

Derivatives Regulation for Corporates

A Global Review

October 2015

C L I F F O R D
C H A N C E

Why a global review, and why now?

Laws governing derivatives have been adopted or proposed in all of the G-20 countries.

Corporate end-users need to understand how these regulations may affect their business.

What type of derivative instruments fall under these regulations?

Derivatives include forward foreign exchange contracts, commodity forwards and options, interest rate swaps, and credit swaps.

Derivatives regulation may apply to products not commonly thought to be derivatives, such as supply contracts and FX. The scope of products covered may vary significantly by jurisdiction.

This review does not address securities or exchange-traded futures and options.








This document is not intended to be comprehensive or to provide legal advice. For more information, please speak to your usual Clifford Chance contact or reach out to one of the offices named below.

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Derivatives Between a Corporate End-User and a Dealer

(Assume both parties are in the same jurisdiction. More detailed descriptions and definitions are set out in the country-specific sections below)

	 United States	 European Union	 Australia	 China	 Hong Kong	 Japan	 Singapore
Does licensing apply to the corporate end-user?	No (unless Major Swap Participant (MSP))	No (corporate end-users rely on exemptions from licensing)	No	No	No	No	No (in the future, end-users may be subject to capital markets licensing requirement unless an exemption applies)
Reporting	Yes (Dealer reports)	Yes (both parties report)	Yes (Only Dealer reports if corporate is an End -user)	Yes (Dealer reports)	Yes (Dealer reports)	Yes (only Dealer reports) (not applicable to commodities)	Yes (both parties report; in the case of end-user only if significant derivatives holder)
Record-keeping	Yes (including e-mail)	Yes	Yes (only Dealer keeps records if corporate is End -user)	Yes (for dealers)	Yes (only dealer keeps records)	Yes (only Dealer keeps records) (not applicable to commodities)	Yes (both parties keep records; in the case of end-user only if significant derivatives holder)
Clearing	No (if End-User exception is met)	No (if end-user is below clearing threshold)	No	Yes (mandatory clearing for Dealers on interbank market only)	Not yet	No (if end-user exemption is met)	Not yet
Margin	Not yet (expected to be No if End-User exception is met)	Not yet (expected to be No if end-user is below clearing threshold)	No	No	Not yet	Not yet	Not yet
Transaction Requirements (see list below)	Yes (but primarily Dealer obligation)	Yes	No	Yes (depending on the specific transaction)	No	Yes	Not yet



Derivative Between Two Affiliated Corporate End-Users

(Assume both parties are in the same jurisdiction. More detailed descriptions and definitions are set out in the country-specific sections below)

	 United States	 European Union	 Australia	 China	 Hong Kong	 Japan	 Singapore
Does licensing apply to the corporate end-user?	No (unless Major Swap Participant (MSP))	No (corporate end-users rely on exemptions from licensing)	No	Corporates usually do not carry out derivative transactions with each other in China	No	Yes (unless conducted not as business or any exemption applies)	No (in the future, end-users may be subject to capital markets licensing requirement unless an exemption applies)
Reporting	Yes (limited exception)	Yes (both parties report)	No (if both parties are End-users)	No	No	No	Yes (each party to report if it is a significant derivatives holder)
Record-keeping	Yes (including e-mail)	Yes	No (if both parties are End-users)	No	No	No	Yes (each party to keep records if it is a significant derivatives holder)
Clearing	No (if either End-User exception or Inter-Affiliate exception is met)	No (if end-user is below clearing threshold)	No	No	No (if either end-user exception or inter-affiliate exception is met)	No (if end-user exemption is met)	Not yet
Margin	No	No (if end-user is below clearing threshold)	No	No	No	No	Not yet
Transaction Requirements (see list below)	No	Yes	No	No	No	No	No

Cross-Border Treatment of Inter-Affiliate Transactions

Example: Affiliate A is located in the U.S. and Affiliate B is located in the E.U. Assumes: Affiliate A is not a Dealer or Major Swap Participant; and Affiliate B is not a financial counterparty or non-financial counterparty over the clearing threshold

	 United States	 European Union
Reporting	Yes (US affiliate reports; limited exception may apply)	Yes (EU affiliate reports)
Recordkeeping	Yes (Including e-mail and records of regulatory calculations)	Yes (EU affiliate has obligation to keep records)
Clearing	No (if either End-User exception or Inter-Affiliate exception is met)	No (mandatory clearing is not yet in effect, but the clearing obligation will not apply to intra-group transactions or to transactions where one party is below the clearing threshold)
Margin	No	No (the margin rules are not yet in effect, but the clearing obligation will not apply to intra-group transactions or to transactions where one party is below the clearing threshold)
Transaction Requirements (includes documentation; see list below)	No	Yes (EU affiliate is required to comply but will need assistance from US affiliate)

Product Scope	<p>“Swaps” are subject to regulation. “Swaps” include swaps, options and forwards but exclude spot foreign exchange, securities and securities-based swaps, such as equity options. See definition of “swap”, 7 USC 1a(47).</p> <p><u>Foreign Exchange</u> (“FX”)</p> <ul style="list-style-type: none"> ■ <u>Spot</u>: Spot FX trades are not subject to regulation. Spot is generally defined as a trade with a settlement period of two days or less. However, if the market custom for spot settlement for a given currency is greater than two days, settlement within that period will be treated as spot. ■ <u>Physically Settled FX Swaps and Forwards</u>: Physically settled FX swaps and forwards are exempt from swap regulation <u>except</u> for reporting and business conduct standards (described below under Transaction Requirements). So these swaps and forwards are not subject to clearing or recordkeeping requirements. <p><u>Commodity Contracts/Supply Contracts with Variable Amounts</u>: Supply contracts which allow parties to vary the amount of goods to be delivered can potentially be viewed as commodity options by the CFTC. “Full requirements” contracts (i.e., contracts in which a supplier meets all the needs of a recipient) are exempt, and so are contracts that meet a complex “volumetric option” test.</p> <p><u>Security-based Swaps</u>: Swaps linked to individual securities are “security-based” swaps, which will be subject to rules issued by the SEC. However, such rules have not yet been issued.</p>
Entity Definitions	<p>For purposes of this chart, “Corporate End-User” is an entity which is not a financial entity (financial entities include banks, swap dealers, major swap participants, private funds, certain employee benefit plans, and companies predominantly engaged in activities that are in the business of banking or that are “financial in nature”).</p> <p>“Dealer” is an entity licensed to deal in swaps, and which may be licensed to deal in other products in addition.</p> <p>“Major Swap Participant” (MSP) is an entity that is not a swap dealer but has average daily exposure to swaps exceeding certain thresholds. MSPs are subject to many of the same requirements as Dealers. Currently, there are only two such entities in the United States. See Threshold Requirements below.</p>
Registration/ licensing	<p><u>Dealer and MSP</u>: May be required to register with regulators.</p> <p><u>Inter-affiliate</u>: No specific requirements unless an affiliate is a dealer or MSP. Also, if an affiliate regularly acts as agent for other affiliates in the ordinary course of business, the affiliate may be subject to other registration requirements (e.g. futures commission merchant, introducing broker).</p>

Overview: United States (continued)

Reporting	<p>All derivatives must be reported to a swap data repository such as DTCC. (See 17 CFR Part 45.)</p> <p>Reporting Inter-affiliate Derivatives: Inter-affiliate trades are required to be reported unless certain conditions are met and an exception for inter-affiliate derivatives applies. (See CFTC No-Action Letter no. 13-09, dated Apr. 5, 2013.) However, this relief is limited and (i) does not apply to swaps that are exempt from clearing under the inter-affiliate exemption.; and (ii) requires that all swaps involving one of the relevant affiliates and an unaffiliated counterparty must be reported to a U.S. swap data repository. This raises difficult issues if the inter-affiliate reporting exemption is used for cross-border swaps.</p>
Record-Keeping	<p>All parties that enter into derivatives must maintain full, complete and systematic records for at least five years after final termination of the swap. (See 17 CFR Part 45, §45.2.) Records that must be retained include e-mails and calculations performed for regulatory compliance.</p>
Clearing	<p>Currently, certain interest rate swaps and index credit default swaps must be cleared. However, there are exceptions for swaps if:</p> <ol style="list-style-type: none"> one counterparty is a qualified Corporate End-User: To qualify for this exception the following conditions must be met, (i) one party is a Corporate End-User using the swap to hedge commercial risk; (ii) reporting by the dealer, including information as to how the Corporate End-User meets obligations related to uncleared swaps; and (iii) if the Corporate End-User issues SEC-registered securities, the entity must have approval from a committee of its board of directors to enter into uncleared swaps. See 7 U.S.C. 2(h)(7)(A) and 17 CFR Part 39. §39.6. one counterparty is a qualified centralized treasury unit: Under certain conditions, swaps entered into by a corporate treasury unit may qualify for the Corporate End-User exception to clearing. These conditions include that the treasury unit : is a financial entity solely as a result of swap or other financial activity with or on behalf of its related affiliates; enters into swaps only for the purpose of hedging or mitigating commercial risk of its affiliates; does not enter into swaps with any affiliate that is a financial entity or that enters into swaps with another affiliate that is a financial entity. See CFTC No-Action Letter nos. 13-22 and 14-144, dated June 4, 2013 and Nov. 26, 2014, respectively. it meets the inter-affiliate swap exemption: Certain inter-affiliate swaps are exempt from the clearing requirement. Required conditions include : the affiliates must be at least majority owned one by the other or by the same third party; there is written swap relationship documentation between the affiliates; certain reporting requirements must be met; and for each affiliate electing this clearing exemption, all swaps between such affiliates and any non-affiliated counterparties must be cleared or qualify for an exemption or exception from clearing. This last condition may raise issues for swaps between a non-US affiliate and third party non-US counterparties. See 17 CFR Part 50 §50.52.
Margin	<p>Not yet applicable, but expected to apply starting in March of 2017 for swaps with Dealers; however there is also expected to be an exception for Corporate End-Users.</p>

Overview: United States (continued)

Transaction Requirements	Will apply to swaps with Dealers. These requirements include: swap trading relationship documentation; portfolio reconciliation; real-time public reporting; trade confirmation; daily trading records; and external business conduct standards. The Dealer has primary responsibility for ensuring that these requirements are met.
Threshold Requirements	Major Swap Participant Test: Entities must check on a quarterly basis to determine if they are “major swap participants”: these are entities that are not swap dealers whose swap activity exceeds certain prescribed thresholds (e.g., \$1-2 BN for FX, equity, credit or commodity swaps or \$3-6 BN for rate swaps, or \$5-8 BN across all swaps) may qualify as major swap participants. Transactions with affiliates are not included in these thresholds. At the current time, only two entities in the US qualify as major swap participants. If an entity does qualify as a major swap participant, it will be subject to many of the same regulatory obligations as Dealers.
Other Considerations	Cross-border transactions – if at least one counterparty to a swap is a US person, the US derivatives rules apply.

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Overview: European Union

Product Scope	<p>The EU OTC derivatives regulation (EMIR) covers transactions in “derivatives”. The clearing, margin and transaction requirements apply to transactions in OTC derivatives only, while the reporting obligation applies to any transaction in derivatives (whether OTC or on-exchange). The definition of “OTC derivatives” captures transactions outside an EU trading venue and also transactions on a non-EU trading venue in jurisdictions which have not been determined to be equivalent.</p> <p>“Derivatives” include swaps, options and forwards in relation to a broad range of underlyings (including equity derivatives) but exclude spot transactions. See definition of “derivative” (Article 2(5) EMIR).</p>
Entity Definitions	<p>“Financial counterparty” (FC) means an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a reinsurance undertaking, a UCITS and, where relevant, its management company, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs, established and regulated under EU regulation.</p> <p>“Non-financial counterparty” (NFC) means an entity established in the EU that is not an NFC, CCP, trade repository or trading venue .</p>
Registration/ licensing	<p>EMIR does not require counterparties to register or obtain authorisation. However, counterparties dealing as principal or agent in derivatives may already be required to seek authorisation under other financial services legislation (e.g., the Markets in Financial Instruments Directive (MiFID), as implemented in each EU Member State). There are various exemptions from the requirement to seek authorisation which are currently relied upon by corporate end-users (e.g., the exemption for entities that deal only with other group entities, or the exemption for entities whose main business is not provision of investment services). MiFID is currently being revised, and the revised legislation (MiFID2) is likely to significantly narrow many of these exemptions.</p> <p>A counterparty who is required to be authorised as an investment firm under MiFID will be an FC.</p>
Reporting	<p>All derivatives must be reported to a trade repository registered or recognised under EMIR (e.g., DTCC). (See Article 9 EMIR).</p> <p>Reporting Inter-affiliate Derivatives: Inter-affiliate trades are required to be reported. There is no intragroup exemption from the reporting obligation.</p>
Record-Keeping	<p>Counterparties are required to keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract. (See Article 9(2) EMIR). FCs may be subject to more detailed record keeping obligations under other financial services legislation.</p>
Clearing	<p>Not yet applicable, but expected to apply from mid 2016 for transactions between clearing members (phased in approach for other types of counterparties). Clearing requirements will not apply to transactions with NFCs below the clearing threshold or to intragroup transactions.</p>

Overview: European Union (continued)

Margin	Not yet applicable, but expected to apply from 1 September 2016 for transactions between counterparties with an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3 trillion (on a solo or group basis). Margin requirements will not apply to transactions with NFCs below the clearing threshold or to intragroup transactions.
Transaction Requirements	These requirements include: timely confirmation; portfolio reconciliation; portfolio compression; and dispute resolution. Both counterparties are required to comply with these requirements. However, the obligations on NFCs below the clearing threshold are intended to be less onerous. These requirements will apply to transactions between affiliates.
Threshold Requirements	Clearing threshold: An NFC will exceed the clearing threshold if its rolling average position in OTC derivatives exceeds the thresholds over a 30 day period. The thresholds are EUR 1 billion in gross notional value for OTC credit or equity derivatives, and EUR 3 billion in gross notional value for OTC interest rate, foreign exchange, commodity or other derivatives. An NFC that exceeds the clearing threshold will be subject to many of the same obligations as an FC.
Other Considerations	Cross-border transactions – if at least one counterparty to a derivative is an FC or NFC, the EMIR derivatives rules apply. The EMIR derivatives rules may also apply to transactions between two non-EU counterparties if the transaction has a direct, substantial and foreseeable effect within the EU or if it is necessary or appropriate to apply the EMIR rules to avoid evasion. However, if at least one counterparty is located in a jurisdiction that has been determined to be equivalent under Article 13 EMIR, both counterparties will be deemed to have complied with the clearing, reporting, margin and transaction requirements. No equivalence determinations have yet been made under Article 13.

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Entity Definitions	<p>For purposes of this chart, a “Dealer” is what is known in Australia as a ‘reporting entity’. Reporting Entities are:</p> <ul style="list-style-type: none"> ■ An Australian entity (being an entity incorporated or formed in Australia); ■ A foreign subsidiary of an Australian entity where that Australian entity is an Australian authorised deposit taking institution (ADI) or Australian financial services licence holder (AFS Licensee); and ■ A Foreign ADI that has a branch located in Australia OR a foreign company that is required to be registered under the Corporations Act. <p>An “End-user” is a person who is not:</p> <ul style="list-style-type: none"> ■ an Australian ADI; ■ a clearing and settlement facility licensee; ■ an AFS licensee (except an AFL licensee whose financial services licence does not authorise financial services in that class of derivative), or ■ an exempt foreign licensee, being a person: <ul style="list-style-type: none"> – who in this jurisdiction provides a financial service, relating to derivatives, only to wholesale clients, and – whose activities, relating to derivatives, are regulated by an overseas regulatory authority. <p>End -users do not have to comply with the reporting requirements.</p>
Products Covered	<ul style="list-style-type: none"> ■ credit derivatives; ■ interest rate derivatives; ■ foreign exchange derivatives; ■ equity derivatives; and ■ commodity derivatives (other than electricity derivatives).
Registration/ licensing	<p>No licensing or registration requirements for Reporting Entities in addition to the usual business licenses which may be required for example an Australian financial services license or being registered as a foreign company in Australia in the event that the foreign company conducts business in Australia.</p> <p>No licensing requirements for end-users unless they provide financial or credit services.</p>
Reporting	<p>Reporting has been introduced over the following four phases – Phase 1 and 2 and, for certain classes of derivatives, Phase 3, are already reporting:</p> <ul style="list-style-type: none"> ■ <u>Phase 1</u> – A reporting entity that is an Australian entity and is registered or provisionally registered as a swap dealer with the US Commodity Futures Trading Commission in accordance with the Commodity Exchange Act 1936 (US);

Reporting (continued)	<ul style="list-style-type: none"> ■ <u>Phase 2</u> – A reporting entity that (a) is an Australian deposit taking institution (ADI), an Australian financial services licensee (AFS Licensee), an Australian clearing and settlement facility licensee (CS Facility Licensee), an exempt foreign licensee or a foreign ADI; and (b) as at 31 December 2013 holds a total gross notional outstanding position of AUD \$50 billion or more; and (c) is not required to report under Phase 1; ■ <u>Phase 3A</u> – a reporting entity that is an entity referred to in Phase 2 but is not required to report under Phase 1 or Phase 2 and holds AUD \$5 billion or more in gross notional outstanding positions as at the end of June 2014; and ■ <u>Phase 3B</u> – a reporting entity that is not required to report under Phase 1, Phase 2 or Phase 3A. <p>All relevant OTC Derivatives must be reported to a licensed repository or a prescribed trade repository. If the reporting entity is an Australian entity, then it must report to DTCC in its capacity as the only licensed trade repository in Australia. Foreign reporting entities may report to prescribed trade repositories.</p> <p>Reporting Entities must report the following OTC Derivatives that it enters into (save for End-users who do not have to report):</p> <ul style="list-style-type: none"> ■ <u>An Australian entity (being an entity incorporated or formed in Australia)</u> – This entity must report all OTC Derivatives to which it is a counterparty, regardless of where the OTC Derivative is entered into; ■ <u>A foreign subsidiary of an Australian Entity where that Australian Entity is an Australian ADI or AFS Licensee</u> – These entities must report all OTC Derivatives to which it is a counterparty, regardless of where the OTC Derivative is entered into; and ■ <u>A Foreign ADI that has a branch located in Australia OR a foreign company that is required to be registered under the Corporations Act</u> – these entities must report all OTC Derivatives: (a) booked to the profit or loss account of a branch of the Reporting Entity located in Australia; or (b) entered into by the Reporting Entity in Australia*. <p>* Class order relief is available to foreign banks with a branch located in Australia or a foreign company required to be registered in Australia from reporting reportable transactions and outstanding positions for OTC derivatives which are entered into in Australia and not booked to the profit or loss account of a branch of the relevant reporting entity in Australia. Conditions apply.</p>
Record-Keeping	<p>A reporting entity (but not an end user) must keep records that enable the reporting entity to demonstrate it has complied with the requirements of the rules for at least five years from the date the record is made or amended. Where the reporting entity has arrangements in place to access its records in a licensed or a prescribed repository, then it does not have to keep the records (see rule 2.3.1 of the trade reporting rules).</p>

Overview: Australia (continued)

Clearing	<p>Mandatory central clearing is proposed to start January 2016. The Government has released a ministerial determination and regulations to implement a central clearing mandate in Australia. The regulator, the Australian Securities & Investments Commission (ASIC), has also proposed draft rules to implement mandatory central clearing requirements for certain OTC derivatives.</p> <p>Mandatory clearing will only apply to interest rate derivatives denominated in Australian dollar, US dollar, Euros, British pounds or Japanese yen and it is a basis swap, fixed-to-floating swap, forward rate agreement or overnight index swap and it meets certain further specifications set out in the draft rules pertaining to its floating rate index and the termination date (known as clearing derivatives).</p> <p>Mandatory clearing will only apply to “clearing entities”, which are financial entities with AUD \$100 billion or more gross notional outstanding in OTC derivatives measured on a rolling basis. Mandatory clearing will only apply when both parties are clearing entities.</p> <p>In addition intra group trades are exempted – clearing will not be required if the counterparty to a clearing transaction is a related body corporate of the clearing entity.</p>
Margin	Not yet applicable.
Transaction Requirements	Not yet applicable.
Other Considerations	<p>Double-sided reporting applies in Australia, however exemptions apply for example the End-user exemption which was initially a temporary exemption but has since been made permanent.</p> <p>Single-sided reporting has recently been introduced for entities with outstanding OTC derivative positions of less than A\$5m, provided that they conclude their derivatives transaction with a counterparty that qualify as a reporting counterparty. A reporting counterparty is a reporting entity or foreign entity that will be reporting the trade either in Australia or in foreign jurisdiction that are substantially equivalent.</p>

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Product Scope	<ul style="list-style-type: none"> Interest rate: various interest rate derivatives (including RMB interest rate swap (“RMB IRS”)) Credit: credit risk mitigation warrants / contracts and other derivatives used to manage credit risks Foreign exchange: RMB/FX and FX/FX spot, swap and forward Equity: equity swap, equity option, etc.
Entity Definitions	<ul style="list-style-type: none"> No specific category of entities is defined under PRC law.
Registration/ licensing	<ul style="list-style-type: none"> No unified registration/licensing legislation or requirement under PRC law. Note that the licensing requirement differs depending on the nature of the participant involved and the type of derivatives transaction. For example, a commercial bank may obtain either a “basic derivatives licence” or an “ordinary derivatives licence” in accordance with applicable PRC banking derivatives rules in order to deal in OTC derivatives transactions. A state owned enterprise (SOE) shall obtain an “offshore futures business permit” to carry out offshore futures transactions.
Reporting	<ul style="list-style-type: none"> No unified reporting regime for OTC derivative transactions. The China Foreign Exchange Trading System (“CFETS”): in the banking sector, all OTC FX derivatives, OTC interest rates, and credit risk mitigation trades can be traded on the China Foreign Exchange Trading Systems (CFETS) by CFETS’s members. CFETS acts in a trade repository like manner. It should be noted that any interest rate trades executed outside the CFETS platform should be reported to the CFETS and trades of credit risk mitigation instruments should be reported to NAFMII. China Securities Internet System (“CSIS”): all domestic derivatives transactions for equity, credit, interest, index, futures and FX products must be reported by securities companies, securities investment funds, securities investment advisory institutions and private fund managers in China to CSIS.
Record-Keeping	<ul style="list-style-type: none"> No unified legislation on record-keeping requirement. Depending on the specific derivative transactions, there may be record-keeping requirements on the participants. For example, PRC banks are required to keep record of all materials and audio records in derivative transactions for regular inspections.

Overview: China (continued)

Clearing	<ul style="list-style-type: none">■ Voluntary clearing: (i) voluntary clearing of RMB forward freight agreements launched in April 2013; (ii) voluntary clearing of RMB/FX spot, swap and forward transactions introduced in November 2014; (iii) voluntary clearing of RMB iron ore and coal swap launched in August 2014; (iv) voluntary clearing of copper premium swap in the Shanghai Free Trade Zone (FTZ) introduced in February 2015; (v) voluntary clearing of standard bond forwards introduced in April 2015; and (vi) voluntary clearing of ethylene glycol import swaps in the Shanghai FTZ and RMB styrene monomer swaps launched in July 2015. Voluntary clearing of RMB interest rate option will be launched in 2015.■ Mandatory clearing: mandatory clearing of RMB IRS commenced on 1 July 2014 at the Shanghai Clearing House (“SCH”). Mandatory clearing requirement only applies to financial entities, does not apply to end-users.
Margin	<ul style="list-style-type: none">■ No general requirement on margin yet.
Transaction Requirements	<ul style="list-style-type: none">■ No general transaction requirements yet.■ Note that there are transaction requirements for certain participants such as banks and securities companies in derivatives transactions. These transaction requirements may include risk management, risk disclosure, client communication, internal review, hedging requirement and periodical reporting.
Other Considerations	<ul style="list-style-type: none">■ Effect of the PRC insolvency laws on the CCP? Enforceability of close-out /netting is still a question.■ Banks may have concerns on the ability of their back office systems to support or conduct centrally cleared trades.■ Question as to the SCH’s capability for the calculation and valuation functions.■ Concerns on CCP default and default waterfall.

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Overview: Hong Kong¹

Product Scope	During the initial reporting phase, certain types of single currency interest rate swaps (including overnight index swaps) and non-deliverable forwards will be covered by reporting obligations.
Entity Definitions	Derivatives regulations in Hong Kong apply to: <ul style="list-style-type: none"> ■ Authorized institutions (AIs) ■ Licensed corporations (LCs) ■ Approved money brokers (AMBs).
Registration/licensing	The current intention of the Hong Kong regulators is to introduce licensing for Type 11 regulated activity (dealing in OTC derivative products or advising on OTC derivative products) and Type 12 regulated activity (providing clearing agency services for OTC derivative transactions). Certain exemptions may apply including price taker exemption.
Reporting	AIs, LCs and AMBs will need to report if they: <ul style="list-style-type: none"> ■ are a counterparty to a transaction; <u>or</u> ■ “conducted” the transaction in Hong Kong.
Record-Keeping	AIs, LCs and AMBs that are counterparty to a derivatives transaction must keep readily accessible records for a minimum of 5 years after the transaction has matured or been terminated.
Clearing	A Consultation paper on detailed rules for mandatory clearing is expected to be released in Q4 2015. The central clearing obligations are anticipated to apply to AIs, LCs and AMBs and Hong Kong persons that are counterparty to a “clearing eligible transaction”. We understand that AIs, LCs and AMBs will be subject to the clearing obligation when the obligation comes into effect but the obligation on Hong Kong Persons will take effect in a later phase. <ul style="list-style-type: none"> ■ The AI/LC/AMB/Hong Kong person and their counterparty must have exceeded a “specified clearing threshold” (yet to be determined). This “specified clearing threshold” is to be set on a per product class basis. ■ Transactions will need to be cleared through a CCP recognized in Hong Kong. ■ The clearing rules will not be applicable to transactions booked overseas – this is so even if the transaction is “conducted in Hong Kong” by an entity that is subject to a clearing obligation.

¹ We are assuming that corporate end-users are unregulated foreign corporations or are non-financial entities that are conducting hedging transactions for the entity itself or its affiliates.

Overview: Hong Kong (continued)

Margin	Consultation to be published (anticipated Q4 2015).
Transaction Requirements	N/A
Other Considerations	N/A

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Product Scope	<p>Reporting requirements apply to any OTC derivatives transaction which:</p> <ul style="list-style-type: none"> i. is entered into by a Type 1 FIBO (as defined below) or an Obligated Operator (as defined below) as at least one party (with certain exceptions); and ii. relates to the price of a financial product, an interest rate, or financial indicators based on the price of a financial product or an interest rate including: <ul style="list-style-type: none"> – forward transactions or index forward transactions where the period from the trade date to the delivery date is three business days or more; – option transactions or index option transactions where the rights exercise period is three business days or more; – swap transactions; or – credit derivatives transactions where a relevant event is in relation to the credit conditions of a corporation. <p>For the avoidance of doubt, a “financial product” referred to in (ii) above includes currency.</p> <p>No reporting or record-keeping requirement is imposed on OTC commodities derivatives transactions.</p>
Entity Definitions	<p>For purpose of this chart, we assumed that “Corporate End-User” is an entity which is not a registered Financial Instruments Business Operator (“FIBO”) or a Registered Financial Institution (“RFI”) under Financial Instruments and Exchange Act of Japan (the “FIEA”). We also assumed that “Dealer” is an entity which is a Type 1 FIBO or an RFI (limited to a licensed commercial bank, a licensed insurance company, Development of Bank of Japan, Shoko Chukin Bank, Shinkin Central Bank or Nochu Bank, collectively “Obligated Operators”).</p>
Registration/ licensing	<p>In general, any person (other than banks and insurance companies licensed in Japan and certain other financial institutions) who carries out OTC financial derivatives transactions as business is required to be registered as a Type 1 FIBO under the FIEA.</p> <p>In general, any person who carries out OTC commodities derivatives transactions as business is required to obtain permission or file a notification under the Commodities Derivatives Act (the “CDA”).</p> <p>The licensing requirements for OTC financial derivatives and commodities derivatives transactions are exempted if the counterparty is a Type 1 FIBO or an RFI.</p>
Reporting	<p>An FIBO and Obligated Operators must report the derivatives transactions described in the above row of “Product Scope” which are not cleared by a CCP must be reported to the Financial Services Agency of Japan (the “JFSA”). Reports may be made directly to the JFSA or through a designated trade repository.</p>
Record-Keeping	<p>An FIBO and Obligated Operators must maintain records for five years. The information that must be kept includes, among other things, (i) the name of the parties, (ii) whether it is a new trade, change of trade or termination of trade, (iii) kind of trade, (iv) date of agreement, (v) the date when it became effective and (vi) the date when it ceases to be effective.</p>

Overview: Japan (continued)

Clearing	<p>The following transactions are subject to mandatory clearing requirements:</p> <ul style="list-style-type: none">i. iTraxx Japan CDS transactions that meet certain requirements; andii. interest rate swap transactions that meet certain requirements. <p>Currently, no FX transactions are subject to mandatory clearing in Japan. Also, there are several exemptions to the mandatory clearing requirements, which include, among other things, (i) if the transaction is between an FIBO/RFI and its parent, subsidiary or parent's subsidiary, or (ii) if one of the parties to the transaction is not an FIBO or an RFI.</p> <p>There is no mandatory clearing requirement in respect of OTC commodities derivatives transactions.</p>
Margin	<p>The margin requirements in respect of OTC financial derivatives transactions had been planned to be implemented from 1 December 2015. However, the implementation was postponed. The date for the implementation has not been set yet. The regulators of commodities have not published any information on how they will implement margin requirements in respect of OTC commodities derivatives transactions.</p>
Transaction Requirements	<p>FIBOs and RFIs are subject to the general business conduct rules set out in the FIEA. Given that a Corporate End-User is not an FIBO or an RFI, the business conduct rules do not apply to the Corporate End-User.</p> <p>A person who obtained permission or filed a notification under the CDA is subject to the general business conduct rules set out in the CDA. Assuming that a Corporate End-User has not obtained such permission or filed such notification, the business conduct rules do not apply to the Corporate End-User.</p>
Other Considerations	<p>Introduction of mandatory use of electronic trading facilities has come into force on 1 September 2015.</p>

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Product Scope	<p>Derivatives contracts are subject to regulation.</p> <p>“Derivatives contract” includes a forward contract, option contract, swap contract and any contract, arrangement or transaction prescribed by the Monetary Authority of Singapore (“MAS”) by regulations (not being any securities or futures contract).</p>
Entity Definitions	<p>For the purposes of this chart, “Corporate End-User” is a non-regulated entity (i.e. not a (a) bank in Singapore; (b) Singapore-incorporated subsidiary of a bank in Singapore; (c) merchant bank; (d) licensed finance company; (e) licensed insurer; (f) approved trustee; or (g) capital markets services licence holder).</p> <p>“Dealer” is a regulated entity holding, or exempt from holding, a capital markets services licence to deal in securities, amongst other regulated activities (for example, a bank, merchant bank or a capital markets services licence holder).</p>
Registration/ licensing	<p>A person, whether as principal or agent, carrying on business in any regulated activity or holding himself out as carrying on such business, must hold a capital markets services licence for that regulated activity, or be exempt from holding such a licence. Generally, no registration requirement applies to a corporate.</p> <p>“Regulated activity” currently includes (i) dealing in securities; (ii) trading in futures contracts; (iii) leveraged FX trading; (iv) advising on corporate finance; (v) fund management; (vi) real estate investment trust management; (vii) securities financing; (viii) providing credit rating services, and (ix) providing custodial services for securities. There are proposals to consolidate (i), (ii), (iii) and dealing in OTC derivatives contracts into the regulated activity of “dealing in capital markets products”. The draft amendments to the second schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations propose to exempt certain persons from the requirement to hold a capital markets services licence in respect of OTC derivatives, such as persons who deal in OTC derivatives with regulated entities for their own account and do not receive remuneration for dealing in such OTC derivatives.</p> <p>Banks, merchant banks and licensed finance companies are exempted from the requirement to hold a capital markets services licence in respect of any regulated activity.</p>
Reporting	<p><i>All “specified derivatives contracts” which are traded in or booked in Singapore by “specified persons” on or after the applicable reporting commencement date must be reported to a licensed trade repository or licensed foreign trade repository within two business days after the execution/amendment/termination (as applicable) of the contract. An end user is required to report if it is a significant derivatives holder.</i></p> <p>“Specified derivatives contracts” include interest rate derivatives contracts, credit derivatives contracts and FX derivatives contracts.</p>

Reporting (continued)

“Specified persons” include the entities (a) to (g) of the definition of “Corporate End User” mentioned above and significant derivatives holders. A person (such as a Corporate End-User) is a significant derivatives holder when the aggregate gross notional amount of specified derivatives contracts to which he is a party and which are booked in or traded in Singapore exceeds the reporting threshold amount of S\$8 billion.

“Traded in Singapore” means the execution of the derivatives contract by a trader (a) whose place of employment is located in Singapore and who conducts, on behalf of a specified person, activities relating to the execution of derivatives contracts in Singapore; or (b) who conducts or is authorised to conduct such activities for a period of not less than 30 days immediately before the date of the execution of derivatives contracts in Singapore and is physically in Singapore at the time of execution of the derivatives contract.

Implementation timetable (only applicable to reporting entities)

Reporting obligation is phased in by asset class and type of specified person:

- Reporting of interest rate derivatives contracts and credit derivatives contracts booked in Singapore commenced on 1 April 2014.
- Reporting of interest rate derivatives contracts and credit derivatives contracts traded in Singapore will commence on 1 November 2015 for Singapore banks and merchant banks and 1 February 2016 for significant derivatives holders.
- In the case of FX derivatives contracts booked in or traded in Singapore, the reporting obligation will commence from 1 May 2015 and 1 November 2015 respectively for Singapore banks and merchant banks only.

Backloading (only applicable to reporting entities)

Specified derivatives contracts booked in Singapore and which have a maturity of at least one year are required to be backloaded within six months of the applicable reporting commencement date.

Masking relief and exemptions (only applicable to reporting entities)

- MAS has provided for temporary masking relief until 1 November 2015 from reporting counterparty information subject to certain requirements in the reporting regulations.
- Capital markets services licence holders carrying on the business of fund management or real estate investment trust management whose managed assets are below specified thresholds are exempted from the reporting obligation.

Overview: Singapore (continued)

Record-Keeping	<p><i>All specified persons must keep all relevant books, transaction information and other information as may be required by the MAS until at least five years after the last date of expiry or termination of a contract, agreement or transaction to which the book or information (as applicable) relates. An end user is required to keep records if it is a significant derivatives holder.</i></p> <p>“Specified persons” include the entities (a) to (g) of the definition of “Corporate End User” mentioned above and significant derivatives holders. A person (e.g. Corporate End-Users) is a significant derivatives holder when the aggregate gross notional amount of specified derivatives contracts to which he is a party and which are booked in or traded in Singapore exceeds the reporting threshold amount of S\$8 billion.</p>
Clearing	<p><i>All specified derivatives contracts to which a specified person is party to must be cleared by a clearing facility operated by an approved clearing house or recognised clearing house. The MAS has proposed draft regulations for clearing in its July 2015 consultation paper.</i></p> <p>“Specified derivatives contracts” refer to derivatives contracts or class of derivatives contracts prescribed by MAS regulations.</p> <ul style="list-style-type: none"> ■ MAS proposes to initially mandate clearing for SGD and USD interest rate swaps. It is considering subjecting interest rate swaps denominated in EUR, GBP and JPY to mandatory clearing obligations. SGX-DC already clears non-deliverable FX forwards denominated in seven Asian currency pairs. ■ MAS has proposed to subject derivatives contracts to the clearing obligation where both transacting counterparties have booked their trades in their Singapore-based operations. The MAS does not at this stage propose to subject derivatives contracts which are traded in Singapore but booked elsewhere to the clearing obligation. <p>“Specified persons” include the entities (a) and (c) to (g) listed in the definition of “Corporate End User” mentioned above and any other person who is or who belongs to a class of persons prescribed by MAS regulations.</p> <ul style="list-style-type: none"> ■ However, MAS has proposed at this stage to subject only banks which exceed the clearing threshold amount of S\$20 billion to the clearing obligation. ■ “Non-financial entities” (e.g. Corporate End-Users) are not subject to the clearing mandate at this point. <p>Approved clearing houses are deemed to be systemically important to the functioning of Singapore's financial and capital markets, whereas recognised clearing houses are not deemed to be systemically important but will be subject to a set of general obligations consistent with ensuring the safe and efficient operation of their clearing facilities.</p>

Overview: Singapore (continued)

Clearing (continued)	Entities being considered for exemption include: <ul style="list-style-type: none">■ Public bodies (including central banks and governments and international multilateral organisations);■ Intra-group transactions; and■ Banks which do not exceed the clearing threshold amount of S\$20 billion.
Margin	Margin requirements have not been finalised. MAS stated in its February 2012 consultation paper that it will be taking into account upcoming international standards on margin requirements for non-centrally cleared derivatives and will consult on the proposed regulatory changes to implement these standards in “due course”. MAS stated in its June 2015 consultation paper that it is considering the BCBS-IOSCO recommendations and will consult on the requirements.
Transaction Requirements	MAS proposed in its June 2015 consultation paper to introduce conduct of business requirements that will apply to dealers. These proposed requirements include record-keeping requirements and the following in relation to non-centrally cleared derivatives contracts: trading relationship documentation, trade confirmations, portfolio reconciliation and dispute reporting and portfolio compression.

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