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Your Asia OTC Derivatives Clearing and Reporting Update

Volume 2, 2016

As at 17 June 2016

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Hong Kong gears up for mandatory clearing and expanded mandatory reporting of OTC derivatives

In September 2015, the Hong Kong Monetary Authority (“**HKMA**”) and the Securities and Futures Commission (“**SFC**”) published a [consultation paper](#) on their proposed next steps on the regulation of OTC derivative transactions. That paper focused on clearing and reporting, with draft rules for both.

In that paper, the regulators promised to consider comments from the public on the rules, and to release a further consultation paper containing proposed final versions of the rules early this year.

In February 2016, the regulators published that further paper, being the [Consultation conclusions and further consultation on introducing mandatory clearing and expanding mandatory reporting](#).

The proposed final clearing rules and reporting rules remain largely the same as initially drafted. That being said, the revised rules have implemented some of the comments received, and the regulators responded to some of the comments that were not implemented.

Please see [here](#) for the detailed client alert published by Linklaters on this consultation conclusion and further consultation.

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SHCH publishes draft default handling rules for RMB IRS central clearing

On 22 February 2016, Shanghai Clearing House (“**SHCH**”) published on its website a draft of the default handling rules for the central clearing of Renminbi interest rate swaps (the “**Draft Rules**”) for public consultation. The consultation period ended on 1 May 2016.

The Draft Rules set out detailed procedures on default determination, member default and client defaults handling procedures and forced liquidation procedures. This is a much anticipated development and will be of great significance to all clearing participants.

The Chinese version of the Draft Rules can be accessed [here](#). Linklaters has prepared an English translation of the Draft Rules. Please contact us if you would like to receive a copy.

SHCH consults on draft clearing agreements and clearing guidelines for its CCP services

SHCH published a set of draft clearing documents for its CCP services on its website on 12 May 2016 for public consultation. The drafts published include the clearing agreement, the agency clearing agreement and the clearing guidelines. These draft documents can be accessed [here](#).

Currently, each CCP service offered by SHCH is subject to a separate set of clearing agreements and clearing guidelines. SHCH intends to introduce a uniform clearing agreement and clearing guidelines which apply to the different CCP services, with a view to improving the consistency in the terms on which the CCP services are provided and making it administratively easier for clearing participants to sign up to multiple CCP services.

The consultation ended on 31 May 2016. It is expected that SHCH will implement the new clearing agreements and clearing guidelines later this year.

SHCH granted no action relief by the CFTC

On 31 May 2016, the US Commodity Futures Trading Commission (“**CFTC**”) issued a no action relief letter in relation to SHCH’s non-registration as a derivatives clearing organization (“**DCO**”).

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MAS consultation on reporting of commodity and equity derivatives

The Monetary Authority of Singapore (“**MAS**”) issued a [consultation paper](#) on 18 January 2016 on proposed amendments to the *Securities and Futures (Reporting of Derivatives Contracts)*

Regulations 2013 (“SF(RDC)R”) to implement reporting obligations regarding commodity and equity derivatives contracts, as well as other revisions to complete the implementation of the OTC derivatives trade reporting regime in Singapore. Certain types of contracts (e.g. physically-settled commodity derivatives contracts that are entered into for commercial purposes, and exchange-traded equity derivatives contracts) will be excluded from the reporting obligations. The information to be reported for commodity derivatives contracts will be set out in a new section of the SF(RDC)R, while the required information for equity derivatives contracts will be aligned with existing requirements for credit derivatives contracts.

The MAS also proposed, for all types of reportable derivatives contracts, new data fields to identify the booking location and the location of the trading desk, and to implement the reporting of collateral information. Further, the MAS proposed: (i) exemptions from the reporting obligations for certain non-bank financial institutions (e.g. all approved trustees and licensed trust companies); and (ii) excluding brokers and banks from reporting derivatives transactions where their counterparties are retail investors. Implementation of the changes will be phased in between 1 July 2016 and 1 November 2018.

Please see [here](#) for the detailed client alert published by Linklaters on this consultation.

[MAS proposes amendments to regulations relating to the Singapore bank resolution regime](#)

On 29 April 2016, the MAS published a [consultation paper](#) to propose amendments to the Monetary Authority of Singapore Act and the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013. The proposed amendments are related to the [MAS consultation paper](#) released in June 2015 where the MAS proposed various enhancements to the resolution regime of Singapore – see our [Asia Clearing Bulletin](#) from 2015 for further details.

[CME granted the status of recognised clearing house in Singapore](#)

On 26 May 2016, the Chicago Mercantile Exchange (“**CME**”) was granted the status of a recognised clearing house in Singapore.

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[LCH has registered with the JFSA for non-JPY Interest Rate Derivatives clearing](#)

On April 8, the Japan Financial Services Agency granted LCH.Clearnet Limited a licence to conduct “Financial Instruments Obligation Assumption Business”, which means that LCH is now able to offer its clearing service for non-JPY interest rate derivatives to Japanese banks.

Below are links to the JFSA and LCH websites regarding this matter:

- > [JFSA’s website](#) (in Japanese)
- > [LCH’s website](#)

[Final Margin Rules](#)

The final Japanese [margin rules for non-centrally cleared derivatives](#) were published on 31 March 2016, and will become effective on 1 September 2016.

Changes from the second draft proposed on 11 December 2015 are limited. Regulations relating to VM are not significantly different from other jurisdictions – however, as to IM, the Japanese rules provide for a trust arrangement for segregation of IM (which differs from the EU/US, where a third party custodian arrangement is expected to be used). It should be noted that the use of a trust (rather than third party custodian) approach will affect the form of credit support documents under Japanese law.

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Commencement of the central clearing regime

The **ASIC Derivative Transaction Rules (Clearing) 2015** (“**Rules**”), which implements Australia’s mandatory central clearing regime for OTC derivatives of financial institutions, took effect on 4 April 2016. These Rules apply to Authorised Deposit-taking Institutions, Australian Financial Services Licensees and Exempt Foreign Licensees where the relevant entity holds total gross notional outstanding positions of at least A\$100 billion (“**Clearing Threshold**”) at the end of each of two consecutive calendar quarters across all OTC derivatives subject to the clearing mandate as well as any entities that opt-in to the clearing regime. Australian Securities and Investments Commission (“**ASIC**”) has published a [list](#) of entities which have notified ASIC that that entity meets the Clearing Threshold and the Clearing Start Date for such entities commenced on 4 April 2016.

On 1 April 2016, ASIC released **ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/258**, which makes transitional arrangements in relation to Swaptions. These arrangements provide that the Rules do not apply to an OTC transaction that arose by virtue of a party exercising an option under a Swaption that was entered into before 4 April 2016.

APRA releases consultation package on proposed margin and risk mitigation requirements for non-centrally cleared derivatives

A **consultation package** was released by the Australian Prudential Regulation Authority (“**APRA**”) in February 2016, which provides the proposed margin and risk mitigation requirements that would apply to authorised deposit-taking institutions (ADIs), general insurers, life insurers, and RSE licensees of registrable superannuation entities that transact in non-centrally cleared derivatives. APRA proposes to phase-in the application of these requirements between 1 September 2016 to March 2017, for larger Australian institutions, and 1 September 2020, for smaller market participants.

Introduction of legislation relating to margin requirement for non-centrally cleared derivatives

On 4 May 2016, the **Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016** was passed by both houses of Australian federal parliament. The intention of the Bill is to amend the *Payment Systems and Netting Act 1998*, and other associated Acts, to allow OTC derivative counterparties to meet the margin requirements for non-centrally cleared derivatives agreed by the G20 in 2011. The Bill broadly reflects the exposure draft that was released in December 2015.

Extension of reporting relief for trade identifiers

On 29 January 2016, ASIC extended the exemption to report trade identifiers from 31 January 2016 to 31 January 2017. A copy of the exemption, together with the other exemptions relevant to

the reporting requirements, can be found [here](#) with the extension available [here](#).

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[CCIL releases consultation paper on timing in respect of collection of incremental MTM margin for cleared trades](#)

On 1 March 2016, the Clearing Corporation of India Limited (“**CCIL**”) released a consultation paper on timing of collection of the incremental MTM margin in respect cleared trades across various segments of CCIL. The consultation paper proposes that the incremental MTM margin be computed at the end of the day and be debited from the clearing member’s account immediately thereafter. This proposal is in line with the CPMI’s Principles of Financial Market Infrastructure which specifies that a clearing house should cover its credit exposures to all its participants through an effective margin system. A copy of the consultation paper is available [here](#).

[RBI publishes discussion paper on margin requirements for non-centrally cleared derivatives](#)

On 2 May 2016, the Reserve Bank of India (RBI) published a [discussion paper](#) on margin requirements for non-centrally cleared derivatives covering the exchange of initial and variation margin for non-cleared derivatives.

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[KRX granted ESMA recognition](#)

On 22 April 2016, the European Securities and Markets Authority (“**ESMA**”) recognised Korea Exchange (“**KRX**”) as a third country CCP under the European Market Infrastructure Regulation (“**EMIR**”).

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Previous Issues - 2015: [Volume 1](#) and [Volume 2](#)

Previous Issues - 2014: [Volume 1](#), [Volume 2](#) and [Volume 3](#)

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