

**Bills Committee on Securities and Futures (Amendment) Bill 2013**

**Second meeting on**

**Monday, 30 September 2013, at 2:30 pm**

**in Conference Room 1 of the Legislative Council Complex**

**SPEAKER'S NOTES**

Presentation by Mr Francis EDWARDS of Clifford Chance

*(On behalf of Barclays Bank PLC, BNP Paribas, Citibank, N.A., Credit Suisse AG, Deutsche Bank AG, Goldman Sachs (Asia) LLC, The Hongkong and Shanghai Banking Corporation Limited, J.P.Morgan, Morgan Stanley and Standard Chartered Bank)*

Thank you for inviting us to the meeting today. I am presenting on behalf of a group of international financial institutions, all of whom are interested stakeholders in the Hong Kong financial markets and are dedicated to Hong Kong's success. The group is committed to helping the Bills Committee, the HKMA and the SFC develop an appropriate and proportionate regulatory framework that enhances the stability and liquidity of the OTC derivatives market and maintains Hong Kong's status as a premier international financial centre.

There are three key messages I would like to deliver on behalf of the Group today:

1. First, the importance of a two stage process to develop the regulatory framework for Hong Kong's OTC derivatives market
2. Second, the importance for Hong Kong to develop a regulatory regime which is internationally aligned with other major jurisdictions and
3. Third, the importance of ongoing dialogue and market consultation during the rule making process.

Starting with the first point, the Group fully supports the two stage process provided under the Bill, which lays down a broad regulatory framework and empowers the HKMA and SFC to create detailed rules for the mandatory obligations in the form of subsidiary legislation. This approach is consistent with the approach that has been adopted in various other jurisdictions such as the United States, the European Union, Singapore and Australia. Following the Financial Stability Board report published this month, we expect that Hong Kong will be keen promptly to adopt legislation to comply with its G20 commitments and the group is supportive of helping Hong Kong to do this.

Second, allowing detailed rules to be set out at the subsidiary legislation level will facilitate international alignment of Hong Kong's rules with those of other jurisdictions. This is because it will allow the HKMA and the SFC to continue

their active dialogue with other international regulators, of which they are a key part, in order to implement rules which are internationally consistent. The importance of international alignment is recognized by the G20 and international regulators and we strongly encourage the continuing efforts by the HKMA and SFC to achieve this.

Conflicting, duplicative or inconsistent rules for trading derivatives as between Hong Kong and another jurisdiction could restrict the ability of Hong Kong and foreign market participants to enter into OTC derivatives transactions with each other or could make Hong Kong uncompetitive internationally through inefficiencies or unnecessary costs or barriers. This would have serious ramifications for the liquidity and efficiency of the OTC derivatives market in Hong Kong and could stifle the development of the Renminbi derivatives market. Furthermore, inconsistencies in the standards imposed could lead to needlessly onerous requirements for market participants faced with multiple regulatory standards. This could also hamper the ability of Hong Kong corporations to carry out hedging activity which is vital for the appropriate risk management of their businesses in Asia Pacific.

In order to achieve international alignment, we strongly support the HKMA and SFC developing an appropriate and proportionate scope for Hong Kong's OTC derivatives regulations and a recognition process for equivalent foreign regulatory regimes. Reciprocal access and recognition will be key to ensuring

that Hong Kong's regulatory framework for OTC derivatives is consistent with that of other jurisdictions so that Hong Kong's financial markets can continue to thrive.

Finally, as the detailed rules under many jurisdictions are still in the process of development, we urge the HKMA and the SFC to remain flexible and to conduct regular market consultations with stakeholders who will be happy to assist during the rule making process in order to ensure that unnecessary disruption for the Hong Kong market is avoided and so that Hong Kong can have the best rules for the continued stability and success of its financial markets. The group lends its full support to assist in developing a regulatory regime for Hong Kong's OTC derivatives market that reduces systemic risk and maintains Hong Kong's position as a leading financial centre. Thank you.

**Clifford Chance**

**30 September 2013**