

Joint consultation paper on the prescription of additional markets and clearing houses and prescription of Delta One Warrants under the OTC derivatives regulatory regime

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TABLE OF CONTENTS

FOREWORD	iii
PERSONAL INFORMATION COLLECTION STATEMENT	iv
EXECUTIVE SUMMARY.....	1
INTRODUCTION	2
PRESCRIPTION OF ADDITIONAL MARKETS AND CLEARING HOUSES	2
PRESCRIPTION OF DELTA ONE WARRANTS	4
WAY FORWARD	6
APPENDIX A – LIST OF PROPOSED ADDITIONAL MARKETS AND CLEARING HOUSES TO BE PRESCRIBED	7

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 Data¹ will be used following collection, what you are agreeing to with respect to the HKMA's and / or 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 to the HKMA and / or SFC in response to this consultation paper may be used by the HKMA and SFC for one or more of the following purposes –
 - (a) to administer –
 - (i) in the case of the HKMA, the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA; and
 - (ii) in the case of the SFC, the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) in performing –
 - (i) in the case of the HKMA, statutory functions under the provisions of the Banking Ordinance (Cap. 155) and the Securities and Futures Ordinance (Cap. 571); and
 - (ii) in the case of the SFC, its statutory functions under the 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 and / or SFC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. 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

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.

Retention

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

Enquiries

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

In the case of the HKMA –

Personal Data Privacy Officer
Hong Kong Monetary Authority

INTRODUCTION

6. The HKMA and the SFC have been working on implementing an OTC derivatives regulatory regime in Hong Kong. Phase 1 Reporting came into effect on 10 July 2015. It requires the reporting of transactions in certain interest rate swaps and non-deliverable forwards. Phase 2 Reporting (which expands mandatory reporting to cover all OTC derivatives products in 5 key asset classes, namely, interest rate, foreign exchange, equity, credit and commodity) will commence on 1 July 2017.
7. As Phase 2 Reporting nears, we have been receiving market feedback to adjust the scope of the term “OTC derivative product”. Specifically, some market participants have requested the following via an industry association³:
 - (a) certain additions to the list of markets and clearing houses prescribed under section 392A of the SFO⁴; and
 - (b) the exclusion of certain warrants from the definition of “OTC derivative product” pursuant to section 392(1)(b)(vii) of the SFO.

PRESCRIPTION OF ADDITIONAL MARKETS AND CLEARING HOUSES

8. The OTC derivatives regime is not intended to encompass products that are traded on an exchange and cleared through a clearing house. They are therefore excluded from the definition of “OTC derivative product” by virtue of section 1B(2)(b) and (c) of Part 1 of Schedule 1 to the SFO.

- (b) They are regulated in their home jurisdictions, and their regulatory status is comparable to that of a recognized exchange company or a recognized clearing house under the SFO.
- (c) They are regulated by the relevant market regulators, banking regulator or government agency in that jurisdiction.

12. Save for two exceptions, the list at Appendix A

15. For the time being, we will continue with maintaining a list of markets and clearing houses to exclude overseas exchange traded derivatives from the definition of “OTC derivative product”. However, we will also look into alternative approaches, including (if necessary) recasting section 1B(2)(c) of Part 1 of Schedule 1 to the SFO. In any case, any change in approach will require consultation and may also involve amending primary legislation. It is therefore unlikely to be implemented in the near future.

PREScription OF DELTA ONE WARRANTS

16. Section 392(1) of the SFO empowers the Financial Secretary to prescribe or not so that they are specifically included in or excluded from the definition of “OTC derivative product”. This provision aims to ensure that there is a degree of flexibility to refine the ambit of “OTC derivative product” as appropriate. The section 392(1) power is intended to be used sparingly and in exceptional cases.
17. We have received a request from an industry association for Delta One Warrants to be specifically excluded from the definition of “OTC derivative product” by being prescribed pursuant to section 392(1)(b)(vii) of the SFO.

18. We agree that Delta One Warrants are rather distinct from other OTC derivative products in that they do not contain features commonly associated with OTC derivatives

- (e) it is documented in the form of a warrant and not concluded by a confirmation made under an ISDA master agreement.
- 21. For completeness we note that we have considered whether all warrants, as a class, should be excluded from the definition of OTC derivative product. However, we do not believe this is appropriate as this might inadvertently provide a loophole for bilaterally negotiated OTC options to avoid the OTC derivatives regulatory regime by documenting in the form of warrants.

Q3: Do you have any concerns or comments on the proposal to exclude Delta One Warrants, and how they should be described?

APPENDIX A – LIST OF PROPOSED ADDITIONAL MARKETS AND CLEARING HOUSES TO BE PRESCRIBED

Proposed additional list of stock and futures markets

For the purposes of the definition of “OTC derivative product” under the SFO, we propose that all markets operated by the following entities be prescribed under section 392A of the SFO, except that where specific markets are identified below, we propose that only the specific markets identified below be prescribed.

	<u>Market operator</u>	<u>Market proposed to prescribed</u>
1.	Hanoi Stock Exchange	
2.	HoChiMinh Stock Exchange	
3.	Miami International Securities Exchange, LLC	
4.	Pakistan Stock Exchange	
5.	Taipei Exchange*	
6.	Taiwan Stock Exchange Corporation	
7.	The Irish Stock Exchange Plc	Main Securities Market

* “Taipei Exchange” is intended to replace the currently prescribed “GreTai Securities Market”, which is the former name of Taipei Exchange.

Proposed additional list of clearing houses

For the purposes of the definition of “OTC derivative product” under the SFO, we propose that the additional clearing houses also be prescribed under section 392A of the SFO.

1.	Clearstream Banking, S.A.
2.	Euroclear Bank S.A./N.V.
3.	National Clearing Company of Pakistan Limited
4.	Taiwan Stock Exchange Corporation
5.	Vietnam Securities Depository