Frequently Asked Questions on

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

6 October 2017

These FAQs elaborate on how the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules will operate and are intended to help market participants better understand their obligations and responsibilities under the Reporting Rules so that they can better understand the requirements and ensure compliance going forward.

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Definitions and Interpretation

Unless the context otherwise requi

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 Reporting Rules. The data fields for each OTC derivative transaction in respect of the five asset classes are published by Government Gazette. These documents are accessible at the Department of Justice's website: www.blis.gov.hk.

Technical guidance for reporting is set out in the HKTR Reporting Manuals which are accessible at https://hktr.hkma.gov.hk/

The Supplementary Reporting Instructions (**SRI**), annexed to the AIDG, provides an overview of the technical reporting requirements and would be a good start to understanding the more technical aspects of reporting.

Commencement Date of the Reporting Rules

Q2. When did the reporting and related record keeping requirements start to operate? What is required to be reported?

The reporting and related record keeping requirements first came into effect from the commencement of the phase 1 Reporting Rules on 10 July, 2015. The subsequent phase of reporting and related record keeping requirements reflected in the phase 2 Reporting Rules came into effect on 1 July, 2017. Covered transactions have to be reported on a T+2 basis subject to certain transitional arrangements (see Q3).

Phase 1 Reporting Rules covered transactions in certain interest rate swaps and non-deliverable forwards only whereas phase 2 Reporting Rules subsequently expanded the coverage of transactions to all five asset classes of interest rate, foreign exchange, equity, credit and commodity. Reporting entities are required to comply with the data fields gazetted for each asset class in accordance with the description thereof and the instructions set out in the SRI. Subsequent events of these transactions, as set out in the SRI to cover any event which occurs after the transaction was entered into that affects the terms or conditions on which the transaction was entered into or the persons involved, are also required to be reported (please also see Q18). Under phase 2 reporting, valuation information of the transactions will have to be reported daily.

Transitional Arrangement

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

When the phase 2 Reporting Rules came into effect, there was a 3-month grace period starting from the commencement date for backloading outstanding transactions. For valuation information, there will however be no grace period for transactions that have been reported/backloaded as due consideration had been given to the time needed for reporting entities to get necessary system preparation.

Points to note:

(a) Transactions entered into before the commencement date of the phase 2 Reporting Rules but still outstanding as at that date are not required to be reported if they mature or are terminated before the end of the grace period (see Q17). However, if such a transaction has already been reported to the HKMA via the HKTR before it matures or is terminated, then any subsequent events in respect of that transaction (that occur up till the time the transaction matures or is terminated) should also be reported (please also see Q17)

(b) Although there is a 3-month grace period for backloading outstanding transactions, reporting entities are encouraged to backload these transactions as early as possible rather than wait till the end of the grace period.

Entities subject to reporting and related record keeping obligations

Q4. Who would be subject to the mandatory reporting and related record keeping obligations?

The mandatory reporting and the related record-keeping obligations apply to an entity that is:

(a) an authorized institution (**"AI"**);

(b) an approved money broker (**"AMB"**);

(c) a licensed corporation (**"LC"**);

(d) a recognized clearing house (**“RCH”**) – i.e. a central counterparty (**“CCP”**) that is recognized basis. But there is a 3-month grace period for backloading outstanding transactions as at the date the person becomes an AI/AMB/LC (please also see Q3)

Q7. I expect that although my institution is eligible for the exempt person relief under the Reporting Rules, it will likely lose this relief some time later due to planned changes in business strategies. Is there any transitional arrangement 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. Additionally:

(a) for an overseas incorporated AI, the transaction must be booked in its Hong Kong branch; and

(b) for an ATS-CCP, the counterparty to the transaction must be a Hong Kong incorporated entity.

"Conducted in Hong Kong" limb - For an AI, AMB and LC, it is also required to report an OTC derivative transaction that it has "conducted in Hong Kong" (see Q20):

(a) on behalf of an affiliate (in the case of any AI, AMB or LC); or

(b) on behalf of its head office or its branch/office outside Hong Kong (in the case of the Hong Kong branch of an overseas incorporated AI)

Additionally, in the case of an RCH or ATS-CCP, the reporting obligation will only apply when the RCH or ATS-CCP is acting in its capacity as a CCP. Transactions entered into as part of its default management procedures are still transactions entered into in its capacity as a CCP. They will therefore be reportable under the reporting regime.

Q9. What types ofypeypeeBT1n(li)-3(mb)]TJ8(Wh)-3(at)3(toBT03a)4(lf oT)e.304 91.464 Tm[( )]TJE

Under phase 2 Reporting Rules, all specified OTC derivative transactions, as defined in the SFO, under the five asset classes are required to be reported.

By definition (as set out in Schedule 1 to the SFO

Q11. Are Accumulators subject to the reporting obligation?

Accumulatorsare 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 transactioninvolving a FX Accumulator should be reported by using the FX Other template.

Q12.

Q16. Are

who only undertakes pure sales activities (i.e. whose role is only that of a salesman negotiating between a client and a trader) will not be regarded as a trader, even if the person is able to adjust the price offered to the client to achieve a desired sales credit.

If the Hong Kong staff only negotiate the transactions between clients and traders, and the traders responsible for the decision to enter into the transactions are not Hong Kong traders, the transactions will not be regarded as “conducted in Hong Kong” transactions.

If the traders that the Hong Kong staff negotiate with are Hong Kong traders, or if the Hong Kong staff that are client facing the AI, AMB or LC to perform his or her duties predominantly in Hong Kong. This 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, a reporting institution should act reasonably and sensibly, taking into account all relevant facts and circumstances (e.g. the specific secondment arrangements, the formal contractual agreement, the account assigned to the trader in the seconded site, etc). In case of doubt, reporting entities may consult either the HKMA or the SFC. Additionally, reporting entities are reminded to keep sufficient records.

to Hong Kong. These transactions are booked in the Singapore branch. Are these transactions required to be reported?

It is unlikely that such transactions will be reportable. Firstly these transactions are not booked in the Hong Kong branch so they are not caught by the counterparty limb (see Q8). Secondly, since you are not a trader predominantly performing your duties in Hong Kong, your transactions are therefore not caught by the "conducted in Hong Kong" limb. However, again, reporting entities and traders should adopt a reasonable and sensible approach when assessing if their visits to Hong Kong constitute business trips or a secondment, and in case of doubt, reporting entities should consult either the HKMA or the SFC

Q25. Transactions

product specified test). This applies to both (i) direct submission entities (i.e. those who report transaction by themselves and are not using reporting agents) 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 takes 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 sufficient lead time.

Q30. Is there any technical guidance on how to report a transaction? 123BT1 0 0I3ve

See Q1.

Q31. Can I appoint an agent to report to the HKMA?

Yes. An entity can appoint an agent to report an OTC derivative transaction (and subsequent events and daily valuation information relating to an OTC derivative transaction) to the HKMA to fulfil its reporting obligation. Despite any agency arrangement, the reporting obligation will still rest with the reporting entity itself. Therefore, the reporting entity must monitor the reporting by its reporting agent, e.g. through access to the HKTR, to ensure that its reporting obligation has been fulfilled. Any report submitted by a reporting agent must follow the HKTR requirements on agency reporting (e.g. it must indicate that the report is submitted for the reporting entity and identify who that reporting entity is).

Q32. If I have already reported a transaction to an overseas trade repository ("TR"), will I be considered to have fulfilled my reporting obligation in respect of that transaction?

No. A reporting obligation is considered fulfilled only when the report reaches the HKMA via the HKTR (unless any exemption or relief applies). A reporting entity may appoint an agent, including an overseas TR, to submit reports via the HKTR on its behalf. The HKTR reporting templates have been designed to align as far as possible with those of overseas TRs as we anticipate some market participants may appoint overseas TRs as their reporting agent (see Q31).

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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
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Revised international standards: Similarly, if a reporting entity cannot submit transaction information according to revised international standards (e.g. the currency code of a currency changes from XYD to XZD) because more time is needed to adjust the HKTR system to

Commodity). Daily valuation information related to reportable transactions should also be reported.

Moreover, reports submitted via the HKTR must be completed on the templates provided. The data fields on the templates fall under 3 categories: (i) mandatory; (ii) mandatory if applicable; and (iii) optional. The data fields designated as mandatory and mandatory if applicable must be completed as applicable, otherwise the report may be rejected and the reporting entity will have failed to fulfil the reporting obligation. Note that this classification is for system validation of a report submission and is not an indication of whether it is mandated under the Reporting Rules, i.e. a system optional field under (iii) is still required if it is published in the Government Gazette.

Q38. What are the requirements for reporting transaction identifying references, and where can we find more details about these requirements?

A report of a transaction submitted pursuant to the Reporting Rules must contain certain transaction identifying references as such information will be critical to data analyses. Specifically, reporting entities are required to provide: (i) a transaction reference, which may be an internal reference; and (ii) a unique transaction identifier (UTI) which must be agreed between the counterparties and meet certain standards and requirements. For details of how to report transaction identifying references, please refer to the SRI.

Q39. My institution has a trade to report to the HKMA that has both a USI generated according to the US regulations and a TID generated according to the EU regulations, which one should I report?

You should report both.

Q40. How can I obtain a UTI if I do not have one?

You may:

(a) execute, match or clear your transactions on or through an electronic platform that is capable of generating a USI or TID;

(b) rely on the counterparty to your transaction to generate a USI or TID for the transaction, assuming it has the capability to do so;

(c) agree on a UTI with the counterparty to your transaction, provided the UTI is unique and shared and paired between the two counterparties

The Reporting Rules do not prescribe the mechanism for determining which of the two counterparties is to be responsible for generating the UTI. We also do not propose to mandate the use of any particular format or process for generating a bilaterally agreed UTI. It is our plan to adopt the global standard of UTI after taking into account international implementation timetable.

In the meantime, reporting entities are encouraged to adopt standard mechanisms/practices promoted by industry associations. Reporting entities should ensure that matters relating to the reporting of UTIs are clarified with their counterparty at the time of entering into a transaction.

Q41. What is a "subsequent event"?

The term "subsequent event" is defined in the Reporting Rules to cover any event which occurs after the transaction was entered into, and which affects (i) the terms and conditions on which the transaction was entered into; or (ii) the persons involved in entering into the transaction. In brief, it includes any event that affects key economic terms (e.g. any change in the notional amount, rate, counterparty etc.) of the transactions reported via the HKTR but does not include an event that occurs naturally and in accordance with the agreed terms and conditions (e.g. periodical fixings and natural maturity of the transaction, or changes in accordance with a predetermined schedule). Although changes in accordance with a predetermined schedule are not considered subsequent events, they are however required to be reported to facilitate regulatory monitoring. Further technical guidance on "subsequent events", and how they are to be reported, is given in the SRI annexed to the AIDG.

Q42. We cannot identify information for the data field "Execution Type" in our systems for outstanding transactions entered into prior to 1 July 2017. What should we fill in for this data field?

For backloading outstanding transactions which were entered into prior to 1 July 2017, reporting entities may follow their internal classification to determine which option to choose, i.e. "Electronic", "Written" or "Voice". We do not prescribe the way they classify the type of execution of a transaction. Description of each execution option is provided in accordance with FpML standards, reporting entities may choose the one that best matches their own case. For instance, emails may also be considered as electronic means.

Q43. How about for transactions entered into after 1 July 2017, where we are unable to identify information for the data field "Execution Type"? Is it acceptable if the field is populated with the value "Electronic" if most of the transactions are executed electronically?

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.

<u>Masking of counterparty identity</u>

Q44. How can my institution report transactions

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

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

21.

35. Warsaw Stock Exchange/Equities/Main Market operated by Warsaw Stock Exchange S.A.

36. Warsaw Stock Exchange/ETPs operated by Warsaw Stock Exchange S.A.

37. Warsaw Stock Exchange/Financial Derivatives operated by Warsaw Stock Exchange S.A.

38. Wiener Börse AG Amtlicher Handel (Official Market) operated by Wiener Börse AG

39. Wiener Börse AG Geregelter Freiverkehr (Second Regulated Market) operated by Wiener Börse AG

40. Any stock markets or futures markets operated by the following market operators –

(a) Asia Pacific Exchange Limited;

(b) ASX Limited;

(c) Australian Securities Exchange Limited;

(d) BM&FBOVESPA S.A.– Bolsa de Valores, Mercadorias e Futuros;

(e) Board of Trade of the City of Chicago, Inc.;

(f) Borsa Istanbul Inc.;

(g) BOX Options Exchange LLC;

(h) BSE Ltd.;

(i) Bursa Malaysia Derivatives Berhad;

(j) Bursa Malaysia Securities Berhad;

(k) CBOE Futures

(q) Dubai Mercantile Exchange Limited;

(r) Eurex Zürich AG;

(s) Euronext UK Markets Limited;

(t) FEX Global Pty Ltd.;

(u) GreTai Securities Market;

(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.;

(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)

(zq) OJSC

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49. SIX X-Clear Ltd.

50. Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Sociedad Unipersonal

51. TASE Clearing House Ltd.

52. Thailand Clearing House Co., Ltd.

53. The Central Depository (Pte) Limited

54. The Options Clearing Corporation

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Annex 3 – List of jurisdictions for the purposes of the masking relief

As of 10 July 2015

1. Algeria
2. Argentina
3. Austria
4. Bahrain
5. Belgium
6. France
7. Hungary
8. India
9. Indonesia
10. Israel
11. Luxembourg
12. Pakistan
13. People’s Republic of China
14. Samoa
15. Singapore
16. South Korea
17. Switzerland
18. Taiwan