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Definitions and Interpretation

Unless the context otherwise requires, terms defined in Schedule 1 to the SFO or in the Reporting Rules bear the same meaning when used in the questions and answers below, and the following terms bear the following meanings:

- **“AIDG”** refers to the Administration and Interface Development Guide issued by the HKMA through the operator of HKTR;
- **“HKMA”** refers to the Hong Kong Monetary Authority;
- **“HKTR”** refers to the electronic reporting system operated by or on behalf of the HKMA for submitting and receiving reports on specified OTC derivative transactions for the purposes of the Reporting Rules and section 101B of the SFO;
- **“HKTR Reporting Manuals”** refers to the reporting manuals and related documents issued by the HKMA (i.e. the AIDG, OTC Derivatives Trade Repository Reporting Service Reference Manual, Operating Procedure for Hong Kong Trade Repository Reporting Service – User Manual for Participants) and which, together, constitute the “directions and instructions for the use of electronic reporting system” required to be published by the HKMA under Rule 21(2) of the Reporting Rule

Legislation and technical guidance

Q1. Where are the reporting and related record keeping requirements set out?

The broad framework for mandatory reporting and related record keeping is contained in Part IIIA of the SFO, and the detailed requirements for reporting and

related record keeping are set out in the RJ60.0025.4-0.004 Twis c 0.078 Tw [(s)1 (e2(t o)2 u)1.9

Transitional Arrangement

Q3. Is there any transitional arrangement for backloading outstanding transactions under the phase 2 Reporting Rules?

to provide automated trading services and is acting in its capacity as a central counterparty.

Other types of entities may be covered in later phases of implementation.

Q5. Are there any

for my institution to report transactions after my institution loses the exempt person relief?

As there will no longer be any concession period under phase 2 reporting, any institution expects itself to be subject to the reporting requirements should get necessary preparation to report transactions on a T+2 basis. There is however still a 3-month grace period for backloading any outstanding transactions from the date the person ceases to be regarded as an exempt person (please also see Q3).

Circumstances when reporting is required

Q8. Under what circumstances should an OTC derivative transaction be reported?

Counterparty limb - An AI, AMB, LC, RCH or ATS-CCP is required to report an OTC derivative transaction (see Q9) if it is a counterparty to the transaction.

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- (a) transactions in securities or futures contracts that are traded on a recognized stock market or recognized futures market (i.e. a market operated by an entity that is a recognized exchange company under the SFO);
- (b) transactions in securities or futures contracts that are traded on a stock or futures market and cleared through an overseas CCP if those markets and CCPs are prescribed under the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice – these are listed in [Annex 1](#) and [Annex 2](#) respectively for ready reference;
- (c) transactions in a spot contract;
- (d) transactions in a structured product which is offered to the multiple persons for a short period and on essentially identical terms; and
- (e) transactions in an embedded derivative.

In addition, as set out in the Reporting Rules, excluded currency contracts (i.e. certain FX forward contracts for the purpose of settling a sale or purchase of securities which are denominated in a foreign currency, settled within a customary settlement period and in any event settled in not longer than 7 days) is also not a specified OTC derivative transaction.

Q10. Is Delta One Warrant subject to the reporting obligation?

Warrants are generally OTC derivatives and, except those specifically carved out under the definition of “OTC derivative product”, are therefore subject to the reporting obligation. However, the HKMA and SFC concluded in June 2017 upon market request and after a public consultation that Delta One Warrants (i.e. call warrants with a strike price set at, or effectively set at, zero or very close to zero) which satisfy certain requirements should be excluded from the definition of “OTC derivative product” and therefore will not be reportable under the mandatory reporting regime. The proposed exclusion requires amendments to subsidiary legislation. Subject to the Legislative Council’s negative vetting process and subject to the legislative timetable, the implementation of the proposed exclusion may not be possible until Q4 of 2017 or later. In the meantime, the HKMA and SFC will adopt a pragmatic approach in dealing with non-reporting of Delta One Warrants. Market participants who envisage difficulty in complying with their reporting obligations prior to the legislative changes take effect should contact their respective regulator as soon as possible.

Q11. Are Accumulators subject to the reporting obligation?

Accumulators are regarded as OTC derivatives, and are therefore subject to the reporting obligations. Reporting entities should submit the transaction information using the Other template of the corresponding asset class. For example, a

transaction involving a FX Accumulator should be reported by using the FX Other template.

Q12. Are inter-branch and intra-branch transactions reportable?

Inter-branch transactions (i.e. transactions between branches of the same legal entity) and intra-branch transactions (e.g. transactions between desks within the same branch) are not reportable. Such transactions are not between two persons and hence we do not regard them as being transactions between counterparties.

Q13. Are transactions reportable if they are: (i) entered into with retail customers; (ii) undertaken for hedging purposes; or (iii) intragroup transactions (i.e. transactions between the reporting institution and an institution that belongs to the same group of companies as the reporting institution)?

The answer to each of the above questions is “yes”, subject to the transactions meeting the reporting criteria. There is no general exemption provided for the reporting of these transactions.

Q14. My institution is an overseas incorporated bank. We have entered into an OTC derivative transaction with a client and then entered into another transaction with our New York branch to transfer the market risk of the transaction. How should we report these transactions?

Assuming that the transaction with the client is booked in the Hong Kong branch, the transaction should be reported pursuant to the counterparty limb (see Q8). As for the hedging transaction with the New York branch, this is not required to be reported because it is an inter-branch transaction (see Q12).

Please note that this case is different from the Hong Kong branch entering into a

Yes, a reporting entity is required to report a transaction which was entered into in the past but remains outstanding at the commencement of the Reporting Rules.

The requirement to report outstanding transactions only applies in respect of transactions to which the person is a counterparty. For an AI, AMB or LC, the outstanding transactions that it “conducted in Hong Kong” are not required to be reported.

Under phase 2 Reporting Rules, there is atounta a

(B) Are “back-to-back” transactions

would include a secondment arrangement to Hong Kong because under such an arrangement, the trader would be performing his duties predominantly in Hong Kong during the secondment period.

Conversely, for traders who are normally based in Hong Kong but who are temporarily seconded to work in an overseas branch or affiliate of an AI/AMB/LC, transactions that they have conducted during their overseas secondment will not be regarded as “conducted in Hong Kong” transactions.

When assessing whether a trader should be regarded as having been seconded to (or out of) Hong Kong,

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It is unlikely that such transactions will be reportable. Firstly these

Q27. Transactions executed on electronic trading platform

How will the “conducted in Hong Kong” concept apply to transactions executed on an electronic trading platform?

Transactions executed on an electronic trading platform should be reported if the person who sets the parameters of the key economic terms (in particular, pricing parameters) that will apply to transactions that are executed on the platform is a Hong Kong trader. In such case, the Hong Kong trader will be regarded as being responsible for the decision to enter into these transactions. On the other hand, if the parameters of the key economic terms were previously set (or modified) by a trader outside Hong Kong, but the latest modification was by a Hong Kong trader and in a manner that altered the pricing parameters of a transaction before it was executed, then the Hong Kong trader will be regarded as responsible for the final decision to enter into the transaction, and the transaction will have to be reported to the HKMA via the HKTR. In fact, the Hong Kong trader will thereafter continue to be regarded as setting the parameters of the key economic terms for transactions executed on the platform, until the parameters are next modified by another trader.

Q28. Transactions entered into for a third party other than an affiliate

Should I report a transaction that I have entered into on behalf of a client which is not an affiliate of my institution?

We assume that the counterparties to the transaction are the client and a third party institution. (In other words, we assume this is not a case where the counterparty is the client's affiliate.)

product specified test). This applies to both (i) direct submission entities (i.e. those who report transaction by themselves and are not using reporting agent) and (ii) reporting agents. For reporting entities using reporting agents, they are also required to take the scenario test and encouraged to take the product specified test. An entity must therefore reserve sufficient time for the HKTR operator to process its membership application and to complete the simulation test in its planning for complying with the reporting obligation. The membership process usually takes about two weeks from the time all relevant documentation is received. The test normally take about a week (depending on a prospective member's systems), and have to be pre-scheduled as per the timetable issued by the HKTR operator. Entities should therefore ensure they have allowed for sufficient lead time.

Q30. Is there any technical guidance on how to report a transaction?

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reported the transaction to the HKMA via the HKTR; and (ii) that the transaction has been reported in accordance with the requirements of the Reporting Rules. Therefore if you intend to rely on reporting by an affiliate to discharge your reporting obligation, it will be necessary to establish a mechanism to ensure that confirmations for all relevant transactions have been received from the affiliate and adequate records of such confirmations have been maintained. Reporting entities should also ensure that appropriate arrangements are made for the reporting of any subsequent events and the daily valuation information relating to transactions reported by an affiliate to ensure compliance with the reporting requirements. .

Q34. Is over-reporting or voluntary reporting allowed?

There is no prohibition on over-reporting, i.e. reporting transactions that are not required to be reported under the Reporting Rules. (For example, an entity may backload all outstanding transactions even if they are due to mature or be terminated before the expiry of the grace period and hence not subject to reporting – see Q3) However, to maintain the integrity of data in the HKTR, once an AI, AMB, LC, RCH or ATS-CCP has reported a transaction voluntarily, any subsequent events and daily valuation information relating to that transaction are required to be reported, and this must be done in the time and manner prescribed in the Reporting Rules (see Q36, Q37 and Q38 .

Q35. How should we report transactions that are within the reportable scope but cannot be reported in full because of limitations in the HKTR system?

Special product features: If a transaction involves special product features that are not supported by the current reporting templates, it is acceptable to report information about the transaction only to the extent supported by the templates. For information, currently the TR templates can accommodate the following special features for interest rate swaps:

- (a) option to cancel transaction;
- (b) amortizing/accreting notional; and
- (c) early termination provision.

Information not supported by the current reporting templates: When there are key information relating to the core economic terms that materially affect the pricing of the transaction but the current reporting templates do not have the relevant data

Please refer to the HKTR Reporting Manuals which are available at <https://hktr.hkma.gov.hk/>.

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The Reporting R

As stated in Q42, we do not prescribe the way in which reporting entities classify the type of execution of a transaction. If reporting entities are unable to identify information for the data field “Execution Type”, it is acceptable to adopt “Electronic” if most of the transactions are executed electronically.

Masking of counterparty identity

Q44. How can my institution report transactions that are subject to a prohibitive legal or regulatory limitation? (See also Q47.)

If the submission of counterparty identifying particulars is prohibited in a jurisdiction that has been designated by the SFC, your institution may report the transactions via the HKTR with the counterparty identifying particulars masked. For more detailed technical guidance, please refer to the SRI. The list of designated jurisdictions for this purpose is as at [Annex 3](#).

Q45. Is there any specific action that an institution is required to take in order to verify that Rule 26(1)(a)(i) is satisfied (i.e. to verify the existence of a prohibitive legal or regulatory limitation)?

The list of jurisdictions is not intended to enable institutions to automatically mask particulars when transacting with counterparties from any of those jurisdictions. Rather, institutions should carry out some reasonable due diligence to ensure that barriers to disclosure still exist in the relevant jurisdiction, and that those barriers still prevent disclosure of counterparty particulars in respect of the particular transaction in question. This does not entail obtaining a formal legal opinion to support masking in a particular case, but would, at a minimum, require them to keep abreast of developments that might trigger changes which effectively allow the reporting of counterparty identifying particulars in a particular case. (So, for example, if barriers in jurisdiction X cease to apply in respect of certain types of transactions, or transactions entered into

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into before 10 January 2016. Transactions entered into on or after this date will not be entitled to such masking relief.

Q47. The SFC has revoked the designation of a jurisdiction which was previously identified as having a prohibitive legal or regulatory limitation. What should we do if we have previously reported transactions on a masked basis in view of this designation?

The revocation of a designation status will invariably be triggered by a change in the relevant prohibitive legal or regulatory limitation. The consequences of a revocation will therefore differ depending on the nature and impact of the particular change as summarised below:

- (a) If a change in the prohibitive legal or regulatory limitation does not apply to a transaction that was previously reported to the HKMA on a masked basis, then the transactions may remain masked. (For example, if the prohibitive legal or regulatory limitation is uplifted but only in respect of future transactions, and not in respect of existing transactions, then the change would not trigger further obligations under the Reporting Rules, and the counterparty particulars may remain masked.)
- (b) On the other hand, if a change in the prohibitive legal or regulatory limitation does apply to a transaction that was previously reported to the HKMA on a masked basis, then, as the reporting entity, you must submit counterparty identifying particulars within 3 months after the day on which the SFC revokes the designation of the jurisdiction in question, unless the customer consents in writing to the transaction remaining masked.

The masking relief is intended as a temporary/transitory measure only. The HKMA and SFC expect that the list to be shortened, not lengthened, over time as more jurisdictions resolve issues relating to barriers to trade reporting. We will also continue to monitor international development in this area when considering which designations should remain and which should be revoked

Specification of AI's subsidiaries

Q52. What criteria will the HKMA adopt when specifying subsidiaries of an AI whose OTC derivative transactions must be reported to the HKMA?

The HKMA has conducted several rounds of surveys on OTC derivatives activities of subsidiaries of the locally incorporated AIs since the implementation of the Reporting Rules. The survey results indicated that the scales of OTC derivatives activities of subsidiaries relative to their respective AI groups were either insignificant, or that such activities have been subject to comparable reporting obligation to TRs/TR-like entities in those jurisdictions whernta-2 (i)peicw 2.86 0 Td(/)-3 (()Tj

Annex 1 – List of prescribed stock markets and futures markets

As of 27 April 2018

1. Athens Exchange Derivatives Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
2. Athens Exchange Securities Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
3. Baden-Wuerttembergische Wertpapierbörse (Regulierter Markt) operated by Börse Stuttgart AG
- 4.

18. Italian Derivatives Market operated by Borsa Italiana S.p.A.
19. London Stock Exchange Derivatives Market operated by London Stock Exchange plc
20. London Stock Exchange – Regulated Market operated by London Stock Exchange plc
- 20A. Main Securities Market operated by The Irish Stock Exchange plc (*L.N. 34 of 2018*)
21. Market for Investment Vehicles (MIV) operated by Borsa Italiana S.p.A.
22. MEFF Exchange operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
23. MEFF – Segmento Derivados Energía operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
24. Mercado Continuo Español operated by Sociedad Rectora de la Bolsa de Valores de Madrid, S.A., Sociedad Unipersonal
25. NASDAQ OMX Copenhagen A/S operated by NASDAQ OMX Copenhagen A/S
26. NASDAQ OMX Helsinki (Arvopaperipörssi) operated by NASDAQ OMX Helsinki Ltd.
27. NASDAQ OMX Stockholm AB operated by NASDAQ OMX Stockholm AB
28. NYSE Euronext – Euronext Amsterdam operated by Euronext Amsterdam N.V.
29. Oslo Axess operated by Oslo Børs ASA
30. Oslo Børs ASA operated by Oslo Børs ASA
31. Securitised Derivatives Market operated by Borsa Italiana S.p.A.
32. The London International Financial Futures and Options Exchange (LIFFE) operated by LIFFE Administration and Management
33. Warsaw Stock Exchange/Bonds/Catalyst/Main Market operated by Warsaw Stock Exchange S.A.

- (m) Chicago Mercantile Exchange, Inc.;
- (n) China Financial Futures Exchange;
- (o) Commodity Exchange, Inc.;
- (p) Dalian Commodity Exchange;
- (q) Dubai Mercantile Exchange Limited;
- (r) Eurex Zürich AG;
- (s) Euronext UK Markets Limited;
- (t) FEX Global Pty Ltd.;
- (u) *(Repealed L.N. 34 of 2018)*
- (ua) Hanoi Stock Exchange; *(L.N. 34 of 2018)*
- (ub) Hochiminh Stock Exchange; *(L.N. 34 of 2018)*
- (v) ICE Futures Canada, Inc.;
- (w) ICE Futures Europe Limited;
- (x) ICE Futures U.S., Inc.;
- (y) Indonesian Stock Exchange;
- (z) International Securities Exchange, LLC;
- (za) JSE Limited;
- (zb) Korea Exchange, Inc.;
- (zc) Mercado Mexicano de Derivados, S.A. de C.V.;
- (zca) Miami International Securities Exchange, LLC; *(L.N. 34 of 2018)*
- (zd) Minneapolis Grain Exchange, Inc.;
- (ze) Montréal Exchange Inc.;

- (zf) Multi Commodity Exchange of India Limited;
- (zg) Nagoya Stock Exchange, Inc.;
- (zh) NASDAQ OMX PHLX LLC;
- (zi) National Commodity & Derivatives Exchange Limited;
- (zj) National Stock Exchange of Australia Limited;
- (zk) National Stock Exchange of India Limited;
- (zl) New York Mercantile Exchange, Inc.;
- (zm) New York Stock Exchange LLC;
- (zn) New Zealand Exchange Limited;
- (zo) NYSE Arca, Inc.;
- (zp) NYSE MKT LLC;
- (zq) OJSC Moscow Exchange MICEX-RTS;
- (zr) OneChicago, LLC;
- (zs) Osaka Exchange, Inc.;
- (zsa) Pakistan Stock Exchange; (*L.N. 34 of 2018*)
- (zt) Shanghai Futures Exchange;
- (zta) Shanghai International Energy Exchange Co., LTD; (*L.N. 34 of 2018*)
- (zu) Shanghai Stock Exchange;
- (zv) Shenzhen Stock Exchange;
- (zw) SIM Venture Securities Exchange Ltd.;
- (zx) Singapore Exchange Derivatives Trading Limited;

- (zz) SIX Structured Products Exchange Ltd.;
- (zza) SIX Swiss Exchange Ltd.;
- (zzab) Taipei Exchange (previously GreTai Securities Market); *(L.N. 34 of 2018)*
- (zzac) Taiwan Stock Exchange Corporation; *(L.N. 34 of 2018)*
- (zzb) Tel Aviv Stock Exchange Ltd.;
- (zzc) Thailand Futures Exchange Public Company Limited;
- (zzd) The London Metal Exchange Limited;
- (zze)

Annex 2 – List of prescribed clearing houses

As of 27 April 2018

1. Asigna, Compensación y Liquidación
2. ASX Clear (Futures) Pty Limited
3. ASX Clear Pty Limited
4. Athens Exchange Clearing House S.A.
5. BME Clearing S.A.
6. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
7. Bursa Malaysia Derivatives Clearing Berhad
8. Bursa Malaysia Securities Clearing Sdn. Bhd.
9. Canadian Derivatives Clearing Corporation
10. Cassa di Compensazione e Garanzia S.p.A.
11. CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)
12. CDS Clearing and Depository Services Inc.
13. Chicago Mercantile Exchange, Inc.
14. China Financial Futures Exchange
15. China Securities Depository and Clearing Corporation Limited
16. CJSC JSCB National Clearing Centre
- 16A. Clearstream Banking S.A. (*L.N. 34 of 2018*)
17. Dalian Commodity Exchange
18. Eurex Clearing AG
- 18A. Euroclear Bank S.A./N.V. (*L.N. 34 of 2018*)
19. European Central Counterparty N.V.
20. European Commodity Clearing AG
21. (*Repealed L.N. 34 of 2018*)
22. ICE Clear Canada, Inc.

23. ICE Clear Europe Limited
24. ICE Clear U.S., Inc.
25. India Clearing Corporation Limited
26. Indonesian Clearing and Guarantee Corporation
27. Istanbul Clearing, Settlement and Custody Bank Inc. (Takasbank)
28. Japan Commodity Clearing House Co., Ltd.
29. Japan Securities Clearing Corporation
30. JSE Clear (Pty) Ltd.
31. KDPW_CCP S.A.
32. KLER Central Counterparty Ltd.
33. Korea Exchange, Inc.
34. LCH.Clearnet Limited
35. LCH.Clearnet S.A.
36. LME Clear Ltd.
37. MAOF (Derivatives) Clearing House Ltd.
38. Minneapolis Grain Exchange, Inc.
39. Multi Commodity Exchange of India Limited
40. NASDAQ OMX Clearing AB
- 40A. National Clearing Company of Pakistan Limited (*L.N. 34 of 2018*)
41. National Securities Clearing Corporation
42. National Securities Clearing Corporation Limited
43. New Zealand Clearing Limited
44. Oslo Clearing ASA
45. Securities Clearing Corporation of the Philippines
46. Shanghai Futures Exchange
- 46A. Shanghai International Energy Exchange Co., LTD (*L.N. 34 of 2018*)

- 47. Singapore Exchange Derivatives Clearing Limited
- 48. SIX SIS AG
- 49. SIX X-Clear Ltd.
- 50. Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Sociedad Unipersonal
- 50A. Taipei Exchange (previously GreTai Securities Market) (*L.N. 34 of 2018*)
- 50B. Taiwan Stock Exchange Corporation (*L.N. 34 of 2018*)
- 51. TASE Clearing House Ltd.
- 52. Thailand Clearing House Co., Ltd.
- 53. The Central Depository (Pte) Limited
- 54. The Options Clearing Corporation
- 55. The Taiwan Depository & Clearing Corporation
- 56. The Taiwan Futures Exchange Corporation
- 57. Tokyo Financial Exchange Inc.
- 57A. Vietnam Securities Depository (*L.N. 34 of 2018*)
- 58. Zhengzhou Commodity Exchange

