

Hong Kong OTC Derivatives Reporting: What you need to know

The Hong Kong Monetary Authority ("**HKMA**") and the Securities and Futures Commission ("**SFC**") recently published their Conclusions on Further Consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (the "**Conclusions**"). With the implementation of the Hong Kong OTC derivatives reporting and record keeping rules (the "**Rules**") due in mid-July, we have set out below key information to assist our clients to understand their reporting requirements. We have set out at page 6 links to allow you to access our previous Hong Kong reporting Client Briefings.

Who needs to report?



The following Hong Kong entities are subject to the initial phase of reporting requirements under the Rules (together "**Prescribed Entities**"):

- Authorised Institutions ("**AI**") ✓
- Approved Money Brokers ("**AMB**") ✓
- Licensed Corporations ("**LC**") ✓
- Central Clearing Counterparty ("**CCP**") ✓

Certain types of Hong Kong entities have been excluded from the initial phase of reporting requirements:

- Hong Kong Persons ✗
- Fund Managers ✗

NB: It is expected that both Hong Kong Persons and Fund Managers will become subject to the Rules in the future.

What product types need to be reported?

The product types that will be captured in the initial phase ("**Specified Products**") are:

Interest Rate Swaps ("IRS")

AND

Non-Deliverable Forwards ("NDF")

BUT ONLY IF

- ▶ Cancellable
- ▶ Early Termination
- ▶ Amortizing/Accreting

- ▶ Cancellable
- ▶ Early Termination

Reporting to HKTR is subject to capability of HKTR to receive the report

Further consultation to expand reporting to all types of IRS and NDF expected later this year



What products need to be reported?

A Specified Product must be reported in Hong Kong if it is either:

1. Booked onto the balance sheet of a Prescribed Entity (if a Hong Kong Entity) or onto the Hong Kong balance sheet of a Prescribed Entity (if a foreign entity) (“booked in Hong Kong”)

2. "Conducted in Hong Kong" i.e.

- (a) one of the individuals who made the decision to enter into the transaction was a trader who was employed or engaged by the AI, AMB or LC to perform his or her duties predominantly in Hong Kong (i.e. a Hong Kong trader); and
- (b) the transaction was:
 - (i) conducted on behalf of an affiliate of the AI, AMB or LC, and was booked in that affiliate; or
 - (ii) conducted by the Hong Kong branch of an overseas incorporated AI on behalf of its head office or on behalf of any of its overseas branches, and was booked in such head office or overseas branch.

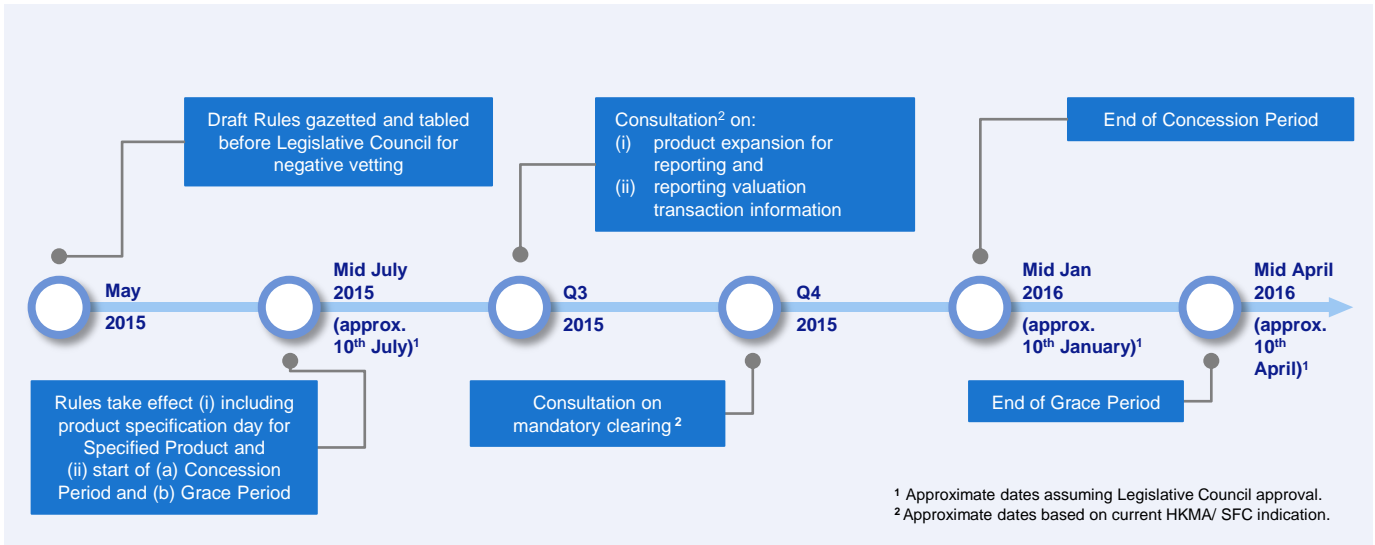


“Conducted in Hong Kong” transaction frequently asked questions:

- **A Hong Kong sales person?** If the sales person is involved in making the decision to enter into the transaction, then the trade is reportable.
- **A trader seconded to Hong Kong office?** Yes because the seconded trader is performing his/her duties predominantly in Hong Kong.
- **A Hong Kong trader seconded outside of Hong Kong?** No because the seconded trader is performing his/her duties predominantly outside Hong Kong.
- **A Hong Kong trader during business trip outside of Hong Kong?** Yes because the trader still performs duties prominently in Hong Kong.
- **Multiple traders, including a Hong Kong trader?** Yes provided one of the persons responsible for the decision to enter into the transaction is a Hong Kong trader.
- **An electronic trading platform?** Yes provided that the person who set the parameters of the key economic terms that apply to the transaction is a Hong Kong trader.



When does reporting start?



Generally a Concession Period lasts for six months from the date on which a product type is specified for reporting (the "**Effective Date**"). No reporting is required in this period for the Specified Product. Any reportable transaction that is outstanding after the end of the Grace Period must be reported by the end of the Grace Period if it is (i) "booked in Hong Kong" prior to the Effective Date or (ii) entered into during the Concession Period. The Grace Period lasts for nine months from the Effective Date. Any reportable transaction entered into after the end of the Concession Period must be reported on a T+2 basis.

Transaction Start Date		Termination Date		Reportable?
Prior to Effective Date	+	Before end of Grace Period	=	✗ (see FAQ3(d))
Prior to Effective Date ("booked in Hong Kong" only)	+	First day after Grace Period	=	✓ (by last day of Grace Period)
During Concession Period	+	Before end of Grace Period	=	✗ (see FAQ3(d))
During Concession Period	+	First day after Grace Period	=	✓ (by last day of Grace Period)
After end of Concession Period	+	Any date	=	✓ (on T+2 basis)

Where must reporting be made?

- All reporting is made to the Hong Kong Trade Repository ("HKTR"). There is no substituted compliance. Therefore, even if a Prescribed Entity has reported a transaction to an overseas Trade Repository, a report must still be submitted to the HKTR.
- A Prescribed Entity is permitted to delegate reporting to the HKTR to a third party agent but the Prescribed Entity remains responsible for such report.
- Each Prescribed Entity must complete the onboarding documents for reporting to the HKTR notwithstanding whether that entity is using a third party agent to report the transaction.



Further points to note:

Masking: there are 18 jurisdictions which are designated for masking relief.

Record Keeping: records required to be kept under the rules must be kept in a manner that is readily accessible. However the proposed provisions to keep records which evidence the communications and instructions that result in the transaction being executed are no longer required.

"Affiliate" Definition: the definition of "affiliate" now expressly excludes collective investment schemes in line with the HKMA's and SFC's earlier decision to defer the implementation of fund manager reporting obligations.

Reporting of Valuation Transaction Information: this is subject to further consultation by the HKMA and SFC ("Further Consultation"). The Further Consultation will discuss the proposal that valuation information on transactions should be reported on a daily basis. In terms of the valuation information to be reported, the Conclusions proposed as follows:

- For transactions that are cleared through a CCP, entities should report the valuation determined by the CCP.
- For non-centrally cleared transactions where the counterparties have agreed to exchange margins, entities should report the valuation that the counterparties have mutually agreed for the purposes of exchanging margin.
- For other non-centrally cleared transactions, entities should report the valuation based on the methodology that the counterparties have mutually agreed.



Access to our Hong Kong reporting client briefings

1. [HKMA and SFC Consultation Conclusions pave way for mandatory reporting of OTC derivatives in Hong Kong in 2015 - 03 December 2014](#)
2. [Hong Kong releases consultation paper on draft OTC derivatives mandatory reporting and record keeping rules - 25 July 2014](#)
3. [Hong Kong enacts its primary legislation relating to the proposed changes to the regulatory regime for Hong Kong OTC derivatives market - 10 April 2014](#)
4. [The Hong Kong FSTB publishes the amendment bill relating to the proposed regulatory regime for the OTC derivatives market in Hong Kong - 10 July 2013](#)

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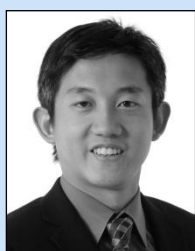


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