

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance
(Chapter 571)

**Securities and Futures (Amendment) Ordinance 2014
(Commencement) Notice 2016**

**Securities and Futures (OTC Derivative Transactions
– Clearing and Record Keeping Obligations and
Designation of Central Counterparties) Rules**

**Securities and Futures (OTC Derivative Transactions
– Reporting and Record Keeping Obligations) Rules
(Commencement) Notice**

**Securities and Futures (OTC Derivative Transactions
– Reporting and Record Keeping Obligations)
(Amendment) Rules 2016**

**Securities and Futures (OTC Derivative Transactions
Reporting Obligation – Fees) Rules**

Securities and Futures (Fees) (Amendment) Rules 2016

INTRODUCTION

Further to the enactment of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (“Amendment Ordinance”) in March 2014 and the gazettal of the first batch of subsidiary legislation in May 2015¹ to implement the first stage of the over-the-counter (“OTC”) derivatives regulatory regime, the following pieces of subsidiary

¹ The first batch of subsidiary legislation comprised –

- (a) the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2015 – to implement phase 1 reporting and the general framework of the regime;
- (b) the Securities and Futures (OTC Derivative Transactions — Reporting and Record Keeping Obligations) Rules (“Reporting Rules”) – to implement phase 1 reporting; and
- (c) Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice – to provide for certain carve out from the scope of the term “OTC derivative product” under the Securities and Futures Ordinance (Cap. 571) (“SFO”).

legislation have been made for the purpose of implementing the next stage of the regime –

- (a) the Secretary for Financial Services and the Treasury has, pursuant to section 1(2) of the Amendment Ordinance, made the **Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016** (“Amendment Ordinance Commencement Notice”) at **Annex A** to appoint 1 September 2016 as the date on which the provisions relating to mandatory clearing and related record keeping obligations will commence;
- (b) by virtue of the new sections 101N, 101P and 101Q of the SFO, the Securities and Futures Commission (“SFC”), with the consent of the Monetary Authority (“MA”) and after consultation with the Financial Secretary (“FS”), has made the **Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules** (“Clearing Rules”) at **Annex B** to set out the details of the mandatory clearing and related record keeping obligations as well as designation of central counterparties (“CCPs”);
- (c) the SFC has, pursuant to section 1(2) of the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (“Reporting Rules”), made the **Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice** (“Reporting Rules Commencement Notice”) at **Annex C** to appoint 1 September 2016 as the starting date for reporting obligation for CCPs that are authorised to provide automated trading services (“ATS”) in respect of OTC derivative products;
- (d) by virtue of the new sections 101L and 101P of the SFO, the SFC, with the consent of the MA and after consultation with the FS, has made the **Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016** (“Reporting Amendment Rules”) at **Annex D** to set out the details of the expanded scope of mandatory reporting and related record keeping obligations;

- (e) by virtue of the new section 101M of the SFO, the Chief Executive in Council, after consultation with the MA, has made the **Securities and Futures (OTC Derivative Transactions Reporting Obligation – Fees) Rules** (“the TR Fees Rules”) at **Annex E** to require the payment of a fee to the MA for using the electronic system (i.e. the Hong Kong Trade Repository, “TR”) operated by or on behalf of the MA for submitting reports on OTC derivative transactions under the regulatory regime; and
- (f) by virtue of section 395 of the SFO, the Chief Executive in Council, after consultation with the SFC, has made the **Securities and Futures (Fees) (Amendment) Rules 2016** (“CCP Fees Rules”) at **Annex F** to provide for the application fee for CCP designation and annual fees in respect of designated CCPs.

JUSTIFICATIONS

The Regulatory Framework

2. The Legislative Council (“LegCo”) enacted the Amendment Ordinance on 26 March 2014 which amended the SFO to provide for a regulatory framework for the OTC derivatives market in Hong Kong to meet the relevant commitments of the Group of Twenty. Among other things, the framework introduces mandatory obligations that require the reporting, clearing and trading of OTC derivative transactions. The precise ambit of these obligations, and their related details, will be set out in subsidiary legislation (i.e. rules) and are being implemented in stages.

Implementation In Stages

3. The first stage was implemented on 10 July 2015 when the first batch of subsidiary legislation came into effect. This introduced mandatory reporting for certain interest rate swaps (“IRS”) and non-deliverable forwards (“NDF”) in Hong Kong (“phase 1 reporting”). The next stage of the regime will be on mandatory clearing of dealer-to-dealer trades of certain IRS, designation of CCPs (“phase 1 clearing”) and expanded mandatory reporting (“phase 2 reporting”). The relevant proposals are summarised in the paragraphs below.

Main Proposals for Phase 1 Clearing

4. Under the new section 101C of the SFO, transactions that are subject to mandatory clearing must be cleared through a designated CCP.² As to which transactions will be subject to clearing, in what circumstances, and within what timeframe, these are set out in the Clearing Rules and summarised below.

Transactions to be subject to phase 1 clearing

5. In considering which products should be covered under phase 1 clearing, we have taken into account the following –

- (a) whether the product is standardized enough;
- (b) whether there are acceptable pricing sources for the product;
- (c) the nature, depth and liquidity of the market for the product;
- (d) the level of systemic risk posed by the product;
- (e) the market impact of subjecting the product to central clearing;
- (f) whether the product is subject to mandatory clearing in other jurisdictions; and
- (g) whether any Hong Kong-authorized CCP provides services for clearing the product.

6. Having considered the above, we propose to require clearing for plain vanilla IRS that contain the features set out below –

² The designation of CCPs is discussed in paragraph 19 below.

	IRS that are fixed-to-floating swaps and basis swaps				
Currency	HKD	USD	EUR	GBP	JPY
Floating rate index	HIBOR	LIBOR	EURIBOR	LIBOR	LIBOR
Tenor	28 days to ten years				
Constant notional	Yes				
Optionality	No optionality that might affect the amount, timing or form of payments made under the IRS.				

	IRS that are overnight index swaps		
Currency	USD	EUR	GBP
Floating rate index	Federal funds	Euro Overnight Index Average	Sterling Overnight Interbank Average
Tenor	Seven days to two years		
Constant notional	Yes		
Optionality	No optionality that might affect the amount, timing or form of payments made under the IRS.		

7. Most major jurisdictions have mandated, or proposed to mandate, the clearing of IRS denominated in any of the G4 currencies (i.e. USD, EUR, GBP and JPY). We therefore consider it necessary to do likewise to prevent regulatory arbitrage. Additionally, we also propose to mandate clearing for HKD IRS because HKD is a systemically important currency for Hong Kong. As regards the other features described in the tables above, our proposals are within the scope of those of the major jurisdictions.

Only dealer-to-dealer transactions to be covered in phase 1 clearing

8. We propose to only cover transactions between major dealers (i.e. dealer-to-dealer transactions) under phase 1 clearing. Major dealers are the most active participants in the OTC derivatives market. They also often trade among themselves, thus increasing their interconnectedness. Their transactions therefore potentially pose the greatest systemic risk.

9. Major dealers with a presence in Hong Kong are likely to be authorized financial institutions (“AFIs”), approved money brokers (“AMBs”) or licensed corporations (“LCs”). Major dealers outside Hong Kong are likely to be the overseas equivalent of an AFI or LC, and to actively engage in activities relating to OTC derivative transactions outside of Hong Kong. These entities are referred to as “financial services providers” in the Clearing Rules. For simplicity and better clarity, they will be pre-identified in a list of financial services providers which will be gazetted. Accordingly, we propose to identify dealer-to-dealer transactions as follows –

- (a) the parties to the transaction must be an AFI, AMB, LC or a financial services provider, and at least one party must be an AFI, AMB or LC; and
- (b) the AFI, AMB or LC must have outstanding OTC derivative positions that exceed certain stipulated thresholds (“clearing thresholds”).

Clearing thresholds

10. We propose to have multiple clearing thresholds, each set by reference to a three-month calculation period. To determine if an AFI, AMB or LC has crossed the threshold for a particular calculation period, its average positions during that period will be compared to the threshold stipulated for that calculation period. If the threshold is crossed, transactions (of the kind described in the tables in paragraph 6 above) entered into seven months after the calculation period may be subject to mandatory clearing. The seven-month gap is to allow sufficient time for an AFI, AMB or LC to calculate and ascertain whether they have crossed the threshold, and if so, set up the necessary systems connection, and complete the documentation and on-boarding exercise, for accessing clearing facilities.

11. We propose a threshold of US\$20 billion for the first two years after implementation. For a local AFI, AMB or LC, the MA or the SFC (as applicable) will look at all of the entity's relevant positions (i.e. outstanding positions in OTC derivative transactions other than deliverable foreign exchange forwards and deliverable foreign exchange swaps³). For an overseas AFI, AMB, or LC, the MA or the SFC (as applicable) will only look at those of its relevant positions that are booked in Hong Kong. In this regard, information collected from a recent survey conducted by the MA of a group of 55 AFIs in Hong Kong indicates that the threshold of US\$20 billion will capture institutions that accounted for approximately 97% of the positions of the surveyed institutions.

Exiting the clearing obligation

12. In general, we propose that once an AFI, AMB or LC has reached the clearing threshold for any calculation period, it will thereafter always be regarded as having reached the clearing threshold (even if its relevant positions fall below the threshold for a subsequent calculation period). However, the clearing obligation may cease to apply if the AFI, AMB or LC's relevant positions have stayed below 70% of the clearing threshold (i.e. below US\$14 billion) for a period of 12 consecutive months, and it has given notice of this to the MA or the SFC (as applicable). This exit mechanism is to cater for a permanent change in the AFI, AMB or LC's business model or the trading profile.

Timeframe for complying with the clearing obligation

13. We propose that a transaction which is subject to mandatory clearing must be cleared within one Hong Kong business day after entering into the transaction. The one day lag should give market participants enough time to resolve any outstanding issues relating to the acceptance of the transaction for clearing. It should also provide some time allowance for persons clearing their transactions through a designated CCP located in a different time zone while ensuring timely mandatory clearing.

³ Deliverable foreign exchange forwards are excluded because they are not the focus of mandatory clearing. They are mostly short-term in nature with unique settlement process and we therefore do not see a need to mandate them for clearing. However, they represent a significant portion of the OTC derivatives activities of market participants in Hong Kong. If we include them in the threshold calculation, this may distort our assessment of whether a person should be subject to mandatory clearing. Deliverable foreign exchange swaps are also excluded because they are similar in nature to deliverable foreign exchange forwards.

Exemptions

14. We propose three exemptions to the mandatory clearing obligation – an intra-group exemption, a jurisdiction-based exemption, and an exemption for transactions resulting from a multilateral portfolio compression cycle⁴.

15. The intra-group exemption is intended to reduce the compliance burden by exempting transactions between affiliates within the same group. Such transactions pose limited risk, particularly where the risk management of the group is centralized. Regulators in other jurisdictions have also provided for similar exemptions. The proposed pre-requisites for this exemption are that –

- (a) the two affiliates are accounted for on a full basis in the consolidated financial statements of the holding company and in accordance with certain recognized financial reporting standards;
- (b) the risk positions of the affiliates are centrally overseen and managed within the group; and
- (c) the identity of the affiliates have been notified in advance to the MA or the SFC (as applicable).

16. The jurisdiction-based exemption mainly aims to address concerns about conflicting obligations that may apply to market participants operating in closed markets where transactions may have to be cleared by a CCP located in that market but which is not a designated CCP under our regime. Basically, we propose that transactions booked by a person in one or more pre-identified overseas jurisdictions may be exempted from the clearing obligation if –

- (a) the person has notified the MA or the SFC (as applicable) which jurisdictions it wishes to treat as “exempt jurisdictions”; and
- (b) the notional amount of the person’s OTC derivative positions booked in such exempt jurisdiction(s) does not exceed a

⁴ A multilateral portfolio compression cycle is a process whereby transactions entered into by different persons are modified, or terminated and replaced with other transactions, with a view to reducing the operational or counterparty credit risks of all persons participating in the exercise.

certain portion of the person's total OTC derivatives portfolio (wherever booked), namely not more than 5% in respect of *each* exempt jurisdiction, and not more than 10% in respect of *all* exempt jurisdictions collectively.

17. We understand that “multilateral portfolio compression” is a risk mitigation tool used by the industry to reduce the notional value of transactions and reduce counterparty exposures among participants. In order not to discourage this practice, we propose to exempt transactions that are created or amended due to a multilateral portfolio compression cycle, where the original transactions are themselves not subject to the clearing obligation.

Additional relief

18. We also propose to allow “substituted compliance” so that for a transaction that is subject to mandatory clearing under our regime *and* subject to mandatory clearing under the laws of a comparable overseas jurisdiction, the counterparties may opt to clear in accordance with either our requirements or the requirements of the overseas jurisdiction. In either case, however, the transaction must be cleared through a designated CCP. In allowing substituted compliance, we propose to adopt a “stricter rule” approach to avoid importing overseas exemptions which may not be relevant to Hong Kong. Hence, if a transaction is subject to mandatory clearing under our regime but exempt from mandatory clearing under the laws of a comparable overseas jurisdiction, the counterparties must still clear in accordance with our requirements (as they are the stricter ones).

Designation and regulation of CCPs

19. We propose that both local and overseas CCPs may apply to be designated CCPs for the purposes of the mandatory clearing obligation. Pursuant to the new section 101J of the SFO, any CCP seeking to become a designated CCP must either be a recognized clearing house or an authorized provider of ATS. In the case of the latter, we propose that a CCP may submit its application for ATS authorization and CCP designation together.

Consequential commencement of reporting obligations for ATS-CCP

20. With the proposed implementation of mandatory clearing, it is proposed that rule 15 of the Reporting Rules be brought into effect. Rule 15 extends the mandatory reporting obligation to CCPs that are authorized to provide ATS for clearing OTC derivative products (“ATS-CCPs”). It was not commenced previously because the powers to enable the SFC to confer ATS-CCP status were not yet effective. These powers will be effective when mandatory clearing is implemented. It is therefore proposed that rule 15 be brought into effect at the same time.

Main Proposals for Phase 2 Reporting

Proposal to expand product scope

21. Currently, we only require the reporting of transactions in certain IRS and NDF. We propose that phase 2 reporting should expand the product scope to cover all interest rate derivatives and foreign exchange derivatives not covered in phase 1 reporting, as well as other OTC derivative products, namely equity derivatives, credit derivatives and commodity derivatives⁵. Most major jurisdictions (including the US, EU, and Australia) have already implemented mandatory reporting for substantively all OTC derivative products.

22. The reporting obligation will entail not only reporting all new transactions entered into after the Reporting Amendment Rules come into effect, but also reporting old transactions (i.e. “backloading”) entered into before the rules come into effect but still outstanding at that time.

Proposal to expand scope of transaction information to be reported under phase 2 reporting

23. The mandatory reporting obligation requires the reporting of certain specific information and particulars relating to a transaction (“transaction information”). Under phase 2 reporting, we propose to expand the scope of transaction information to be reported and to require the reporting of daily valuations. The proposed expansion is necessary given the proposal to expand the product scope, and taking into account

⁵ Subject to negative vetting of the Reporting Amendment Rules by LegCo, the MA intends to gazette the specific data fields that will have to be completed when reporting under the expanded scope of transaction information for each of the five asset classes pursuant to the proposed new Rule 2A(2) of the Reporting Rules in Q2 2016.

reporting requirements imposed in other major markets. The wider scope will also better ensure the efficacy of data collected by the MA.

24. For transactions already reported under phase 1 reporting, market participants will only have to “backload” transaction information within the expanded scope (i.e. the transaction information not reported under phase 1 reporting but required to be reported under phase 2 reporting). However, such backloading requirement will not apply in respect of transactions that will be maturing within a year of implementation (i.e. before 1 July 2018).

Impact on reliefs under phase 1 reporting

25. We propose that reliefs under phase 1 reporting should generally apply under phase 2 reporting as well. However, two reliefs will operate differently under phase 2 as discussed below –

- (a) There is currently an “exempt person” relief under phase 1 reporting. This exempts small or inactive participants from our reporting regime. One criterion for this relief is that the person’s OTC derivative positions must be below US\$30 million. The existing regime sets this limit on a per product class basis, i.e. a person’s positions in *each* product class must not exceed US\$30 million. As the mandatory reporting obligation will be expanded, the “exempt person” relief will need to be extended likewise to cover the whole spectrum of OTC derivative products. However, it may be confusing and administratively burdensome to market participants if this relief were to continue to apply on a product class basis.⁶ We therefore propose that, under phase 2 reporting, the US\$30 million limit will apply across *all* product classes collectively, i.e. their positions in *all* product classes *collectively* must not exceed US\$30 million; and

⁶ In particular, market participants would have to: (a) calculate their aggregate notional outstanding amount for each product class regularly; and (b) keep track of the product class(es) in respect of which they can or cannot enjoy the “exempt person” relief.

- (b) Of the two “masking reliefs”⁷ available under phase 1 reporting, the relief in respect of transactions that require counterparty consent expired on 9 January 2016, and will not be renewed or extended further under phase 2 reporting.⁸ However, the masking relief based on legal or regulatory barriers will still be available in respect of counterparties in a designated overseas jurisdiction.

Proposal to defer commencement of phase 2 reporting

26. Under phase 1 reporting, a one-off six-month “concession period” was built in to allow market participants sufficient time to set up or enhance their systems and systems connection for reporting transaction information to the MA. Under phase 2 reporting, we propose to simplify the rules by removing the six-month concession period and simply deferring commencement of phase 2 reporting to 1 July 2017 (which is over 12 months from expected enactment) . Market participants should therefore have enough time to set up or enhance their systems and system connection for phase 2 reporting.

27. Additionally, market participants will have a three-month “grace period” to backload historical transactions, and to backload the expanded scope of transaction information for IRS and NDF reported under phase 1 reporting.

Proposed Fees

TR fees

28. Under the OTC derivatives regulatory regime, AFIs, AMBs, LCs and CCPs⁹ (“prescribed persons”) are required to submit reports on their OTC derivative transactions that are subject to mandatory reporting to the MA through the TR. The MA estimates that the annual recurring costs

⁷ Under Rule 26 of the Reporting Rules, a prescribed person may submit counterparty masking particulars instead of counterparty identifying particulars for a transaction if: (a) the submission of the counterparty identifying particulars is prohibited under the laws of, or by an authority or regulatory organization in, a jurisdiction designated by the SFC with the consent of the MA; or (b) the transaction is entered into before 9 January 2016, and the person has been unable to obtain consent from the counterparty to disclose such particulars despite reasonable efforts.

⁸ This means that for transactions entered into after 9 January 2016, a person reporting transaction information cannot mask its counterparty identifying information on the basis that it cannot obtain the required counterparty consent despite reasonable efforts.

⁹ Reporting obligation for CCPs that are Recognised Clearing Houses commenced from 10 July 2015 and for CCPs that are ATS will commence from 1 September 2016.

of operating the TR would amount to about \$32 million and that approximately 600,000 transactions will have to be maintained daily after the full implementation of mandatory reporting obligation. Based on the estimation, the MA proposes to charge a fee of \$4.5 per transaction each month if the transaction is outstanding as at the last business day of that month with a view to achieving full recovery of the recurring costs. The actual pace of achieving full cost recovery will be subject to changes in market conditions. To reflect changes in the operating environment, the MA will review the fees periodically and propose any necessary adjustment in the future. Further details are set out at **Annex G**.

CCP fees

29. Under the mandatory clearing obligation, OTC derivative transactions that are subject to mandatory clearing must be cleared through a designated CCP. The SFC's processing of applications to become a designated CCP and regulation of designated CCPs will incur costs. For CCPs to be designated under section 101J(1), the SFC proposes that an application fee and an annual fee be prescribed, and that the application fee be set at \$10,000 and the annual fee at \$10,000. The proposed fees are relatively low, and hence will not cover the SFC's costs of processing applications and regulating designated CCPs on a full cost recovery basis. The fees will be the same as those prescribed for ATS authorization and authorized ATS providers, the most comparable operations under the SFO. Further details are set out at **Annex H**.

THE SUBSIDIARY LEGISLATION

Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016

30. The Amendment Ordinance Commencement Notice seeks to bring into effect from 1 September 2016 the provisions of the Amendment Ordinance relating to the mandatory clearing obligation under the OTC derivatives regulatory regime. These include provisions enabling the SFC to grant an ATS authorization and a CCP designation to entities that wish to provide services for clearing OTC derivative products.

Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules

31. The main provisions of the Clearing Rules are as follows –
- (a) Part I contains definitions for the interpretation of the rules and includes –
 - (i) a provision that specifies who “prescribed persons” are for the purposes of the clearing and record keeping obligations (Rule 2);
 - (ii) a provision that sets out the circumstances in which the SFC may, with the consent of the MA, designate any person as a “financial services provider” (Rule 3); and
 - (iii) provisions that set out the transactions that are specified OTC derivative transactions for the purposes of clearing and record keeping obligations (Rules 4 and 5).
 - (b) Part 2 describes the clearing obligation and how it must be fulfilled, and it includes the following –
 - (i) a provision that specifies when the clearing obligation arises, including when a prescribed person is taken to have reached the clearing threshold or exited it (Rules 6 and 7);
 - (ii) a provision that specifies the circumstances under which transactions between affiliates will be exempted from the clearing obligation (Rule 8);
 - (iii) a provision that specifies the circumstances under which transactions booked in overseas jurisdictions will be exempted from the clearing obligation (Rule 9);
 - (iv) a provision that specifies the circumstances under which transactions resulting from a multilateral portfolio compression cycle will be exempted from the clearing obligation (Rule 10); and
 - (v) a provision that specifies the circumstances under which substituted compliance may be relied upon in relation to the compliance with the clearing obligation (Rule 11).

- (c) Part 3 (Rules 12 to 15) describes the record keeping obligation. It specifies that records must be kept to demonstrate compliance with the clearing obligation, the duration for which the records must be kept, and the manner in which they must be kept;
- (d) Part 4 (Rules 16 to 18) provides for matters relating to designation of CCPs and revocation of such designations;
- (e) Schedule 1 specifies the OTC derivative transactions that are to be subject to the clearing obligation; and
- (f) Schedule 2 specifies the calculation periods, and related clearing thresholds and prescribed days.

Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (Commencement) Notice

32. The Reporting Rules Commencement Notice seeks to bring into effect, from 1 September 2016, Rule 15 of the Reporting Rules so that the mandatory reporting obligation in respect of ATS-CCP commences at the same time as phase 1 clearing.

Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) (Amendment) Rules 2016

33. The Reporting Amendment Rules amend the Reporting Rules in the following manner –

- (a) amend Rule 2 to remove references to product classes and product types and other related references in the Reporting Rules and define grace period;
- (b) add a new Rule 2A and amend Schedule 1 to expand the scope of transaction information to be reported under phase 2 reporting;
- (c) amend Rule 3 to clarify that the US\$30 million criteria for the exempt person relief is to be assessed in respect of positions across all OTC derivative products collectively;

- (d) amend Rules 7 and 8 so that the reporting obligation applies to transactions in all OTC derivative products, and not only IRS and NDF;
- (e) provide for new Subrules 10(2A), 11(2A), 12(2A) and 13(2A) to clarify that the obligation to report transaction information within the expanded scope applies retrospectively to transactions reported under phase 1 reporting;
- (f) amend Rules 23 and 24, and repeal Rules 19 and 22 to provide for the removal of the concession period;
- (g) add a new Rule 25A to require the reporting of valuations on a daily basis;
- (h) add a new Rule 25B to provide modified arrangements for the reporting of transaction information within the expanded scope and the reporting of subsequent events in respect of transactions that were reported under phase 1 reporting; and
- (i) add a new Rule 33 to provide for transitional arrangements in respect of subsidiaries specified under phase 1 reporting.

Securities and Futures (OTC Derivative Transactions Reporting Obligation – Fees) Rules

34. The main provisions of the TR Fees Rules are as follows –

- (a) section 1 provides that the TR Fees Rules will commence on 1 May 2016;
- (b) section 2 sets out the definitions of terms used in the TR Fees Rules. Some of the terms defined in the Reporting Rules are adopted for use in the TR Fees Rules so that there will be consistent use of defined terms in the Reporting Rules and the TR Fees Rules;
- (c) section 3 provides that a prescribed person must pay a fee to the MA for each specified OTC derivative transaction in respect of each month for using the electronic system to submit transaction information if the transaction has not

matured or been terminated by the end of the last business day of that month. It further provides that the MA may recover the amount of the fee payable as a civil debt due to the MA. It also sets out the timing and method of payment;

- (d) section 4 provides that the MA may, in relation to a person or class of such persons, reduce, or waive the payment of, a fee, or refund the fee paid in whole or in part, if the MA is of the opinion that the payment of the fee would be inappropriate or unduly burdensome to the person or the class; and
- (e) the Schedule sets out the fee payable on each specified OTC derivative transaction, the amount of which is \$4.5.

Securities and Futures (Fees) (Amendment) Rules 2016

35. The CCP Fees Rules mainly amend Schedule 1 and Schedule 3 to the Securities and Futures (Fees) Rules to prescribe an annual fee of \$10,000 payable in respect of designation of a person as a CCP and an application fee of \$10,000 payable on an application for designation as a CCP respectively. The CCP Fees Rules will commence on the day on which section 101J of the SFO comes into operation.

LEGISLATIVE TIMETABLE

36. The Amendment Ordinance Commencement Notice, the Clearing Rules, the Reporting Rules Commencement Notice, the Reporting Amendment Rules, the TR Fees Rules and the CCP Fees Rules will be published in the Gazette on 5 February 2016 and tabled before LegCo at its sitting on 17 February 2016. Subject to negative vetting by LegCo, the TR Fees Rules will come into operation on 1 May 2016. The Amendment Ordinance Commencement Notice, the Reporting Rules Commencement Notice, the Clearing Rules and the CCP Fees Rules will come into operation on 1 September 2016. The Reporting Amendment Rules will come into operation on 1 July 2017.

IMPLICATIONS OF THE PROPOSALS

37. The Amendment Ordinance Commencement Notice, the Clearing Rules, the Reporting Rules Commencement Notice, the Reporting Amendment Rules, the TR Fees Rules and the CCP Fees Rules are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the SFO. They have no productivity, environmental, family, gender or civil service implication. As for economic and sustainability implications, the implementation of phase 1 clearing and phase 2 reporting will further improve transparency of the OTC derivatives market in Hong Kong to enable regulators to better assess, mitigate and manage systemic risk. This will help reinforce Hong Kong's role as an international financial centre. The proposed fees will entail costs to relevant market participants, but the impact should not be significant given the relatively small amount incurred. Other aspects of the regime may also entail compliance costs to relevant market participants. The significance of the impact may vary among different participants. In terms of financial implications, the MA expects to achieve full recovery of the recurring costs of operating the TR, estimated to be about \$32 million annually (as explained in paragraph 28 above). The CCP fees will have no financial implications to the Government.¹⁰

PUBLIC CONSULTATION

38. In 2014, the MA and the SFC conducted a joint public consultation on the implementation of the reporting obligation, including the TR fees. Further, in 2015, the MA and the SFC conducted a joint public consultation on phase 1 clearing and phase 2 reporting, including the CCP fees. No objection to the fee proposals was raised. Respondents generally supported other proposals put forward, which have now been modified in light of the feedback received.

39. We briefed the LegCo Panel on Financial Affairs on the proposals for the introduction of phase 1 clearing and phase 2 reporting as well as the said fees at its meeting on 2 November 2015. Members raised no objection to the proposals.

¹⁰ Section 14 of the SFO provides that the Government shall provide funding to the SFC as appropriated by LegCo. In practice, the SFC has not requested appropriation from LegCo since 1993-94. Its funding basically comes from the market in the form of levies, fees and charges.

PUBLICITY

40. A press release will be issued on 5 February 2016 upon the gazettal of the Amendment Ordinance Commencement Notice, the Clearing Rules, the Reporting Rules Commencement Notice, the Reporting Amendment Rules, the TR Fees Rules and the CCP Fees Rules. A spokesperson will be available to answer media enquiries.

ENQUIRIES

41. Enquiries relating to this brief can be directed to Ms Ada Chan, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2056, Ms Polly Lee, Senior Manager of the Financial Stability Surveillance Division of the MA, at 2878 1099 or Ms Daphne Doo, Senior Director of the Supervision of Markets Division of the SFC, at 2231 1795.

**Financial Services and the Treasury Bureau
Hong Kong Monetary Authority
Securities and Futures Commission
3 February 2016**

Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016

Under section 1(2) of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014), I appoint 1 September 2016 as the day on which the following provisions of the Ordinance come into operation—

- (a) section 9 in so far as it relates to the following provisions—
 - (i) the new section 101A in so far as it relates to—
 - (A) the new definitions of *clearing obligation*, *clearing rules*, *designated CCP* and *designation rules*;
 - (B) paragraph (a) of the new definition of *prescribed manner*;
 - (C) paragraph (b) of the new definition of *prescribed person*; and
 - (D) paragraph (b) of the new definition of *specified OTC derivative transaction*;
 - (ii) the new section 101C;
 - (iii) the new section 101F in so far as it relates to the contravention of the clearing obligation;
 - (iv) the new section 101G in so far as it relates to the contravention of the clearing obligation;
 - (v) the new section 101H in so far as it relates to the exemption from the clearing obligation;
 - (vi) the new section 101I in so far as it relates to the guidelines on exemption from the clearing obligation;

- (vii) the new sections 101J and 101N;
- (viii) the new section 101Q, except—
 - (A) paragraph (a)(ii);
 - (B) paragraph (e) in so far as it relates to the new section 101K; and
 - (C) paragraph (f) in so far as it relates to the new section 101K;
- (b) section 18(5) in so far as it relates to the new section 182(1)(da) (in so far as it relates to the contravention of the clearing obligation);
- (c) section 20 in so far as it relates to the new section 184A (in so far as it relates to the contravention of the clearing obligation);
- (d) section 37 in so far as it relates to the new Division 4 of Part IX (in so far as it relates to the contravention of the clearing obligation);
- (e) section 52(3) in so far as it relates to the new definition of *clearing obligation*;
- (f) section 53(1);
- (g) section 53(2) in so far as it relates to the new entry relating to Type 12 (in so far as it relates to paragraph (c) of the new definition of *excluded services* in Part 2 of Schedule 5);
- (h) section 53(9) in so far as it relates to the new paragraph (d) of the definition of *automated trading services* in Part 2 of Schedule 5;
- (i) section 53(10);

- (j) section 53(11) in so far as it relates to the new paragraph (d) of the definition of *automated trading services* in Part 2 of Schedule 5;
- (k) section 53(12);
- (l) section 53(13) (except in so far as it relates to Type 7 regulated activity under the Securities and Futures Ordinance (Cap. 571));
- (m) section 53(14);
- (n) section 53(22) in so far as it relates to—
 - (i) paragraph (c) of the new definition of *excluded services*; and
 - (ii) the new definition of *providing client clearing services for OTC derivative transactions* (in so far as it relates to paragraph (c) of the new definition of *excluded services*);
- (o) section 53(23) in so far as it relates to section 4(b) of the new Part 2A of Schedule 5 (in so far as it relates to the new definition of *providing client clearing services for OTC derivative transactions* in Part 2 of Schedule 5);
- (p) section 54(1) in so far as it relates to the new items 4C, 4D, 4E and 4F;
- (q) section 54(5) in so far as it relates to the new items 2A and 2B.

Secretary for Financial Services and
the Treasury

2016

**Securities and Futures (OTC Derivative Transactions—
Clearing and Record Keeping Obligations and
Designation of Central Counterparties) Rules**

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Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules

(Made by the Securities and Futures Commission under section 101N, 101P and 101Q 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

These Rules come into operation on 1 September 2016.

2. Interpretation

In these Rules—

deliverable FX forward (交收外匯遠期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange, on a single day in the future, an agreed amount of a currency for—

- (a) an agreed amount of another currency; or
- (b) an amount in another currency calculated by reference to an agreed exchange rate;

deliverable FX swap (交收外匯掉期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange 2 currencies (*currency A* and *currency B*) in the following manner—

- (a) on a specified day, a counterparty (*counterparty 1*) will give to the other counterparty (*counterparty 2*) an agreed amount of currency A and will receive from counterparty 2—
- (i) an agreed amount of currency B; or
 - (ii) an amount in currency B calculated by reference to an agreed exchange rate; and
- (b) on another specified day that is after the day referred to in paragraph (a), counterparty 1 will give to counterparty 2 an agreed amount of currency B and will receive from counterparty 2—
- (i) an agreed amount of currency A; or
 - (ii) an amount in currency A calculated by reference to an agreed exchange rate;

designated CCP (指定中央對手方) has the meaning given by section 101A of the Ordinance;

financial services provider (金融服務提供者) means a person designated by the Commission in accordance with rule 3;

local AFI (本地認可財務機構) means an authorized financial institution that is incorporated in Hong Kong;

local AMB (本地核准貨幣經紀) means an approved money broker that is incorporated in Hong Kong;

local LC (本地持牌法團) means a licensed corporation that is incorporated in Hong Kong;

overseas AFI (海外認可財務機構) means an authorized financial institution that is incorporated outside Hong Kong;

overseas AMB (海外核准貨幣經紀) means an approved money broker that is incorporated outside Hong Kong;

overseas LC (海外持牌法團) means a licensed corporation that is incorporated outside Hong Kong;

outstanding trade (未完結交易), in relation to a person and at a particular time, means an OTC derivative transaction (except a deliverable FX forward and a deliverable FX swap)—

- (a) to which the person is a counterparty; and
- (b) that—
 - (i) has not matured; and
 - (ii) before the transaction matures, has not been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction;

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

total position (總持倉量), in relation to a person, means the aggregate of the notional amounts of every outstanding trade of the person.

3. Designation as a financial services provider

- (1) For the purposes of these Rules, the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any person (whether incorporated in Hong Kong or outside Hong Kong) as a financial services provider if the Commission is satisfied that it is likely that the person is actively engaged in activities relating to OTC derivative transactions or OTC derivative products outside Hong Kong.
- (2) For the purposes of subrule (1), the Commission may designate a person by name, or by reference to a class or description of persons to which the person belongs, or both.

- (3) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a person made under subrule (1).
- (4) In deciding whether to designate a person under subrule (1) or to revoke the designation of a person under subrule (3), the Commission may have regard to any information in its possession.
- (5) A notice published under subrule (1) or (3) is not subsidiary legislation.

4. Transactions that are specified OTC derivative transactions for purposes of clearing obligation

For the purposes of paragraph (b) of the definition of *specified OTC derivative transaction* in section 101A of the Ordinance, an OTC derivative transaction that is specified in section 2 of Schedule 1 is specified for the purposes of the clearing obligation.

5. 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 that is specified in section 2 of Schedule 1 is specified for the purposes of the record keeping obligation.

Part 2

Clearing Obligation

6. When clearing obligation arises

- (1) Subject to rules 8(1), 9(1) and 10(1), a prescribed person must clear a specified OTC derivative transaction with a designated CCP (whether directly or through a third party) within 1 business day after the transaction is entered into if—
 - (a) the person is a counterparty to the transaction and—
 - (i) the transaction is entered into on or after—
 - (A) the prescribed day for the first calculation period in respect of which the person reached the clearing threshold; or
 - (B) if the person gave an exit notice, the prescribed day for the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice; and
 - (ii) if the person is an overseas AFI or an overseas AMB, the transaction is recorded in the form of an entry in the Hong Kong books of the person; and
 - (b) the other counterparty to the transaction—
 - (i) is also a prescribed person and the requirements referred to in paragraph (a)(i) are met in relation to the counterparty; or
 - (ii) is a financial services provider.

- (2) For the purposes of subrule (1), a prescribed person is regarded as having reached the clearing threshold at all times after—
 - (a) subject to paragraph (b), the first calculation period in respect of which the person reached the clearing threshold, even if the person has not reached the clearing threshold for a subsequent calculation period; or
 - (b) if the person gave an exit notice, the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice, even if the person has not reached the clearing threshold for a subsequent calculation period.
- (3) An exit notice may be given by a prescribed person if—
 - (a) the person is a local AFI, a local AMB or a local LC and the total position of the person on the last day of each month in a period of 12 consecutive months is less than US\$14 billion; or
 - (b) the person is an overseas AFI, an overseas AMB or an overseas LC and the local total position of the person on the last day of each month in a period of 12 consecutive months is less than US\$14 billion.
- (4) An exit notice given under subrule (3) must—
 - (a) be in writing;
 - (b) be given to—
 - (i) the Monetary Authority, if the person is an authorized financial institution or an approved money broker; or
 - (ii) the Commission, if the person is a licensed corporation; and
 - (c) specify—

- (i) the period of 12 consecutive months (*period*) during which the total position or the local total position (as applicable) of the person on the last day of each month was less than US\$14 billion;
 - (ii) the total position or the local total position (as applicable) of the person on the last day of each month within the period; and
 - (iii) that the total position or the local total position (as applicable) of the person has not equalled or exceeded US\$14 billion between the last day of the last month included in the period and the day on which the exit notice is given.
- (5) For the purposes of this rule, a prescribed person reached the clearing threshold if—
 - (a) where the person is a local AFI, a local AMB or a local LC, the average total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period; or
 - (b) where the person is an overseas AFI, an overseas AMB or an overseas LC, the average local total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period.
- (6) In this rule—

average local total position (平均本地總持倉量), in relation to a prescribed person that is an overseas AFI, an overseas AMB or an overseas LC for a calculation period, means the amount which is equal to the sum of the person's local total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

average total position (平均總持倉量), in relation to a person for a calculation period, means the amount which is equal to the sum of the person's total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

calculation period (計算期間) means a period specified in column 2 of Schedule 2;

exit notice (退出通知) means a notice given under subrule (3);

local total position (本地總持倉量), in relation to a person, means the total position of the person excluding every outstanding trade of the person that is recorded in the form of an entry in the overseas books of the person;

prescribed day (訂明日期), in relation to a calculation period, means the day specified in column 4 of Schedule 2.

7. Clearing obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong

For the purposes of this Part, a prescribed person must clear a specified OTC derivative transaction with a designated CCP 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.

8. Clearing obligation does not apply to transactions with exempt affiliate

- (1) Rule 6(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if, on the day on which the transaction is entered into—

- (a) the other counterparty to the transaction is an affiliate of the person;
- (b) the affiliate is an exempt affiliate, within the meaning of subrule (3); and
- (c) the requirements referred to in subrule (2) are met.

(2) The requirements are that—

- (a) the person and the exempt affiliate are accounted for on a full basis in the consolidated financial statements of the holding company of the group of companies to which they belong, for the purposes of and in compliance with—

- (i) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants;

- (ii) the International Financial Reporting Standards issued by the International Accounting Standards Board; or

- (iii) the standards of accounting practices applicable to the holding company in the place in which it is incorporated; and

- (b) the risk evaluation, measurement and control procedures applicable to the person and the exempt affiliate are centrally overseen and managed within the group of companies to which they belong.

(3) For the purposes of subrule (1)(b), an affiliate of a prescribed person is an exempt affiliate on and after the effective day specified in an exemption notice until the day before the effective day specified in a cessation notice (if any).

(4) An exemption notice or a cessation notice given by a prescribed person must—

- (a) be in writing;
- (b) be given to the Commission or the Monetary Authority;
- (c) specify the affiliate (or if more than one, each affiliate) of the person that is to be regarded as, or is to cease to be regarded as, an exempt affiliate for the purposes of this rule; and
- (d) specify the effective day, being a day that is not earlier than the day on which the notice is received by the Commission or the Monetary Authority.

(5) In this rule—

affiliate (聯屬公司), in relation to a prescribed person, means a corporation that is in the same group of companies as the person, except a corporation that is a collective investment scheme;

cessation notice (停止通知), in relation to an exemption notice given by a prescribed person in respect of an affiliate specified in the exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the affiliate is to cease to be regarded as an exempt affiliate for the purposes of this rule;

effective day (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

exemption notice (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of an affiliate of the person to the effect that the affiliate is to be regarded as an exempt affiliate for the purposes of this rule.

9. Clearing obligation does not apply to transactions recorded in exempt jurisdiction books

- (1) Rule 6(1) does not apply to a prescribed person that is a licensed corporation, a local AFI or a local AMB in relation to a specified OTC derivative transaction to which the person is a counterparty if—
 - (a) on the day on which the transaction is entered into, the jurisdiction is an exempt jurisdiction in relation to the person, within the meaning of subrule (3);
 - (b) the transaction is recorded in the form of an entry in the exempt jurisdiction books of the person; and
 - (c) at the end of the day on which the transaction is entered into, taking into account every outstanding trade of the person (including the transaction), the requirements referred to in subrule (2) are met.
- (2) The requirements are that—
 - (a) the jurisdiction position of the person for each jurisdiction that is an exempt jurisdiction in relation to the person does not exceed 5% of the total position of the person; and
 - (b) the aggregate of the person's jurisdiction positions for all jurisdictions that are exempt jurisdictions in relation to the person does not exceed 10% of the total position of the person.
- (3) Subject to subrule (5), for the purposes of subrule (1)(a), a jurisdiction outside Hong Kong is an exempt jurisdiction in relation to a prescribed person on and after the effective day specified in an exemption notice in respect of the jurisdiction until the day before the effective day specified in a cessation notice (if any) in respect of the jurisdiction.

- (4) An exemption notice or a cessation notice given by a prescribed person must—
- be in writing;
 - be given to the Monetary Authority, if the person is a local AFI or a local AMB;
 - be given to the Commission, if the person is a licensed corporation;
 - specify the jurisdiction (or if more than one jurisdiction, each jurisdiction) that is to be regarded as, or is to cease to be regarded as, an exempt jurisdiction in relation to the person for the purposes of this rule; and
 - specify the effective day, being a day that is not earlier than the day on which the notice is received by the Monetary Authority or the Commission.
- (5) A prescribed person that has given an exemption notice and a cessation notice in respect of a jurisdiction is permitted to give only 1 more exemption notice in respect of the jurisdiction.
- (6) In this rule—

cessation notice (停止通知), in relation to an exemption notice given by a prescribed person in respect of a jurisdiction specified in the exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the jurisdiction is to cease to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

effective day (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

exemption notice (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of a

jurisdiction to the effect that the jurisdiction is to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

jurisdiction position (司法管轄區持倉量), in relation to a prescribed person and an exempt jurisdiction, means the aggregate of the notional amounts of every outstanding trade of the person that is recorded in the form of an entry in the exempt jurisdiction books of the person.

10. Clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle

- (1) Rule 6(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if—
- the transaction is entered into by the person—
 - as a result of a multilateral portfolio compression cycle that meets the requirements referred to in subrule (2); and
 - with a participant in the multilateral portfolio compression cycle that was a counterparty to one or more of the compressed transactions; and
 - rule 6(1) did not apply to the person in relation to any of the compressed transactions, under the multilateral portfolio compression cycle.
- (2) The requirements are that the multilateral portfolio compression cycle—
- was conducted in accordance with the rules of an operator of multilateral portfolio compression cycles;
 - involved more than 2 participants, none of which was the operator of the cycle; and

- (c) was conducted in compliance with the counterparty credit risk tolerance levels set by the participants in the cycle.

(3) In this rule—

compressed transaction (壓縮交易), in relation to a multilateral portfolio compression cycle, means an OTC derivative transaction that was modified, or terminated and replaced, under the cycle;

multilateral portfolio compression cycle (多邊投資組合壓縮周期) means a process applied to portfolios of OTC derivative transactions between participants in the process—

- (a) under which some or all of the transactions are—
 - (i) modified to reduce their notional value; or
 - (ii) terminated and replaced with one or more new OTC derivative transactions which have the effect of reducing exposures between or among the participants; and
- (b) that is conducted for the purposes of reducing operational risk or counterparty credit risk for the participants.

11. Clearing obligation taken to have been complied with if transaction cleared under laws of designated jurisdiction

- (1) A prescribed person is taken to have complied with rule 6(1) in relation to a specified OTC derivative transaction to which the person is a counterparty if—
 - (a) under the laws of a jurisdiction that is designated by the Commission in accordance with subrule (2) (**designated jurisdiction**), the transaction is required to be cleared with a central counterparty;

- (b) the transaction has been cleared with a central counterparty in accordance with the laws of the designated jurisdiction; and

- (c) the central counterparty referred to in paragraph (b) is a designated CCP.

(2) For the purposes of subrule (1), 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 the laws of the jurisdiction—

- (a) provide for requirements that are similar to, or serve similar purposes as, the clearing obligation; and
- (b) are appropriately administered and enforced in the jurisdiction.

(3) 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 (2).

(4) A notice published under subrule (2) or (3) is not subsidiary legislation.

Part 3

Record Keeping Obligation

12. Prescribed persons to keep records in relation to transactions

A prescribed person must, in relation to a specified OTC derivative transaction to which it is a counterparty, keep the records specified in rule 14 in the manner specified in rule 15 until no earlier than 5 years after the transaction has—

- (a) matured; or
- (b) before the transaction matures, been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction.

13. Prescribed persons to keep records even if counterparty is, or transaction was entered into, outside Hong Kong

Rule 12 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 wholly or partially outside Hong Kong.

14. Records to be kept by prescribed persons

The records that a prescribed person must keep in relation to a specified OTC derivative transaction are records sufficient to demonstrate that—

- (a) rule 6(1) applied to the person in relation to the transaction and—

- (i) the person complied with rule 6(1); or
- (ii) the person was taken to have complied with rule 6(1) because rule 11(1) applied to the person in relation to the transaction; or
- (b) rule 6(1) did not apply to the person in relation to the transaction because—
 - (i) rule 6(1)(a)(i) was not satisfied;
 - (ii) rule 6(1)(b) was not satisfied;
 - (iii) rule 6(3) applied to the person and the person gave a notice under rule 6(3);
 - (iv) rule 8(1) applied to the person in relation to the transaction;
 - (v) rule 9(1) applied to the person in relation to the transaction; or
 - (vi) rule 10(1) applied to the person in relation to the transaction.

15. 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 14 in a manner that enables the records to be readily accessible.

Part 4

Designation as Central Counterparty

16. Designation as central counterparty

- (1) The Commission may, if it is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest—
 - (a) designate a person under section 101J(1) of the Ordinance as a central counterparty for the purposes of Part IIIA of the Ordinance; and
 - (b) do the following with regard to a designation—
 - (i) impose conditions;
 - (ii) amend or revoke a condition;
 - (iii) impose additional conditions.
- (2) An application under section 101J(1) of the Ordinance for designation must—
 - (a) be in writing;
 - (b) specify the class or description of OTC derivative transactions in respect of which the applicant seeks to be designated;
 - (c) if the applicant is a person outside Hong Kong—
 - (i) specify each authority or regulatory organization outside Hong Kong that is responsible for regulation of the applicant in its capacity as a central counterparty (*overseas regulators*); and
 - (ii) be accompanied by information that is sufficient to demonstrate that the applicant meets legal or

regulatory requirements enforced or administered by the overseas regulators, and that those requirements meet generally recognized international principles and standards applicable to central counterparties; and

- (d) contain or be accompanied by any other information that the Commission may reasonably require.
- (3) The Commission may, in considering an application for designation—
 - (a) by a written notice served on the applicant, request the applicant to submit any additional information that the Commission reasonably considers may be relevant to the Commission's consideration of the application; and
 - (b) have regard to any information in the possession of the Commission, whether provided by the applicant or not.
 - (4) A notice of designation given by the Commission to a person under section 101J(1)(a) of the Ordinance must specify—
 - (a) the class or description of OTC derivative transactions in respect of which the person is designated;
 - (b) the conditions (if any) imposed with regard to the designation; and
 - (c) the time at which the designation is to take effect.
 - (5) The Commission may, in considering whether to exercise any of the powers referred to in subrule (1)(b) with regard to a designation, have regard to any information in the possession of the Commission, whether provided by the designated person or not.

17. Refusal to designate

If the Commission, under section 101J(1)(b) of the Ordinance, refuses to designate a person as a central counterparty for the purposes of Part IIIA of the Ordinance, the Commission must, by a written notice served on the person, inform the person of the refusal and the reasons for the refusal.

18. Revocation of designation

- (1) The Commission may revoke a designation of a person under section 101J(5)(d) of the Ordinance—
 - (a) if the Commission is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest; or
 - (b) at the request, in writing, of the person.
- (2) If the Commission revokes a designation of a person under section 101J(5)(d) of the Ordinance—
 - (a) it must include in the notice the reasons for the revocation, except where the revocation is at the request of the person; and
 - (b) it may include in the notice any directions to the person that it considers appropriate for the purpose of—
 - (i) ceasing the designation of the person; or
 - (ii) protecting the interests of the investing public or the public interest.

- (3) The Commission may, in considering whether to revoke a designation of a person under section 101J(5)(d) of the Ordinance, have regard to any information in the possession of the Commission, whether provided by the person or not.

Schedule 1

[rr. 4 & 5]

Specified OTC Derivative Transactions for the Purposes of Clearing Obligation and Record Keeping Obligation

1. Interpretation

In this Schedule—

basis swap (基準掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties are to be calculated by reference to a floating interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to another floating interest rate applied to the same notional amount;

features (特點), in relation to an interest rate swap, and as applicable depending on whether the swap is a basis swap (see Table 1), a fixed-to-floating swap (except an overnight index swap) (see Table 2) or an overnight index swap (see Table 3), means the following—

- (a) the currency in which the notional amount and payments are denominated as specified under column 2 with the heading of “Currency” in Table 1, 2 or 3;
- (b) the floating rate index on which the floating interest rate (or rates) for the swap is based as specified under

column 3 with the heading of “Floating rate index” in Table 1, 2 or 3;

- (c) the tenor of the swap is within the range as specified under column 4 with the heading of “Tenor” in Table 1, 2 or 3;
- (d) whether or not the swap has optionality as specified under column 5 with the heading of “Optionality” in Table 1, 2 or 3;
- (e) whether or not the notional amount of the swap is constant during the tenor of the transaction as specified under column 6 with the heading of “Constant notional” in Table 1, 2 or 3;

fixed-to-floating swap (固定對浮動掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties are to be calculated by reference to a fixed interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to a floating interest rate applied to the same notional amount;

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 (**payments**) 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 fixed interest rates or agreed floating interest rates;

optionality (授予選擇權), in relation to an interest rate swap, means a counterparty to the swap is granted an option which, if exercised, would or might affect the amount, timing or form of the payments that would otherwise be made under the swap;

overnight index swap (隔夜指數掉期) means a fixed-to-floating swap where the floating interest rate referred to in paragraph (b) of the definition of *fixed-to-floating swap* in this section is based on an overnight interest rate index.

2. Specified OTC derivative transactions

The following OTC derivative transactions are specified for the purposes of rules 4 and 5—

- (a) a basis swap that has all of the features specified for an item in a row of Table 1;
- (b) a fixed-to-floating swap (except an overnight index swap) that has all of the features specified for an item in a row of Table 2;
- (c) an overnight index swap that has all of the features specified for an item in a row of Table 3.

Table 1
Basis Swaps

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	LIBOR	28 days to 10 years	No	Yes
2.	EUR	EURIBOR	28 days to 10 years	No	Yes
3.	GBP	LIBOR	28 days to 10 years	No	Yes
4.	JPY	LIBOR	28 days to 10 years	No	Yes
5.	HKD	HIBOR	28 days to 10 years	No	Yes

Table 2

Fixed-to-Floating Swaps (except Overnight Index Swaps)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	LIBOR	28 days to 10 years	No	Yes
2.	EUR	EURIBOR	28 days to 10 years	No	Yes
3.	GBP	LIBOR	28 days to 10 years	No	Yes
4.	JPY	LIBOR	28 days to 10 years	No	Yes
5.	HKD	HIBOR	28 days to 10 years	No	Yes

Table 3

Overnight Index Swaps

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	Fed Funds	7 days to 2 years	No	Yes
2.	EUR	EONIA	7 days to 2 years	No	Yes
3.	GBP	SONIA	7 days to 2 years	No	Yes

Schedule 2

[r. 6]

**Calculation Periods, Clearing Thresholds and
Prescribed Days**

Column 1	Column 2	Column 3	Column 4
Item	Calculation period	Clearing threshold	Prescribed day
1.	1 September 2016 to 30 November 2016	US\$20 billion	1 July 2017
2.	1 March 2017 to 31 May 2017	US\$20 billion	1 January 2018
3.	1 September 2017 to 30 November 2017	US\$20 billion	1 July 2018
4.	1 March 2018 to 31 May 2018	US\$20 billion	1 January 2019

2016

Chief Executive Officer,
Securities and Futures Commission

Explanatory Note

The main object of these Rules is, for the purposes of the clearing obligation (the obligation to clear specified OTC derivative transactions with a designated central counterparty) imposed on prescribed persons (licensed corporations (*LC*), authorized financial institutions (*AFI*) and approved money brokers (*AMB*)) by section 101C of the Securities and Futures Ordinance (Cap. 571) (*Ordinance*) and the record keeping obligation (to keep records relating to specified OTC derivative transactions) imposed on prescribed persons by section 101E of the Ordinance, to specify—

- (a) the transactions that are subject to the obligations;
 - (b) the circumstances relating to the transactions in which the obligations apply to prescribed persons;
 - (c) the circumstances in which the Securities and Futures Commission (*SFC*) may designate persons as central counterparties under section 101J(1) of the Ordinance and procedural matters relating to the designations.
2. Rule 2 sets out the definitions to be used in the Rules.
 3. Rule 3 sets out when a counterparty to a specified OTC derivative transaction may be designated as a financial services provider.
 4. Rules 4 and 5 specify the OTC derivative transactions that are subject to the clearing and record keeping obligations.

Rules relating to clearing obligation

5. Part 2 sets out the circumstances in which the clearing obligation arises, does not apply or is taken to have been complied with.
6. Rule 6 requires a prescribed person to clear a specified OTC derivative transaction to which it is a counterparty if it has reached

the clearing threshold (and in the case of an AFI or AMB incorporated outside Hong Kong, if it records the transaction in its Hong Kong books) and the other counterparty meets equivalent requirements (if it is a prescribed person) or is a financial services provider.

7. Rule 7 applies the clearing obligation to the specified OTC derivative transactions even if a counterparty to the transaction is outside Hong Kong or the transactions were entered into outside Hong Kong.
8. Rule 8 provides that the clearing obligation does not apply to specified OTC derivative transactions between a prescribed person and an affiliate of the person, if the requirements set out in the rule relating to exempt status for the affiliate are satisfied.
9. Rule 9 provides that the clearing obligation does not apply to specified OTC derivative transactions that an LC, or a Hong Kong incorporated AFI or AMB, records in its exempt jurisdiction books, if the requirements set out in the rule relating to exempt status for the jurisdiction are satisfied.
10. Rule 10 provides that the clearing obligation does not apply to specified OTC derivative transactions that are entered into by a prescribed person as a result of a multilateral portfolio compression cycle, if the requirements set out in the rule relating to the cycle are satisfied.
11. Rule 11 provides that the clearing obligation is taken to have been complied with by a prescribed person if a specified OTC derivative transaction has been cleared with a designated central counterparty in accordance with the laws of a jurisdiction designated by the SFC.

Rules relating to record keeping obligation

12. Part 3 sets out the rules relating to the record keeping obligation.

13. Rule 12 requires a prescribed person to keep records of a specified OTC derivative transaction until no earlier than 5 years after the transaction has matured or been terminated.
14. Rule 13 applies the record keeping obligation to specified OTC derivative transactions even if a counterparty to the transaction is outside Hong Kong or the transactions were entered into outside Hong Kong.
15. Rule 14 sets out the records that a prescribed person must keep.
16. Rule 15 sets out the manner in which a prescribed person must keep the records.

Rules relating to designation as central counterparty

17. Part 4 sets out matters relating to the designation by the SFC of persons as central counterparties under section 101J(1) of the Ordinance.
18. Rule 16 sets out the circumstances in which the SFC may designate persons as central counterparties, requirements relating to applications for designation, and procedural requirements relating to the designations.
19. Rule 17 sets out the procedural requirements to be followed by the SFC if it refuses to designate a person as a central counterparty.
20. Rule 18 sets out the circumstances in which the SFC may revoke the designation of a central counterparty and procedural requirements relating to the revocations.

Transactions that are specified OTC derivative transactions

21. Schedule 1 specifies the OTC derivative transactions that are specified under rules 4 and 5 for the purposes of the clearing and

record keeping obligations. Interest rate swap transactions which have the features set out in tables 1, 2 or 3 are so specified.

Clearing thresholds

22. Schedule 2 specifies the clearing thresholds that a prescribed person must exceed, for the purposes of the clearing obligation set out in rule 6.

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

1

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

Under rule 1(2) of the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015), the Securities and Futures Commission appoints 1 September 2016 as the day on which rule 15 of the Rules comes into operation.

Chief Executive Officer,
Securities and Futures Commission

2016

Securities and Futures (OTC Derivative Transactions—Reporting and Record
Keeping Obligations) (Amendment) Rules 2016

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**Securities and Futures (OTC Derivative Transactions—
Reporting and Record Keeping Obligations)
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Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) (Amendment) Rules 2016

(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)

1. Commencement

These Rules come into operation on 1 July 2017.

2. Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules amended

The Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015) are amended as set out in rules 3 to 24.

3. Rule 2 amended (interpretation)

(1) Rule 2—

Repeal the definition of *starting day*

Substitute

“*starting day* (開始日期), in relation to a prescribed person, means the later of—

- (a) the specification day;
- (b) the day on which the person becomes a prescribed person; and
- (c) if applicable, the day on which the person ceases to be regarded as an exempt person;”.

- (2) Rule 2, definition of *transaction information*—

Repeal

everything after “in relation to a specified OTC derivative transaction,”

Substitute

“has the meaning given by rule 2A;”.

- (3) Rule 2, Chinese text, definition of 聯屬公司—

Repeal the full stop

Substitute a semicolon.

- (4) Rule 2—

- (a) definition of *product class*;
- (b) definition of *product class specification day*;
- (c) definition of *product type*;
- (d) definition of *product type specification day*;
- (e) definition of *regulated prescribed person*—

Repeal the definitions.

- (5) Rule 2—

Add in alphabetical order

“*excluded currency contract* (豁除貨幣合約) means an OTC derivative product that is a forward contract for the sale or purchase of a currency which—

- (a) is entered into for the purpose of settling a sale or purchase of securities denominated in that currency; and
- (b) is intended to be settled by the actual delivery of that currency, by the earlier of the following days—

- (i) the last day of the customary settlement period for the securities referred to in paragraph (a);

- (ii) the seventh business day after the day on which the forward contract is executed;

grace period (寬限期), in relation to a prescribed person, means the period of 3 months beginning on the starting day;

previous Rules (先前的規則) means the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules as in force immediately before the specification day;

specification day (指明日期) means 1 July 2017;

valuation transaction information (交易估值資料), in relation to a specified OTC derivative transaction, means the information and particulars which are within the category of information and particulars specified in item 11 of Schedule 1, and which satisfy the requirement referred to in paragraph (b)(ii) of the definition of *transaction information* in rule 2A(1).”.

4. Rule 2A added

After rule 2—

Add

“2A. Meaning of *transaction information*

- (1) In these Rules—

transaction information (交易資料), in relation to a specified OTC derivative transaction, means the information and particulars relating to the transaction (including

information and particulars relating to a subsequent event and valuation transaction information), and to the persons involved in the transaction, which—

(a) must be submitted to the Monetary Authority for complying with the reporting obligation; and

(b) are—

(i) within a category of information and particulars specified in column 2 of Schedule 1; and

(ii) required for completing a data field that is specified by the Monetary Authority in accordance with subrule (2) in relation to the class or description of specified OTC derivative transactions to which the transaction belongs.

(2) For the purposes of paragraph (b)(ii) of the definition of *transaction information* in subrule (1), the Monetary Authority may, after consultation with the Commission and by notice published in the Gazette, specify in relation to a class or description of specified OTC derivative transactions, the data fields that must be completed by a prescribed person in relation to a specified OTC derivative transaction for complying with the reporting obligation.

(3) A notice published under subrule (2) is not subsidiary legislation.”.

5. **Rule 3 amended (when prescribed person to be regarded as exempt person)**

(1) Rule 3(1)—

Repeal

“in relation to a specified OTC derivative transaction within a product class”.

(2) Rule 3(2)—

Repeal

“after the product class”

Substitute

“after the”.

(3) Rule 3(2)(a)—

Repeal

everything after “outstanding” and before “to which the prescribed person”

Substitute

“specified OTC derivative transactions”.

(4) Rule 3(2)(b) and (c)—

Repeal

“a specified OTC derivative transaction within the product class”

Substitute

“any specified OTC derivative transaction”.

(5) Rule 3—

Repeal subrule (4)

Substitute

“(4) Despite subrule (1), the prescribed persons referred to in subrule (4A) are not eligible to be regarded as exempt persons for the purposes of rule 10(1)(a), 11(1)(a), 12(1)(a) or 13(1)(a) (as applicable).”.

(6) After rule 3(4)—

Add

- “(4A) The prescribed persons are persons that, under the previous Rules—
- (a) reported a specified OTC derivative transaction to the Monetary Authority;
 - (b) under rule 17(1) or 18(1), were taken to have reported a specified OTC derivative transaction to the Monetary Authority; or
 - (c) were required to report a specified OTC derivative transaction to the Monetary Authority but had not reported the transaction to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”

(7) Rule 3(5)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) is not eligible to again be regarded as an exempt person; and
- (b) ceases to be regarded as an exempt person on the day on which the person ceases to satisfy the requirement.”

6. Rule 7 amended (transactions that are specified OTC derivative transactions for purposes of reporting obligation)

Rule 7—

Repeal

“in a product type”

Substitute

“(except a transaction in an excluded currency contract)”

7. Rule 8 amended (transactions that are specified OTC derivative transactions for purposes of record keeping obligation)

Rule 8—

Repeal

“in a product type”

Substitute

“(except a transaction in an excluded currency contract)”

8. Rule 10 amended (reporting by licensed corporations)

(1) After rule 10(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

- (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
- (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”

(2) Rule 10(3)—

Repeal

“in relation to the specified OTC derivative transaction”

9. **Rule 11 amended (reporting by authorized financial institutions incorporated in Hong Kong)**

(1) After rule 11(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or

(b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(2) Rule 11(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

10. **Rule 12 amended (reporting by authorized financial institutions incorporated outside Hong Kong)**

(1) After rule 12(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) or (c) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or

(b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(2) Rule 12(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

11. **Rule 13 amended (reporting by approved money brokers)**

(1) After rule 13(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or

(b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

- (2) Rule 13(3)—
Repeal
“in relation to the specified OTC derivative transaction”.
12. **Rule 16 heading amended (reporting obligation applies even if counterparty, or transaction entered into, outside Hong Kong)**
Rule 16, heading—
Repeal
everything after “counterparty”
Substitute
“is, or transaction was entered into, outside Hong Kong”.
13. **Rule 19 repealed (interpretation of Division 3)**
Rule 19—
Repeal the rule.
14. **Rule 22 repealed (reporting outstanding transactions and transactions entered into during concession period)**
Rule 22—
Repeal the rule.
15. **Rule 23 amended (reporting outstanding transactions where no concession period)**
(1) Rule 23, heading—
Repeal
“where no concession period”.
(2) Rule 23(1)—
Repeal

- “Subject to subrule (5), a prescribed person referred to in subrule (2) and”
Substitute
“Subject to subrule (5) and rule 25B, a prescribed person”.
- (3) Rule 23—
Repeal subrule (2).
16. **Rule 24 amended (reporting transactions entered into after concession period, or where no concession period)**
(1) Rule 24, heading—
Repeal
everything after “entered into”
Substitute
“on or after starting day”.
(2) Rule 24(1)—
Repeal
“referred to in subrule (2) and”.
(3) Rule 24—
Repeal subrule (2).
(4) Rule 24(3)—
Repeal
everything after “specified OTC derivative transaction”
Substitute
“that is entered into on or after the starting day.”.
17. **Rule 25 amended (reporting subsequent events)**
(1) Rule 25(1)—

Repeal

everything after “subrules (2) and (3)” and before “must submit the transaction information”

Substitute

“and rule 25B, a prescribed person referred to in subrule (1A)”.

- (2) After rule 25(1)—

Add

“(1A) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—

- (a) has submitted the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for the transaction to the Monetary Authority despite rule 23(5)); or
- (b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.”.

- (3) Rule 25(2)—

Repeal

“22(4) or”.

18. Rules 25A and 25B added

After rule 25—

Add

“25A. Submitting valuation transaction information

- (1) Subject to rule 25B, a prescribed person referred to in subrule (2) must submit the valuation transaction information for a specified OTC derivative transaction to the Monetary Authority for every day on which the transaction is still outstanding, within 2 business days after the day to which the valuation transaction information relates.
- (2) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—
 - (a) has submitted the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for the transaction to the Monetary Authority despite rule 23(5)); or
 - (b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.

25B. Modified requirements for transactions reported to Monetary Authority under previous Rules

- (1) Rules 23, 25 and 25A apply to a prescribed person in relation to a specified OTC derivative transaction referred to in subrule (2) subject to the modifications specified in subrule (3), (5) or (7) (as applicable).
- (2) The specified OTC derivative transaction is a transaction—
 - (a) that is still outstanding on the specification day; and

- (b) for which previous transaction information was, before the specification day and under the previous Rules, submitted to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong.
- (3) If, on the specification day, the transaction has a maturity day that is before 1 July 2018, subject to subrule (7)—
 - (a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit the previous transaction information to the Monetary Authority on the specification day;
 - (b) rule 25(1)—
 - (i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day; and
 - (ii) applies until the maturity day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;
 - (c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction

- information for the transaction to the Monetary Authority on the specification day.
- (4) For the purposes of subrule (3)(a), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.
- (5) If, on the specification day, the transaction has a maturity day that is on or after 1 July 2018—
 - (a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit to the Monetary Authority—
 - (i) on the specification day, the previous transaction information; and
 - (ii) by no later than the last day of the grace period, the additional transaction information as at a day (*reporting day*) which is not earlier than 2 business days before the day on which the additional transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into;
 - (b) rule 25(1)—
 - (i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day; and

- (ii) applies until the reporting day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;
 - (c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day.
- (6) For the purposes of subrule (5)(a)(i), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.
- (7) If, in relation to a transaction referred to in subrule (3), on or after the specification day and before 1 July 2018, a subsequent event occurs that has the effect of extending the maturity day of the transaction to a day that is on or after 1 July 2018 (*extending event*), then—
- (a) on and from the day on which the extending event occurs, subrule (3) ceases to apply to the prescribed person in relation to the transaction and, subject to paragraph (b), subrule (5) applies to the person in relation to the transaction; and
 - (b) if the extending event occurs on or after the last day of the grace period, subrule (5)(a)(ii) is to be construed as if the reference to the last day of the grace period is a reference to a day that is no later

than 2 business days after the day on which the extending event occurs.

(8) In this rule—

additional transaction information (額外的交易資料) means transaction information that is not previous transaction information;

previous transaction information (先前的交易資料) means information and particulars that constituted the transaction information within the meaning of the previous Rules.”.

19. Rule 26 amended (submitting counterparty identifying particulars in certain circumstances)

(1) Rule 26(1)—

Repeal

“22.”.

(2) Rule 26(1)—

Repeal

“22(5) or”.

(3) Rule 26(1)(b)(i)—

Repeal

everything after “entered into before”

Substitute

“10 January 2016;”.

(4) Rule 26(6)—

Repeal the definition of counterparty identifying particulars

Substitute

“*counterparty identifying particulars* (識別對手方身分的詳情) means the following transaction information—

- (a) the name of a counterparty to a specified OTC derivative transaction;
- (b) any identifying reference of, or assigned to, a counterparty to a specified OTC derivative transaction, and the type of the identifying reference;”.

20. **Rule 28 heading amended (prescribed persons to keep records even if counterparty, or transaction entered into, or conducted, outside Hong Kong)**

Rule 28, heading—

Repeal

everything after “counterparty”

Substitute

“is, or transaction was entered into or conducted, outside Hong Kong”.

21. **Rule 29 amended (records to be kept by prescribed persons)**

- (1) Rule 29(1)(c)—

Repeal

“exempt person in relation to the transaction”

Substitute

“exempt person”.

- (2) Rule 29(1)(e)—

Repeal

“22(5) or”.

- (3) Rule 29—

Repeal subrule (2).

22. **Rule 32 amended (reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified subsidiaries)**

Rule 32(5)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) a reference to a 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), is to be construed as a reference to a specified subsidiary;
- (b) a reference to the starting day in relation to a prescribed person is to be construed, in relation to a specified subsidiary, as a reference to the effective day; and”.

23. **Rule 33 added**

After rule 32—

Add

“33. Transitional arrangements for specification of subsidiary made before specification day

- (1) A specification of a subsidiary by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance, that was in force immediately before the specification day continues to have effect on and after the specification

day as if the specification was made on the specification day.

- (2) A specification of a subsidiary by the Monetary Authority under section 101E(5) of the Ordinance for the purposes of section 101E(3) of the Ordinance, that was in force immediately before the specification day continues to have effect on and after the specification day as if the specification was made on the specification day.”.

24. Schedule 1 substituted

Schedule 1—

Repeal the Schedule

Substitute

“Schedule 1

[rr. 2 & 2A]

Transaction Information to be Submitted to Monetary Authority

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
1.	Information and particulars relating to the Monetary Authority’s administration of the

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
	reporting of the transaction, including information and particulars identifying—
	(a) the nature of the report;
	(b) the person submitting the report;
	(c) the person that is required to comply with the reporting obligation; and
	(d) if the person that is required to comply with the reporting obligation is regarded as having conducted the transaction in Hong Kong on behalf of an affiliate of the person, the affiliate.
2.	Information and particulars relating to the class or type of product to which the transaction belongs.
3.	Days and periods relating to the transaction, including—
	(a) the day on which the transaction was entered into or on which a subsequent event is agreed;
	(b) the day on which the transaction or a subsequent event becomes effective;
	(c) the day on which the transaction matures or terminates;
	(d) dates or periods relating to a feature of

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
	the class or type of product to which the transaction belongs; and
	(e) dates or periods relating to the reporting of a transaction that is outstanding as at a particular time.
4.	Information and particulars relating to the counterparties to the transaction, including names, places of incorporation or residence, identifying references, and rights and obligations arising under, or relating to, the transaction.
5.	Information and particulars relating to pricing of the transaction (other than valuation transaction information), including— (a) notional amounts and schedules; (b) reference and settlement currencies; (c) agreed prices, rates or indices; (d) settlement details; and (e) other features or details specific to the class or type of product to which the transaction belongs that may affect the value of the transaction.
6.	Information and particulars relating to the

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
	confirmation of the transaction, including the platform through which, and the manner in which, the transaction was confirmed and any identifying reference assigned to the transaction by the confirmation platform.
7.	Information and particulars relating to the execution of the transaction, including— (a) the platform through which, and the manner in which, the transaction was executed; (b) any identifying reference assigned to the transaction by the execution platform; (c) the day on which, and the time at which, the transaction was executed; and (d) any agent involved in the execution of the transaction.
8.	Information and particulars relating to the clearing of the transaction, including— (a) whether the transaction was, or is intended to be, cleared through a central counterparty;

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
	<ul style="list-style-type: none"> (b) if applicable, the central counterparty through which the transaction was, or is intended to be, cleared; (c) identifying references assigned to the original transaction before it is cleared, and the 2 new transactions resulting from the clearing process; (d) the client clearing services provider (if any) involved in, or intended to be involved in, clearing the transaction; and (e) whether or not the clearing obligation applies to the transaction.
9.	Information and particulars relating to whether and how the transaction arises from, or is amended as a result of, a portfolio compression exercise.
10.	Particulars of any identifying reference assigned to the 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)).
11.	Information and particulars relating to the

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
	valuation of the transaction, including— <ul style="list-style-type: none"> (a) the basis of the valuation; (b) the day on which, and the time at which, the valuation was calculated; (c) the value of the transaction; and (d) the currency in which the value is denominated.
12.	Information and particulars relating to a subsequent event, including— <ul style="list-style-type: none"> (a) the day on which the event occurred; (b) the type of the event; and (c) the changes resulting from the event to information or particulars submitted to the Monetary Authority.
13.	Other information and particulars relating to the transaction, or to the persons involved in the transaction.”.

Chief Executive Officer,
Securities and Futures Commission

2016

Explanatory Note

The main object of these Rules is to amend the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015) (*Reporting Rules*) by expanding the scope of OTC derivative transactions to which the reporting and record keeping obligations apply and information relating to the transactions that must be submitted to the Monetary Authority (*MA*), and by providing for transitional arrangements relating to transactions already reported to the MA under the Reporting Rules when these Rules commence (*specification day*).

2. Rule 3 amends rule 2 of the Reporting Rules by amending, repealing and adding various definitions used in the Reporting Rules.
3. Rule 4 adds a new rule 2A to the Reporting Rules, which sets out the meaning of *transaction information* and expands the scope of the information and particulars relating to a transaction that must be submitted to the MA for complying with the reporting obligation.
4. Rule 5 amends rule 3 of the Reporting Rules by removing the product class basis for exempt person status. Consequential amendments as a result of this removal are made to rules 2 (definitions of *starting day* and *regulated prescribed person*), 10(3), 11(3), 12(3), 13(3), 29(1)(c) and 32(5) of the Reporting Rules.
5. Rules 6 and 7 respectively amend rules 7 and 8 of the Reporting Rules to apply the reporting and record keeping obligations to all OTC derivative transactions, except transactions in excluded currency contracts. Consequential amendments as a result of this expansion are made to rule 2 (addition of definition of *excluded currency contract* and repeal of various definitions relating to product classes and product types), rule 3 (exempt person status),

- rules 19, 22, 23 and 24 (repeal of references to concession period) of, and Schedule 1 to, the Reporting Rules.
6. Rules 8(1), 9(1), 10(1) and 11(1) respectively add a new subrule (2A) to rules 10, 11, 12 and 13 of the Reporting Rules in order to apply the reporting obligation to certain transactions which were conducted by prescribed persons on behalf of affiliates and reported to the MA before the specification day.
 7. Rule 13 repeals rule 19 of the Reporting Rules that contains the definitions of—
 - (a) *grace period* (rule 3 adds a new definition for this term to rule 2 of the Reporting Rules); and
 - (b) *concession period* (rules 14, 15(1) and 16(1) remove references to this term from the Reporting Rules).
 8. Rules 15(2) and 17(1) respectively amend rules 23 and 25 of the Reporting Rules to make them subject to certain modified requirements set out in a new rule 25B of the Reporting Rules relating to transactions reported to the MA before the specification day.
 9. Rule 17(2) amends rule 25 of the Reporting Rules to clarify the prescribed persons that are required to report subsequent events.
 10. Rule 18 adds to the Reporting Rules—
 - (a) a new rule 25A, which requires prescribed persons to submit valuation transaction information for a specified OTC derivative transaction on a daily basis; and
 - (b) a new rule 25B, which sets out certain modified requirements for reporting expanded transaction information for transactions that were reported to the MA before the specification day.

11. Rule 19 amends rule 26 of the Reporting Rules, to clarify the meaning of the day specified in rule 26(1)(b)(i) of the Reporting Rules and to amend the definition of *counterparty identifying particulars* consequential to the repeal and substitution of Schedule 1 to the Reporting Rules.
12. Rule 23 adds a new rule 33 to the Reporting Rules, which sets out transitional arrangements relating to certain subsidiaries of authorized financial institutions incorporated in Hong Kong that were specified by the MA under sections 101B(5) or 101E(5) of the Securities and Futures Ordinance (Cap. 571) before the specification day.
13. Rule 24 repeals and substitutes Schedule 1 to the Reporting Rules with certain categories of information and particulars relating to transactions, for the purposes of the new rule 2A of the Reporting Rules.

Securities and Futures (OTC Derivative Transactions Reporting Obligation—Fees) Rules

(Made by the Chief Executive in Council under section 101M of the Securities and Futures Ordinance (Cap. 571) after consultation with the Monetary Authority)

1. Commencement

These Rules come into operation on 1 May 2016.

2. Interpretation

In these Rules—

electronic reporting system (電子匯報系統) has the meaning given by rule 2 of the Reporting and Record Keeping Rules;

fee (費用) means the fee payable under rule 3(1);

Reporting and Record Keeping Rules (《匯報及備存紀錄規則》) means the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015);

specified transaction (指明交易) means an OTC derivative transaction that is specified for the purposes of the reporting obligation as referred to in rule 7 of the Reporting and Record Keeping Rules;

terminated (被終止) has the meaning given by rule 2 of the Reporting and Record Keeping Rules.

3. Fees for using electronic reporting system

(1) A prescribed person must pay to the Monetary Authority the fee specified in the Schedule for using the electronic reporting

system mentioned in rule 21 of the Reporting and Record Keeping Rules.

- (2) The fee must be paid for each specified transaction in respect of each month if the transaction has not matured or been terminated by the end of the last business day of that month.
- (3) The fee must be paid within 7 business days from the date on which the demand note for the fee is issued by the Monetary Authority.
- (4) The fee must be paid—
 - (a) by debiting the account specified by the prescribed person, subject to any condition imposed by the Monetary Authority; or
 - (b) in a manner agreed between the person and the Monetary Authority.
- (5) The Monetary Authority may recover an outstanding fee as a civil debt due to the Monetary Authority.

4. Waiver of fees

The Monetary Authority may, if of the opinion that the charging of a fee is inappropriate or unduly burdensome for a person or class of persons, do any of the following in relation to the person or the class—

- (a) waive the payment of the fee;
- (b) reduce the fee;
- (c) refund, in whole or in part, the fee.

Schedule

[r. 3]

Fee

\$4.5 per specified transaction

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

These Rules require the payment of a fee to the Monetary Authority for using the electronic system operated by or on behalf of the Monetary Authority for submitting reports on certain OTC derivative transactions for the purposes of—

- (a) the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015); and
 - (b) section 101B of the Securities and Futures Ordinance (Cap. 571).
2. These Rules also empower the Monetary Authority to waive the payment of a fee or reduce or refund a fee.

Securities and Futures (Fees) (Amendment) Rules 2016

(Made by the Chief Executive in Council under section 395 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Securities and Futures Commission)

1. Commencement

These Rules come into operation on the day on which section 9 of the Securities and Futures (Amendment) Ordinance 2014 (6 of 2014) (in so far as it relates to the new section 101J) comes into operation.

2. Securities and Futures (Fees) Rules amended

The Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) are amended as set out in sections 3, 4 and 5.

3. Section 3 amended (time for payment of fees)

(1) After section 3(1)—

Add

“(1A) The annual fee prescribed in item 1A of Schedule 1 is payable on or before each anniversary of the date on which the central counterparty concerned is designated under section 101J(1)(a) of the Ordinance.”.

(2) Section 3(3), after “subsection (1)”—

Add

“, (1A)”.

4. Schedule 1 amended (fees prescribed for purposes of section 395(1)(a)(i), (iii) and (iv) of Ordinance)

Schedule 1, after item 1—

Add**“Fees relating to Part IIIA of Ordinance**

1A. Annual fee payable in respect of designation as a central counterparty under section 101J(1)(a) of the Ordinance \$10,000”.

5. Schedule 3 amended (fees prescribed for purposes of section 395(1)(b) of Ordinance)

Schedule 3, after item 2—

Add**“Fees relating to Part IIIA of Ordinance**

2A. Prescribed fee payable under section 101J(1) of the Ordinance on an application for designation as a central counterparty \$10,000”.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

These Rules are made by the Chief Executive in Council under section 395 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Securities and Futures Commission (*Commission*). The Rules —

- (a) prescribe the application fee payable to the Commission by a person seeking to be designated as a central counterparty under section 101J of the Ordinance; and
- (b) require a designated central counterparty to pay an annual fee to the Commission for the designation, and prescribe the annual fee payable.

**Further Information on the Securities and Futures
(OTC Derivative Transactions Reporting Obligation – Fees) Rules
 (“TR Fees Rules”)**

In accordance with section 101M of the Securities and Futures Ordinance (Cap. 571), the Chief Executive in Council may, after consultation with the Monetary Authority (“MA”), make rules to require and provide for the payment to the MA of the fees for using the electronic system (i.e. the Hong Kong Trade Repository, “TR”).

2. The key objective of introducing the mandatory reporting obligation under the regulatory regime is to improve the transparency of the over-the-counter (“OTC”) derivatives market in Hong Kong. The OTC derivative transaction information collected by the TR will provide the MA and the Securities and Futures Commission with information relevant to its monitoring and surveillance of the local market. The TR therefore plays a vital role in supporting the implementation of the mandatory reporting obligation in Hong Kong.

3. The expenses for developing the TR include the cost of acquiring the hardware and developing the software for the electronic system, and the staff cost incurred for setting up the system (collectively, the capital costs). Recurring costs in the form of system maintenance cost and staff cost are also incurred in the day-to-day operation of the TR. Initially, both capital costs and recurring costs are fully funded by the Exchange Fund. The TR, through collecting OTC derivatives data and providing access to regulatory authorities, is an important financial infrastructure which fosters financial stability. Consistent with the policy of funding the development of financial infrastructure of strategic importance to financial stability, the MA intends to recover the recurring costs by charging fees on users, while the capital costs will be absorbed by the Exchange Fund.

4. The proposed TR Fees Rules will allow the MA to reduce the amount of, or waive the payment of, any fee, or refund any fee paid if the MA considers that such payment would be inappropriate or unduly burdensome. This is intended to cater for situations such as system disruptions. In addition, the MA may limit the overall cost on users by imposing a cap on the fee payable by users to cater for situations where the overall income from the collection of fees exceeds the recurring costs of the TR. The MA intends to set the cap at \$1.5 million per reporting entity per annum at the commencement of these Rules.

**Further Information on
the Securities and Futures (Fees) (Amendment) Rules 2016**

Section 101J(1) of the Securities and Futures Ordinance (Cap. 571) (“SFO”) provides that on application by a person in the prescribed manner and on payment of the prescribed fee, the Securities and Futures Commission (“SFC”) may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, designate the person as a central counterparty (“CCP”). Section 101J(2) provides that only recognized clearing houses and authorized providers of automated trading services may be designated under section 101J(1).

2. Processing of applications to become a designated CCP by the SFC will incur costs. An application to become a designated CCP should include the following information –

- (a) details of any jurisdictions in which the applicant carries on business as a CCP and is recognized as a CCP through which transactions may be cleared for the purposes of fulfilling any mandatory clearing requirements in force in that jurisdiction; and details of the regulator in each such jurisdiction that regulates its activities as a CCP;
- (b) the classes of over-the-counter (“OTC”) derivative transactions in respect of which the applicant is seeking to be designated, together with details of the applicant’s experience and track record in clearing such transactions;
- (c) sufficient information as may be required by the SFC to demonstrate that persons clearing OTC derivative transactions through its facilities will be able to do so in compliance with relevant requirements under the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (“the Clearing Rules”), and details of any arrangements to facilitate such compliance; and
- (d) such other information as the SFC may reasonably require.

3. In addition, the SFC's regulation of designated CCPs will incur costs. Persons designated as CCPs will generally be required to provide information and statistics on a more frequent basis than CCPs that are only authorized to provide automated trading services but not designated for the purposes of mandatory clearing, so as to enable the SFC to monitor their activities and performance as a designated CCP, including their ability to facilitate compliance with the Clearing Rules.

4. Section 395 of the SFO provides that the Chief Executive in Council may, after consultation with the SFC, make rules to, inter alia, require and provide for the payment to the SFC of, and prescribe (a) fees for an application to the SFC under or pursuant to any of the relevant provisions¹; and (b) fees which the SFO provides are, or may be, prescribed by rules made under that section. Currently, such fees are prescribed in the Securities and Futures (Fees) Rules.

¹ As defined in Schedule 1 to the SFO, "relevant provisions" include the provisions of the SFO.