

Hong Kong mandatory reporting obligations come into effect.

The Hong Kong Monetary Authority (“**HKMA**”) and Securities and Futures Commission (“**SFC**”) have published the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (the “**Rules**”) which came into effect on 10 July 2015 (the “**Effective Date**”). The Rules set out the criteria under which certain prescribed persons must report specified OTC derivative transactions to the trade repository set up by the HKMA (the “**HKTR**”).

The HKMA and SFC have also released FAQs and Supplemental Reporting Instructions (SRIs) in relation to the Rules.

Specified OTC derivatives transactions

Initially, only certain interest rate swaps (“**IRS**”) and non-deliverable forwards (“**NDF**”) will be subject to the Rules. In respect of IRS, these will include single-currency and single-currency basis swaps (including overnight index swaps but not forward rate agreements) in specified currencies and floating rate indices. In respect of NDF, these will include transactions in specified currencies.

It is anticipated that further consultations on the extension of reportable transactions types to other types of derivatives such as equity derivatives will take place in late second-quarter or early third-quarter of 2015.

Reporting parties

The following parties are prescribed persons who need to report under the Rules:

- > licensed corporations
- > authorized institutions
- > approved money brokers
- > recognised clearing houses; and
- > (once authorised) central counterparties authorised to provide automated trading services.

Contents

Specified OTC derivatives transactions	1
Reporting parties	1
Timeframe for compliance	3
Backloading	3
Reportable Information	3
Exceptions	3
Masking relief.....	4
Record Keeping Obligations	4
Next steps	4
Further Reading.....	5

At the early stages of the consultation on the Rules, it was proposed that Hong Kong persons and Hong Kong based fund managers would also be subject to reporting. However, regulators have decided to impose reporting obligations on such entities only at a later phase.

Prescribed persons must report regardless of whether its counterparty to the trade also has to report. They may delegate reporting to third party reporting agents, but will remain responsible for the report.

The transactions that must be reported by a prescribed person are either those which are:

- > booked in Hong Kong or
- > “conducted in Hong Kong”.

In relation to “conducted in Hong Kong”, this refers to transactions which are:

- > conducted by an affiliate of the prescribed person and booked outside Hong Kong; or
- > conducted by the Hong Kong branch of an overseas-incorporated authorized institution on behalf of its head office or a branch outside Hong Kong and booked to that branch/head office (including in a global book),

and where one of the individuals who made the decision to enter into the transaction acted in his capacity as trader and was employed to perform his duties predominantly in Hong Kong.

Regulators have provided examples of when a transaction will be “conducted in Hong Kong”:

- > Where a trader is involved in making the decision to enter into the transaction; if the Hong Kong-based trader is only involved in sales activity and does not make the decision to enter into the transaction, the transaction will not be reportable
- > In the case of a transaction where the trader is seconded to work in Hong Kong, the trader will be “engaged to perform his duties predominantly in Hong Kong” and the transaction will be reportable. Regulators declined to introduce a test of how long a secondment would be to qualify and this appears to be a question of fact
- > In the case of a Hong Kong traded seconded outside Hong Kong, transactions in relation to such a trader will not be reportable because the trader will not be “engaged to perform his duties predominantly in Hong Kong”
- > Transactions entered into by a Hong Kong trader while he is out of Hong Kong on business trips would still be reportable
- > Transactions involving multiple traders, including Hong Kong traders, will be reportable if the trader who is responsible for the decision to enter into the transaction is a Hong Kong trader
- > Transactions entered into on an electronic trading platform will be

reportable if the trader who is responsible for the decision to enter into the transaction is a Hong Kong trader

Timeframe for compliance

Reportable transactions entered into after 10 January 2016 (six months after the Effective Date) and subsequent events (such as amendments in connection with the transaction) must be reported on a T+2 basis.

Backloading

Reportable transactions outstanding as of the Effective Date or which are entered into within six months of the Effective Date (up to 10 January 2016) will be subject to reporting no later than 10 April 2016 (nine months after the Effective Date).

However, reportable transactions between licensed banks entered into between the Effective Date and 10 January 2016 that have already been subject to reporting under the interim reporting rules will continue to be reportable on a T+2 basis after the Effective Date.

Reportable Information

The types of reportable information are set out in the Rules and include information about the product class, product type, counterparty particulars, trade identifiers and information about subsequent events. In respect of the trade identifiers, prescribed persons are required to submit the USI (trade identifier applicable under US reporting rules) and TID (trade identifier applicable under EU reporting rules) where available. If neither the USI nor TID is available, the prescribed person would need to agree on a bilaterally agreed identifier (BAI) with its counterparties and the reporting of such BAI would be optional until end of January 2016, pending the HKMA's confirmation of the trade identifier reporting format or practice.

The reporting of two fields, Desk ID and Reference Branch, which were introduced later in the consultation process, will be optional for 12 months after the Effective Date to allow market participants to make system enhancements. In addition, regulators consulted on the reporting of valuation information. However, market participants expressed concern about how counterparties would agree how a transaction would be valued and whether CCP valuations for centrally cleared transactions would be available in time. Regulators decided that the reporting of this field would be deferred to a later date.

Exceptions

There are limited exceptions to the reporting obligation, namely, for "small players": prescribed persons where the sum of the gross notional amounts of all outstanding OTC derivative transactions in a specified product class does not exceed USD30 million and who do not have any "conducted in Hong Kong" transactions. For an overseas authorised institution, the above

requirements only apply to its Hong Kong branch. Market participants seeking to rely on this exemption should note that once this exemption has been lost in respect of a product class, it cannot be relied on again.

There are no exemptions for government entities, central banks and multilateral agencies nor is there an exception for intra-group transactions.

Masking relief

In relation to 18 jurisdictions designated by the SFC where confidentiality obligations prevent counterparties from giving consent to reporting, prescribed persons may mask counterparty identity until counterparty consent has been obtained. This masking relief applies until one month after the designation of the applicable jurisdiction is revoked. The 18 jurisdictions include Singapore, Taiwan, India and the People's Republic of China.

Counterparties may also mask counterparty information where they cannot submit counterparty particulars without consent, and are unable to obtain counterparty consent despite reasonable efforts. This masking relief will only apply in relation to transactions entered into before, or within 6 months after the Effective Date. Prescribed persons have to actively seek counterparty consent and once consent has been obtained, prescribed persons have to supplement the counterparty identifying particulars of the masked transactions reported within one month after the counterparty consent is obtained.

Record Keeping Obligations

Prescribed persons are also subject to record keeping obligations. Such persons have to maintain records sufficient to demonstrate that they have met their reporting obligations. Such records have to be maintained for 5 years from the date that a transaction is terminated or has matured, and have to be kept in a way that enables them to be readily accessible.

Next steps

Counterparties should now be reporting and have inserted provisions into their ISDA Master Agreements in respect of counterparty consent for trade reporting. Market participants will now be looking forward to the upcoming SFC consultation on mandatory clearing and to the expanded scope of reporting.

Further Reading

You can find more information about this subject in our previous bulletin “[Consultation paper on the Securities and Futures \(OTC Derivative Transactions – Reporting and Record Keeping\) Rules](#)” from 31 July 2014.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters. All Rights reserved 2015

Linklaters Hong Kong is a law firm affiliated with Linklaters LLP, a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.

Contacts

For further information please contact:

Chin-Chong Liew

Partner

(+852) 2901 4857

chin-chong.liew@linklaters.com

Victor Wan

Partner

(+852) 2901 5338

victor.wan@linklaters.com

I-Ping Soong

Counsel

(+852) 2901 5181

i-ping.soong@linklaters.com

Karen Lam

Counsel

(+852) 2842 4871

karen.lam@linklaters.com

Derek Chua

Managing Associate

(+852) 2842 4805

derek.chua@linklaters.com

or any of your usual contacts

10th Floor, Alexandra House
Chater Road
Hong Kong

Telephone (+852) 2842 4888

Facsimile (+852) 2810 8133 /
(+852) 2810 1695

Linklaters.com