

# Joint consultation conclusions on addition of new calculation periods and consultation on the annual update to the list of Financial Services Providers under the Clearing Rules for over-the-counter derivative transactions

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April 2022



HONG KONG MONETARY AUTHORITY  
香港金融管理局



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

**CONTENTS**

**Foreword..... ii**

**Personal Information Collection Statement ..... iv**

**Part I Consultation conclusions on addition of new calculation periods for the Clearing Rules ..... 6**

**A Introduction..... 6**

**B Conclusions and way forward ..... 6**

**Part II Consultation on annual update to the list of Financial Services Providers ..... 7**

**A Introduction..... 7**

**B Annual update to the List of Financial Services Providers under the Clearing Rules7**

**C Timing for submitting comments ..... 8**

**D Way forward ..... 9**

**ANNEX 1 – List of Respondents..... 10**

**ANNEX 2 – Proposed revised list of Financial Services Providers..... 11**

## Foreword

In line with global efforts, the Hong Kong Monetary Authority (**HKMA**) and Securities and Futures Commission (**SFC**) have been working with the Government of the Hong Kong Special Administrative Region and other stakeholders to implement a regulatory regime for the over-the-counter (**OTC**) derivatives market in Hong Kong. The regime, which is now in place, provides for, among other things, the introduction of reporting, clearing, trading and record keeping obligations in respect of OTC derivative transactions.

Part I of this paper sets out the conclusions to the joint consultation paper issued by the HKMA and the SFC in December 2021 on the addition of new Calculation Periods<sup>1</sup> under the Clearing Rules<sup>2</sup>.

Part II sets out the result of the annual review of the list of Financial Services Providers under the Clearing Rules conducted for the position on 31 December 2021, and the related proposal for an updated list which is targeted to become effective on 1 January 2023. The HKMA and SFC invite market participants and interested parties to submit written comments on Part II no later than 14 May 2022.

Comments should reach either the HKMA or SFC on or before 14 May 2022 and may be submitted by any of the following methods:

By online submission at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>

By email to: [fss@hkma.gov.hk](mailto:fss@hkma.gov.hk) or [otcconsult@sfc.hk](mailto:otcconsult@sfc.hk)

By fax to: (852) 2878 7297 or (852) 2521 7917

By post to one of the following:

Financial Stability Surveillance Division  
Hong Kong Monetary Authority  
55/F, Two International Finance Centre  
8 Finance Street, Central  
Hong Kong

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

Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

**Please note that the names of respondents and the contents of their submissions may be published by the HKMA and SFC on their respective websites and in other documents to be published by them. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.**

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<sup>1</sup> Please refer to Schedule 2 to the Clearing Rules for the current specifications of Calculation Periods, Clearing Thresholds and Prescribed Days. Further technical guidance is set out under the "[Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime](#)".

<sup>2</sup> The Securities and Futures (OTC Derivative Transactions–Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.

**You may not wish your name or submission to be published by the HKMA and SFC. If this is the case, please state that you wish your name, your submission or both to be withheld from publication when you make your submission.**

April 2022

## Personal Information Collection Statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>3</sup> will be used following collection, what you are agreeing to with respect to the HKMA's and SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

### Purpose of collection

2. The personal data provided in your submission in response to this consultation paper may be used by the HKMA or SFC for one or more of the following purposes:
  - (a) to administer –
    - (i) the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA; and
    - (ii) the relevant provisions<sup>4</sup> and codes and guidelines published pursuant to the powers vested in SFC;
  - (b) to perform statutory functions under the provisions of the Banking Ordinance (Cap. 155), the Securities and Futures Ordinance (Cap. 571) and relevant provisions;
  - (c) for research and statistical purposes; or
  - (d) for other purposes permitted by law.

### Transfer of personal data

3. Personal data may be disclosed by the HKMA or SFC to members of the public in Hong Kong and elsewhere as part of this public consultation. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA and SFC websites and in documents to be published by the HKMA and SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA and SFC have the right to charge a reasonable fee for processing any data access request.

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<sup>3</sup> Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

<sup>4</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

## **Retention**

5. Personal data provided to the HKMA and SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of their functions.

## **Enquiries**

6. Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to:

### **HKMA**

Personal Data Privacy Officer  
Hong Kong Monetary Authority  
55/F, Two International Finance Centre  
8 Finance Street  
Central, Hong Kong

### **SFC**

Data Privacy Officer  
Securities and Futures Commission  
54/F, One Island East  
18 Westlands Road  
Quarry Bay, Hong Kong

7. A copy of the Privacy Policy Statement adopted by the HKMA and SFC is available upon request.

## **Part I Consultation conclusions on addition of new calculation periods for the Clearing Rules**

### **A Introduction**

1. The HKMA and SFC have implemented mandatory clearing since September 2016 to capture specified standardised interest rate swaps (**IRS**) between major dealers if certain conditions under the Clearing Rules are met.
2. In December 2021, the HKMA and SFC issued a joint consultation paper on the addition of eight new Calculation Periods for the purposes of the Clearing Rules (Consultation Paper).
3. We explained in the Consultation Paper that when we implemented the mandatory clearing regime in 2016, Schedule 2 to the Clearing Rules provided for four sets of Calculation Periods spanning from 2016 to 2018, each of which was set to be a period of three consecutive months. If a prescribed person's<sup>5</sup> applicable average total position during any Calculation Period reaches the corresponding Clearing Threshold, it must centrally clear relevant OTC derivative transactions in accordance with the Clearing Rules if certain conditions are met. A Prescribed Day<sup>6</sup> linked to a Calculation Period, which is seven months from the end of that Calculation Period, is set to allow time for the prescribed person to prepare to meet its new clearing obligation. Eight additional Calculation Periods of the same design, covering the years 2019 to 2022, were added to the Clearing Rules in 2018 following industry consultation.
4. We proposed in the Consultation Paper to add eight similar Calculation Periods because the last Calculation Period specified in the Clearing Rules will end by November 2022.

### **B Conclusions and way forward**

5. The deadline for submitting comments on the proposed eight additional Calculation Periods was 21 January 2022. We received three submissions (see [Annex 1](#) for details of the respondents) and the comments can be viewed on the websites of the HKMA and the SFC.
6. The respondents did not have any comments on the additional Calculation Periods and the associated proposed amendments to the Clearing Rules. Therefore, we will proceed with our proposal.
7. We aim to table the draft proposed amendments to the Clearing Rules as attached to the Consultation Paper before the Legislative Council for negative vetting by the third quarter of 2022, and propose that the amendments take

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<sup>5</sup> A "prescribed person" is an authorized institution under the Banking Ordinance, an approved money broker under the Banking Ordinance or a licensed corporation under the Securities and Futures Ordinance.

<sup>6</sup> See footnote 1.

effect on 1 March 2023, the starting date of the proposed new series of Calculation Periods.

## **Part II Consultation on annual update to the list of Financial Services Providers**

### **A Introduction**

8. As explained in paragraph 1 above, mandatory clearing captures specified IRS between major dealers if certain conditions under the Clearing Rules are met. Major dealers with a presence in Hong Kong are usually authorized institutions (**AIs**) or licensed corporations (**LCs**). They therefore fall under the scope of prescribed persons in the Clearing Rules. In order to capture transactions between prescribed persons and major dealers outside Hong Kong which are not AIs or LCs, the concept of a Financial Services Provider (**FSP**) was introduced.
9. Under the Clearing Rules, the SFC may, with the consent of the HKMA and by notice published in the Gazette, designate any person, whether incorporated in or outside Hong Kong, as an FSP if the SFC is satisfied that it is likely that the person is actively engaged in OTC derivative activities outside Hong Kong. The first list of FSPs was gazetted in August 2016 and came into effect on 1 September 2016.

### **B Annual update to the List of Financial Services Providers under the Clearing Rules**

#### ***Scope of an FSP***

10. The two criteria to determine whether an entity comes within the scope of an FSP are:
  - (a) it belongs to a group of companies appearing on the list of global systemically important banks (**GSIBs**) published by the Financial Stability Board, or on the list of dealer groups which undertook to the OTC Derivatives Supervisors Group to work collaboratively with central counterparties, infrastructure providers and global supervisors to continue to make structural improvements to the global OTC derivatives markets (**G15-dealers**); and
  - (b) it is a clearing member of the largest central counterparties (**CCPs**) offering clearing for interest rate swaps in the US, Europe, Japan and Hong Kong (**IRS CCPs**).
11. To ensure that the list of FSPs (**FSP List**) remains relevant and appropriate, we conducted an annual review of the FSP List following a consultation in



2018<sup>7</sup>. The policy adopted in the 2018 consultation was that we would take a snapshot of the entities falling within the FSP criteria in paragraph 10 above at the end of each calendar year, identify any changes and consult the market on any proposed amendments to the FSP List in the following year. This consultation reflects the result of the latest review of the snapshot on 31 December 2021 and proposes an updated FSP List to take effect on 1 January 2023.

### ***Proposed changes to the FSP List based on the current review***

12. Since our last review, Nomura Financial Products Europe GmbH, which is a group member of Nomura, a G15-dealer, has become a clearing member of an IRS CCP. We thus propose to include it in the revised FSP List.
13. To reduce the risk of regulatory arbitrage, our approach has been to keep any GSIB or G15-dealer member entity on the FSP List which is no longer a clearing member of any IRS CCPs unless there is no longer any entity within the group which is a clearing member of an IRS CCP, or we receive a submission from the entity that there is a permanent change in its business model so that it no longer conducts OTC derivative transactions. We have made remarks on these entities in the proposed revised FSP List.
14. The proposed revised FSP List, consolidating all the proposed changes from the current review, including name changes to align with the names of certain entities which also appear in the registers of the HKMA or SFC, is set out in [Annex 2](#). The proposed changes are highlighted for ease of reference. We welcome any comments about the inclusion of any of the entities in the proposed revised FSP List.

<p><b>Question: Do you have any comments about our proposed revised FSP List? If you do, please provide specific details.</b></p>
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### **C Timing for submitting comments**

15. The proposed update to the FSP List is made in accordance with the established policy and process communicated to market participants. As with previous annual updates, we believe that market participants are familiar with the policy and process involved in the annual update and they will have anticipated the substance of our proposals. We propose to allow about six

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<sup>7</sup> See the Joint consultation paper on enhancements to the OTC derivatives regime for Hong Kong to– (1) mandate the use of Legal Entity Identifiers for the reporting obligation, (2) expand the clearing obligation and (3) adopt a trading determination process for introducing a platform trading obligation issued in March 2018 and the consultation conclusions paper published in June 2018.

weeks for the submission of comments on this consultation. Comments should reach the HKMA or SFC by no later than 14 May 2022.

## **D Way forward**

16. As stated in the 2018 consultation, we will align the effective date of the revised FSP List to the Prescribed Day<sup>6</sup> of the Calculation Period nearest to when the consultation conclusions paper is published. We intend to publish the conclusion paper for this consultation in June 2022. This means the nearest Calculation Period will be 1 March 2022 to 31 May 2022. Accordingly, the effective date of the revised FSP List will fall on 1 January 2023, which is the Prescribed Day for the Calculation Period of 1 March 2022 to 31 May 2022.

## **ANNEX 1 – List of Respondents**

(in alphabetical order)

1. DTC Association, The
2. Hong Kong Association of Banks, The
3. Hong Kong Bar Association, The

## **ANNEX 2 – Proposed revised list of Financial Services Providers**

The following entities have been designated, or are proposed to be designated, as FSPs for the purpose of the Clearing Rules. Proposed changes from the current FSP List are highlighted and explained as tabled below.

	<b>Name of the entities</b>	<b>Notes</b>
1.	Agricultural Bank of China Limited	
2.	Banco Santander, S.A.	Proposed change to align with the name set out in the HKMA register.
3.	Bank of America, <u>National Association</u> <del>N.A.</del>	Proposed change to align with the name set out in the HKMA register.
4.	Bank of America Europe Designated Activity Company ( <del>previously stated as “Bank of America Merrill Lynch International Designated Activity Company”</del> )	
5.	Bank of China (UK) Ltd	
6.	Banque Palatine S.A.	
7.	Barclays Bank Ireland Plc	
8.	Barclays Bank PLC	
9.	Barclays Bank UK PLC	
10.	Barclays Capital Inc.	
11.	BNP Paribas Fortis SA/NV	
12.	BNP Paribas <del>SA</del>	Proposed change to align with the name set out in the HKMA register.
13.	BNP Paribas Securities Corp.	
14.	BofA Securities, Inc.	
15.	BofA Securities Europe SA	
16.	BofA Securities Japan Co., Ltd ( <del>previously stated as “Merrill Lynch Japan Securities Co., Ltd.”</del> )	
17.	CACEIS Bank SA	Whilst no longer a clearing

	Name of the entities	Notes
		member of an IRS CCP, other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List. Please see paragraph 13 of this Paper.
18.	Citibank, N.A.	
19.	Citibank Europe Plc	
20.	Citigroup Global Markets Europe AG	
21.	Citigroup Global Markets Inc.	
22.	Citigroup Global Markets Japan Inc.	
23.	Citigroup Global Markets Limited	
24.	Credit Agricole Corporate and Investment Bank	
25.	Credit Foncier de France	
26.	Credit Suisse (Schweiz) AG	
27.	Credit Suisse AG	
28.	Credit Suisse International	
29.	Credit Suisse Securities (Japan) Limited	
30.	Credit Suisse Securities (USA) LLC	
31.	<u>Credit Suisse Bank (Europe), S.A.</u> (previously stated as "Credit Suisse Securities Sociedad de Valores, S.A.")	Current FSP. Name changed since last update.
32.	Deutsche Bank <u>Aktiengesellschaft AG</u>	Proposed change to align with the name set out in the HKMA register.
33.	Deutsche Bank Securities Inc.	Whilst no longer a clearing member of an IRS CCP, other entities within the GSIB group remain as clearing members and we have kept the entity on the FSP List. Please see paragraph 13 of this Paper.
34.	Goldman Sachs & Co. LLC	
35.	Goldman Sachs Bank Europe SE	
36.	Goldman Sachs Bank USA	

	Name of the entities	Notes
37.	Goldman Sachs Financial Markets Pty Ltd	
38.	Goldman Sachs International	
39.	Goldman Sachs Japan Co., Ltd.	
40.	HSBC Bank plc	
41.	HSBC Bank USA, <u>National Association N.A.</u>	Proposed change to align with the name set out in the HKMA register.
42.	HSBC Continental Europe ( <del>previously stated as “HSBC France”</del> )	
43.	HSBC Securities (USA) Inc.	
44.	HSBC UK Bank plc	
45.	ING Bank N.V.	
46.	ING Bank Slaski S.A.	
47.	ING-DiBa AG	Whilst no longer a clearing member of an IRS CCP, other entities within the GSIB group remain as clearing members. We have kept the entity on the FSP List. Please see paragraph 13 of this Paper.
48.	J.P. Morgan AG	
49.	J.P. Morgan Securities LLC	
50.	J.P. Morgan Securities plc	
51.	JPMorgan Chase Bank, <u>National Association N.A.</u>	Proposed change to align with the name set out in the HKMA register.
52.	JPMorgan Securities Japan Co., Ltd.	
53.	Merrill Lynch Capital Services Inc.	
54.	Merrill Lynch International	
55.	Mitsubishi UFJ Morgan Stanley Securities Co., Ltd.	
56.	Mizuho Bank, Ltd.	
57.	Mizuho Capital Markets LLC	

	<b>Name of the entities</b>	<b>Notes</b>
58.	Mizuho International plc	
59.	Mizuho Securities USA LLC	
60.	Morgan Stanley & Co. International plc	
61.	Morgan Stanley & Co. LLC	
62.	Morgan Stanley Capital Services LLC	
63.	Morgan Stanley Europe SE	
64.	Morgan Stanley MUFG Securities Co., Ltd.	
65.	MUFG Bank, Ltd.	
66.	MUFG Securities EMEA plc	
67.	National Westminster Bank Plc	
68.	NATIXIS	
69.	NatWest Markets N.V.	
70.	NatWest Markets plc	
71.	<u>Nomura Financial Products Europe GmbH</u>	A member of a G15-dealer group, and a new clearing member of an IRS CCP. We propose to include it in the revised FSP List.
72.	Nomura Financial Products & Services, Inc.	
73.	Nomura Global Financial Products, Inc.	
74.	Nomura International plc	
75.	Nomura Securities Co., Ltd.	
76.	Nomura Securities International, Inc.	
77.	Nordea Bank Abp	
78.	RBC Capital Markets, LLC	
79.	RBC Europe Limited	
80.	Royal Bank of Canada	

	<b>Name of the entities</b>	<b>Notes</b>
81.	Santander Financial Services Plc	Whilst no longer a clearing member of an IRS CCP, other entity within the GSIB group remains as clearing member. We have kept the entity on the FSP List. Please see paragraph 13 of this Paper.
82.	Santander Investment Securities Inc.	
83.	SG Americas Securities LLC	
84.	SMBC Capital Markets Inc.	
85.	SMBC Nikko Securities Inc.	
86.	Societe Generale	
87.	Societe Generale International Limited	
88.	Standard Chartered Bank	
89.	Sumitomo Mitsui Banking Corporation	
90.	Sumitomo Mitsui Trust Bank, Limited	
91.	TD Bank, N.A.	
92.	TD Bank USA, N.A.	
93.	TD Global Finance Unlimited Company	
94.	The Bank of New York Mellon	
95.	<del>The</del> Toronto-Dominion Bank	Proposed change to align with the name set out in the HKMA register.
96.	UBS AG	
97.	UBS Europe SE	
98.	UBS Securities LLC	
99.	UBS Switzerland AG	
100.	UniCredit Bank AG	
101.	UniCredit Bank Austria AG	
102.	UniCredit S.p.A.	
103.	Wells Fargo Bank, <u>National Association</u>	Proposed change to align with



	<b>Name of the entities</b>	<b>Notes</b>
	<u>N.A.</u>	the name set out in the HKMA register.
104.	Wells Fargo Securities, LLC	