) A prescribed person referred to in subrule (2) and to which the requirement in subrule (3) applies must submit the transaction information for a specified OTC derivative transaction to the Monetary Authority within 2 business days after the transaction is entered into.
- (2) Subrule (1) applies to a prescribed person that—
  - (a) is a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs on the product type specification day;
  - (b) becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs within 6 months after the product type specification day; or
  - (c) becomes a regulated prescribed person in relation to the product type to which the specified OTC derivative transaction belongs more than 6 months after the product type specification day.

- (3) The requirement referred to in subrule (1) is a requirement to report to the Monetary Authority a specified OTC derivative transaction—
  - (a) for a prescribed person referred to in subrule (2)(a) or (b), that is entered into after the end of the concession period; or
  - (b) for a prescribed person referred to in subrule (2)(c), that is entered into on or after the first day of the grace period.

## **25. Reporting subsequent events**

- (1) Subject to subrules (2) and (3), a prescribed person that has submitted, or is required to submit, the transaction information for a specified OTC derivative transaction to the Monetary Authority in accordance with rule 22, 23 or 24 (including a prescribed person that has submitted the transaction information for a specified OTC derivative transaction to the Monetary Authority despite rule 22(5) or 23(5)) must submit the transaction information for a subsequent event to the Monetary Authority within 2 business days after the event occurs.
- (2) If a prescribed person submitted the transaction information for one, or more than one, subsequent event to the Monetary Authority under rule 22(4) or 23(4), subrule (1) applies to the person only in relation to a subsequent event that occurs after the last subsequent event that was included in the submission.
- (3) If a prescribed person is required to submit the transaction information for a subsequent event to the Monetary Authority under subrule (1), and more than one subsequent event occurs on the same day, the person is only required to submit the transaction information once for that day provided that the transaction information

submitted incorporates all of the subsequent events that occurred on that day.

- (4) Subrule (1) does not require a person to submit the transaction information for a subsequent event that has occurred after the day on which the person ceases to be a prescribed person.

**26. Submitting counterparty identifying particulars in certain circumstances**

(1) A prescribed person that submits the transaction information for a specified OTC derivative transaction to the Monetary Authority in accordance with rule 22, 23 or 24 (including a prescribed person that submits the transaction information for a specified OTC derivative transaction to the Monetary Authority despite rule 22(5) or 23(5)) may submit counterparty masking particulars instead of counterparty identifying particulars in relation to a counterparty to the transaction (other than the person) if—

- (a) both of the following requirements are satisfied—
- (i) the submission of the counterparty identifying particulars is prohibited under the laws of, or by an authority or regulatory organization in, a jurisdiction;
  - (ii) the jurisdiction referred to in subparagraph (i) is a jurisdiction designated by the Commission in accordance with subrule (3); or
- (b) both of the following requirements are satisfied—
- (i) the transaction is entered into before the day which is 6 months after the day on which these Rules commence;



- (ii) the counterparty consent limitation applies to the person in relation to the transaction.
- (2) A prescribed person that has submitted counterparty masking particulars under subrule (1) must submit counterparty identifying particulars in relation to the counterparty to the transaction within the following period, unless the transaction has matured or been terminated by the last day of the period—
  - (a) if the person submitted the counterparty masking particulars under subrule (1)(a) and the prohibition referred to in subrule (1)(a)(i) ceases to apply to the transaction—
    - (i) unless subparagraph (ii) applies, 3 months after the day on which the Commission revokes the designation of the jurisdiction under subrule (4);  
or
    - (ii) if the counterparty consent limitation applies to the person in relation to the transaction on the last day of the period referred to in subparagraph (i), 1 month after the day on which the counterparty consent limitation ceases to apply to the person in relation to the transaction;
  - (b) if the person submitted the counterparty masking particulars under subrule (1)(b), 1 month after the day on which the counterparty consent limitation ceases to apply to the person in relation to the transaction.
- (3) For the purposes of subrule (1)(a)(ii), the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any jurisdiction outside Hong Kong if the Commission is satisfied that it

is likely that the laws of, or an authority or regulatory organization in, that jurisdiction would prohibit the submission of the counterparty identifying particulars in relation to a counterparty to a specified OTC derivative transaction.

- (4) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a jurisdiction made under subrule (3).
- (5) A notice published in the Gazette by the Commission under subrule (3) or (4) is not subsidiary legislation.
- (6) In this rule—

***counterparty consent limitation*** (對手方的同意限制), in relation to a prescribed person, means the person cannot submit counterparty identifying particulars for a specified OTC derivative transaction because the person is required to obtain consent from a counterparty to the transaction (other than the person) to the submission of the particulars and, despite reasonable efforts, the person has been unable to obtain consent from the counterparty;

***counterparty identifying particulars*** (識別對手方身分的詳情) means the transaction information referred to in item 3, 8(e) or 9(d) or (e) (as applicable) in Part 4 of Schedule 1 for a specified OTC derivative transaction from which the identity of a counterparty to the transaction may be ascertained;

***counterparty masking particulars*** (掩蓋對手方身分的詳情) means the particulars of a counterparty to a specified OTC derivative transaction which describe the counterparty in a way which prevents the ascertainment of the identity of the counterparty.

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## **Part 3**

### **Record Keeping Obligation**

#### **27. Prescribed persons to keep records in relation to transactions**

A prescribed person must, in relation to a specified OTC derivative transaction, keep the records specified in rule 29(1) in the manner specified in rule 30 until no earlier than 5 years after the transaction has matured or been terminated.

#### **28. Prescribed persons to keep records even if counterparty, or transaction entered into, or conducted, outside Hong Kong**

Rule 27 applies to a specified OTC derivative transaction even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into or conducted wholly or partially outside Hong Kong.

#### **29. Records to be kept by prescribed persons**

- (1) The records that a prescribed person must keep in relation to a specified OTC derivative transaction are—
  - (a) records sufficient to demonstrate that the person has complied with rule 9;
  - (b) without limiting paragraph (a)—
    - (i) the records specified in Schedule 2 relating to the transaction; and
    - (ii) if the person engaged an agent to report the transaction to the Monetary Authority on its behalf—

- (A) records relating to the agreement between the person and the agent; and
  - (B) records sufficient to demonstrate that the person monitored the reporting by the agent;
- (c) if rule 10, 11, 12 or 13 (as applicable) does not apply to the person in relation to the transaction because the person is an exempt person in relation to the transaction—
- (i) the records specified in Schedule 2 relating to the transaction; and
  - (ii) records sufficient to demonstrate that the person satisfied the requirements in rule 3(2) at the time the person would, but for rule 3, have been required to report the transaction to the Monetary Authority, including records of any calculation performed for the purpose of ascertaining whether the person satisfied the requirement in rule 3(2)(a);
- (d) if rule 17 or 18 applies to the person in relation to the transaction (the affiliate of the person has reported the entering into of the transaction or the subsequent event to the Monetary Authority), the confirmation received from the affiliate; and
- (e) if rule 22(5) or 23(5) applies to the person in relation to the transaction (the transaction has matured or been terminated before the end of the grace period), the records specified in Schedule 2 relating to the transaction.
- (2) In this rule—
- grace period*** (寬限期) has the meaning given by rule 19.

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**30. Manner in which records to be kept**

A prescribed person must, in relation to a specified OTC derivative transaction, keep the records specified in rule 29(1) in a manner that enables the records to be readily accessible.

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## Part 4

### Subsidiaries Specified by Monetary Authority under Section 101B(5) or 101E(5) of Ordinance—Reporting and Record Keeping Obligations

#### 31. Interpretation of Part 4

In this Part—

***cessation day*** (終止日期), in relation to a specified subsidiary, means the day notified by the Monetary Authority to the authorized financial institution incorporated in Hong Kong of which it is a subsidiary as the day on which the specification of the subsidiary is to cease to have effect for the purposes of section 101B(3) or 101E(3) (as applicable) of the Ordinance;

***effective day*** (生效日期), in relation to a specified subsidiary, means the later of—

- (a) the day on which the Monetary Authority's written notice under section 101B(5) or 101E(5) (as applicable) of the Ordinance is given to the authorized financial institution incorporated in Hong Kong of which it is a subsidiary; and
- (b) the day specified in the notice referred to in paragraph (a) as the day on which the specification of the subsidiary is to take effect for the purposes of section 101B(3) or 101E(3) (as applicable) of the Ordinance;

***specified subsidiary*** (指明附屬公司), in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—

- (a) in relation to the reporting obligation, a subsidiary specified by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance; and
- (b) in relation to the record keeping obligation, a subsidiary specified by the Monetary Authority under section 101E(5) of the Ordinance for the purposes of section 101E(3) of the Ordinance.

**32. Reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified subsidiaries**

- (1) Subject to subrule (6), for the purposes of section 101B(3) of the Ordinance, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a specified subsidiary of the institution complies with the requirement in subrule (2).
- (2) The requirement referred to in subrule (1) is that, subject to the modifications specified in subrule (5), the specified subsidiary complies with rules 9 and 11 in relation to a specified OTC derivative transaction to which it is a counterparty, as if it were an authorized financial institution incorporated in Hong Kong to which rule 11(1)(a) applies.
- (3) For the purposes of section 101E(3) of the Ordinance, a prescribed person that is an authorized financial institution incorporated in Hong Kong must ensure that a specified subsidiary of the institution complies with the requirement in subrule (4).

- (4) The requirement referred to in subrule (3) is that, subject to the modifications specified in subrule (5), the specified subsidiary complies with rule 27 in relation to a specified OTC derivative transaction to which it is a counterparty, as if it were an authorized financial institution incorporated in Hong Kong to which that rule applies.
  - (5) The modifications referred to in subrules (2) and (4) are—
    - (a) a reference to a prescribed person that is a regulated prescribed person, or to a prescribed person that is an authorized financial institution incorporated in Hong Kong (other than an institution that is an exempt person in relation to a specified OTC derivative transaction), is to be construed as a reference to a specified subsidiary;
    - (b) a reference to a day on which a prescribed person is or becomes a regulated prescribed person is to be construed in relation to a specified subsidiary as a reference to the effective day; and
    - (c) a reference to a day on which a person ceases to be a prescribed person is to be construed in relation to a specified subsidiary as a reference to the cessation day.
  - (6) This rule is not to be construed as requiring an authorized financial institution incorporated in Hong Kong to ensure that a specified subsidiary of the institution complies with rule 9 in relation to a specified OTC derivative transaction to which the subsidiary is a counterparty, if rule 11(1)(b) requires the institution to report the same transaction to the Monetary Authority.
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## Schedule 1

[rr. 2 & 26]

# Specified OTC Derivative Transactions and Transaction Information to be Submitted to Monetary Authority

## Part 1

### Interpretation

#### 1. Interpretation

In this Schedule—

***interest rate swap*** (掉期息率) means an OTC derivative transaction under the terms and conditions of which—

- (a) the 2 counterparties to the transaction agree to exchange interest rate cash flows at specified intervals while the transaction is still outstanding; and
- (b) the payments are to be calculated by reference to—
  - (i) a notional amount that is denominated in a single currency; and
  - (ii) agreed interest rates or interest rate indexes;

***non-deliverable forward*** (不交收遠期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree that—

- (a) 1 counterparty is to purchase from the other counterparty a notional amount of a currency for settlement on a single date in the future;
- (b) on settlement of the transaction, the purchase is to be settled—
  - (i) on a net cash payment basis (without physical delivery of the reference currency); and

- (ii) in an agreed currency that is not the same currency as the reference currency; and
- (c) the amount to be paid by 1 counterparty to the other counterparty is the difference between the values of the notional amount of the reference currency, denominated in the settlement currency, calculated using—
  - (i) an agreed currency exchange rate (whether express or implied); and
  - (ii) a market currency exchange rate (as determined in accordance with the terms and conditions of the transaction) that is prevailing on an agreed future date;

**payments** (付款), in relation to an OTC derivative transaction that is an interest rate swap, means the interest rate cash flows referred to in paragraph (a) of the definition of **interest rate swap** in this section;

**reference currency** (參考貨幣), in relation to an OTC derivative transaction that is a non-deliverable forward, means the currency referred to in paragraph (a) of the definition of **non-deliverable forward** in this section;

**settlement currency** (交收貨幣), in relation to an OTC derivative transaction that is a non-deliverable forward, means the agreed currency referred to in paragraph (b)(ii) of the definition of **non-deliverable forward** in this section;

**specified currency** (指明貨幣) means a currency that is specified by the Monetary Authority by notice published in the Gazette;

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***specified floating interest rate index*** (指明浮動息率指數) means a floating interest rate index specified by the Monetary Authority by notice published in the Gazette.

**2. Monetary Authority notices not subsidiary legislation**

The following notices published in the Gazette are not subsidiary legislation—

- (a) a notice by which the Monetary Authority specifies a currency for the purposes of this Schedule;
- (b) a notice by which the Monetary Authority specifies a floating interest rate index for the purposes of this Schedule.

**Part 2**

**Specified Product Classes**

Column 1	Column 2	Column 3
Item	Product class	Product class specification day
1.	Interest rate swap	10 July 2015
2.	Non-deliverable forward	10 July 2015

## Part 3

### Specified Product Types

Column 1	Column 2	Column 3	Column 4
Item	Product class	Product type	Product type specification day
1.	Interest rate swap	The payments are to be calculated by reference to— (a) a fixed interest rate applied to a notional amount that is denominated in a specified currency; and (b) a specified floating interest rate index applied to the same notional amount.	10 July 2015
2.	Interest rate swap	The payments are to be calculated by reference to— (a) a specified floating interest rate index applied to a notional amount that is denominated in a specified currency; and	10 July 2015

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Column 1	Column 2	Column 3	Column 4
Item	Product class	Product type	Product type specification day
		(b) another specified floating interest rate index applied to the same notional amount.	
3.	Non-deliverable forward	The reference currency is a specified currency and the settlement currency is a specified currency.	10 July 2015

## Part 4

### Transaction Information to be Submitted to Monetary Authority

1. The product class and product type to which the specified OTC derivative transaction belongs.
2. The dates on which the specified OTC derivative transaction—
  - (a) was entered into;
  - (b) starts or otherwise becomes effective; and
  - (c) matures.
3. Particulars of the counterparties to the specified OTC derivative transaction.

4. Information relating to the confirmation of the specified OTC derivative transaction, including particulars of—
  - (a) the platform through which, or the manner in which, the transaction was confirmed; and
  - (b) any identifying reference assigned to the transaction by the platform.
  
5. Information relating to the clearing of the specified OTC derivative transaction, including particulars of—
  - (a) whether the transaction was, or is intended to be, cleared through a central counterparty;
  - (b) if applicable, the central counterparty through which the transaction was, or is intended to be, cleared; and
  - (c) the client clearing services provider (if any) involved in, or intended to be involved in, clearing the transaction.
  
6. Information relating to a subsequent event (being a type of subsequent event for which information may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 21(2)), including particulars of—
  - (a) the date on which the event occurred;
  - (b) the type of the event;
  - (c) the changes to any of the matters referred to in any other item in this Part as a result of the event;
  - (d) the outstanding notional amount after the event; and
  - (e) the currency in which the outstanding notional amount is denominated.

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7. The identifying references assigned to the specified OTC derivative transaction (being types of references that may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 21(2)).
8. If the specified OTC derivative transaction is an interest rate swap, particulars of—
  - (a) the notional amount;
  - (b) the currency in which the notional amount is denominated;
  - (c) the currency in which the payments are to be made, if it is not the same currency as the currency referred to in paragraph (b);
  - (d) each agreed interest rate or interest rate index, including the tenor and spread (if applicable); and
  - (e) for each agreed interest rate or interest rate index, the counterparty to the transaction that has agreed to pay that rate or index.
9. If the specified OTC derivative transaction is a non-deliverable forward, particulars of—
  - (a) the reference currency;
  - (b) the settlement currency;
  - (c) the notional amount of the reference currency—
    - (i) denominated in the reference currency; and
    - (ii) denominated in the settlement currency;
  - (d) the counterparty to the transaction that is the purchaser of the reference currency;

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- (e) the counterparty to the transaction from which the reference currency is to be purchased;
  - (f) the agreed currency exchange rate;
  - (g) the fixing date, being the date referred to in paragraph (c)(ii) of the definition of *non-deliverable forward* in section 1 of Part 1 of this Schedule; and
  - (h) the value date, being the date referred to in paragraph (a) of the definition of *non-deliverable forward* in section 1 of Part 1 of this Schedule.
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## **Schedule 2**

[r. 29]

### **Records to be Kept by Prescribed Persons**

1. Records evidencing the existence and purpose of the specified OTC derivative transaction, including all agreements relating to the transaction.
2. Records showing particulars of the execution of the specified OTC derivative transaction, including orders, ledgers and confirmations of the transaction.
3. Records showing particulars of the terms and conditions of the specified OTC derivative transaction, including particulars relating to all payments and margin requirements relating to the transaction.
4. Records sufficient to demonstrate that the transaction information submitted to the Monetary Authority under Division 3 of Part 2 was accurate.

**Mark STEWARD**  
Acting Chief Executive Officer,  
Securities and Futures Commission

11 May 2015

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## Explanatory Note

The main object of these Rules is, for the purposes of the reporting obligation (the obligation to report specified OTC derivative transactions to the Monetary Authority (*MA*)) imposed on prescribed persons (licensed corporations (*LC*), authorized financial institutions (*AFI*), approved money brokers (*AMB*) and others) by section 101B of the Securities and Futures Ordinance (Cap. 571) (*Ordinance*) and the record keeping obligation (the obligation to keep records relating to specified OTC derivative transactions) imposed on prescribed persons by section 101E of the Ordinance, to specify—

- (a) the additional prescribed persons and the transactions that are subject to the obligations;
  - (b) the circumstances relating to the transactions in which the obligations apply to prescribed persons; and
  - (c) matters relating to compliance with the obligations.
2. Rule 2 sets out the definitions to be used in the Rules.
3. Rule 3 sets out when an LC, AFI or AMB is to be regarded as an exempt person in relation to a specified OTC derivative transaction within a product class. The exempt person status applies on a product class basis.
4. Rule 4 sets out when an LC, AFI or AMB is to be regarded as having conducted a specified OTC derivative transaction in Hong Kong on behalf of an affiliate.

5. Rules 5 and 6 specify certain persons acting in their capacity as central counterparties to be prescribed persons that are subject to the reporting and record keeping obligations.
6. Rules 7 and 8 specify the OTC derivative transactions that are subject to the reporting and record keeping obligations.

### **Rules relating to reporting obligation**

7. Part 2 sets out the circumstances in which the reporting obligation arises (Division 1) and is taken to have been complied with (Division 2), the transaction information that a person must submit to the MA and procedural matters relating to the submission of the transaction information (Division 3).
8. Rule 9 provides that the reporting obligation arises when rule 10, 11, 12, 13, 14 or 15 first begins to apply to a prescribed person in relation to a specified OTC derivative transaction, and each time an event affecting that transaction (*subsequent event*) occurs.
9. Rules 10, 11, 12 and 13 require an LC, AFI or AMB to report the following specified OTC derivative transactions—
  - (a) the transactions to which it is a counterparty, including—
    - (i) transactions entered into before, but still outstanding on, the day on which the relevant product type is specified under rule 7, but excluding transactions in relation to which it is an exempt person;

- (ii) in the case of an AFI incorporated outside Hong Kong, all transactions recorded in the form of an entry in the books of a Hong Kong branch of the AFI, and certain transactions recorded in the form of an entry in the books of the AFI outside Hong Kong;
  - (b) transactions that it has conducted in Hong Kong on behalf of its affiliate that is the counterparty to the transaction.
- 10. Rule 14 requires a recognized clearing house to report the specified OTC derivative transactions to which it is a counterparty when acting in its capacity as a central counterparty.
- 11. Rule 15 requires a person authorized to provide automated trading services to report the specified OTC derivative transactions to which it is a counterparty when acting in its capacity as a central counterparty and the other counterparty is a Hong Kong company.
- 12. Rule 16 applies the reporting obligation to the specified OTC derivative transactions where a counterparty is outside Hong Kong, or which were entered into outside Hong Kong.
- 13. Rules 17 and 18 provide that an LC, AFI or AMB is taken to have complied with its reporting obligation in relation to a specified OTC derivative transaction if the affiliate of it on whose behalf it conducted the transaction in Hong Kong has reported the entering into of the transaction or a subsequent event relating to the transaction.

14. Rule 19 sets out the definitions of *concession period* and *grace period* to be used in Division 3 of Part 2. Both periods apply on a product type basis, i.e. the concession period and the grace period differ in respect of each product type. The duration and commencement of the periods differ for each prescribed person depending on when the reporting obligation in respect of a particular product type first applies to that prescribed person.
15. Rule 20 requires a prescribed person that has a reporting obligation to submit transaction information to the MA in accordance with Division 3 of Part 2.
16. Rule 21 requires the transaction information to be submitted by means of the electronic reporting system operated by or on behalf of the MA, and in accordance with the directions and instructions for the use of the system published by the MA.
17. Rule 22 applies to prescribed persons that first have a reporting obligation within 6 months from the day on which the relevant product type is specified under rule 7. It requires the backloading of historical transactions (i.e. the reporting of the transactions entered into before, and still outstanding on, the first day of the relevant grace period) and the reporting of the transactions entered into during the concession period. In both cases, the transactions must be reported no later than the last day of the relevant grace period and only if the transactions are still outstanding on that day. An AFI that has submitted the transaction information for a specified OTC derivative transaction to the MA before the Rules commence (i.e. under the interim reporting requirement) is taken to have fulfilled the requirement on the commencement of the Rules.

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Paragraph 18

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18. Rule 23 applies to prescribed persons that first have a reporting obligation more than 6 months after the day on which the relevant product type is specified under rule 7. It requires the backloading of historical transactions (i.e. the reporting of the transactions entered into before, and still outstanding on, the first day of the relevant grace period) by no later than the last day of the relevant grace period and only if the transactions are still outstanding on that day.
19. Rule 24 requires the reporting of new specified OTC derivative transactions within 2 business days after the transaction is entered into (i.e. on a T+2 basis). It applies in respect of the transactions entered into after the concession period (in the case of a prescribed person that is a regulated prescribed person on the relevant product type specification day, or becomes such a person within 6 months after the relevant product type specification day), or transactions entered into on or after the first day of the grace period (in the case of a prescribed person that becomes a regulated prescribed person more than 6 months after the relevant product type specification day).
20. Rule 25 requires prescribed persons to submit the transaction information for subsequent events within 2 business days after the event occurs.
21. Rule 26 permits a prescribed person to mask information about a counterparty's identity when reporting a specified OTC derivative transaction if the disclosure of the information—
  - (a) is prohibited under the laws of, or by an authority or regulatory organization in, a designated jurisdiction;  
or

- (b) requires the consent of the counterparty and despite reasonable efforts the person is unable to obtain such consent,

but requires the information to be unmasked under certain circumstances and within a prescribed period. The masking relief in subparagraph (b) applies only in respect of transactions entered into before the expiry of 6 months from the commencement date of the Rules.

### **Rules relating to record keeping obligation**

22. Part 3 sets out the rules relating to the record keeping obligation.
23. Rule 27 requires prescribed persons to keep records of a specified OTC derivative transaction until no earlier than 5 years after the transaction has matured or been terminated.
24. Rule 28 applies the record keeping obligation to specified OTC derivative transactions where a counterparty is outside Hong Kong, or which were entered into or conducted outside Hong Kong.
25. Rule 29 sets out the records that a prescribed person must keep.
26. Rule 30 sets out the manner in which a prescribed person must keep the records.

### **Rules relating to specified subsidiaries of AFIs incorporated in Hong Kong**

27. Part 4 sets out the reporting and record keeping obligations applicable to AFIs incorporated in Hong Kong in respect of their subsidiaries specified by the MA for the purposes of the reporting and record keeping obligations imposed on the AFIs under sections 101B(3) and 101E(3) of the Ordinance.
28. Rule 31 sets out the definitions to be used in Part 4.
29. Rule 32 sets out the reporting and record keeping obligations that an AFI incorporated in Hong Kong must ensure are complied with by a specified subsidiary for specified OTC derivative transactions to which the subsidiary is a counterparty. The subsidiary is to comply with the Rules as if it were an AFI incorporated in Hong Kong, subject to the modifications set out.

### **Product class, product type and transaction information**

30. Schedule 1 specifies the types and classes of transactions to which the Rules apply, and the transaction information that must be submitted to the MA for complying with the reporting obligation. Part 1 sets out the definitions to be used in that Schedule. Part 2 sets out 2 OTC derivative classes (interest rate swap and non-deliverable forward). Part 3 specifies the product types within those product classes in which OTC derivative transactions are specified under rules 7 and 8 for the purposes of the reporting and record keeping obligations. Part 4 sets out the transaction information that must be submitted to the MA.



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Paragraph 31

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**Records to be kept**

31. Schedule 2 specifies the records relating to the specified OTC derivative transactions that must be kept under rule 29.