

MEMO# 29080

June 10, 2015

Hong Kong Publishes Consultation Conclusions on Reporting and Recordkeeping Rules for OTC Derivatives

[29080]

June 10, 2015

TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 43-15
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 30-15
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 27-15
INTERNATIONAL COMMITTEE No. 31-15 RE: HONG KONG PUBLISHES CONSULTATION CONCLUSIONS ON REPORTING AND RECORDKEEPING RULES FOR OTC DERIVATIVES

Recently, the Hong Kong Monetary Authority (“HKMA”) and the Securities and Futures Commission (“SFC”) published their conclusions regarding the proposals for implementing mandatory reporting and related recordkeeping obligations for OTC derivative transactions. [\[1\]](#) The Consultation Conclusions Paper follows two rounds of consultations by the HKMA and the SFC. [\[2\]](#) The Consultation Conclusions Paper includes a summary of comments received on issues raised in the Second Consultation Paper, the HKMA and the SFC’s responses to those comments, and their conclusions. The implementation rules on which the HKMA and the SFC have been consulting will now be subject to the legislative process and are expected to take effect the second week of July 2015. The HKMA and the SFC plan to develop detailed rules for the next phase of implementation in the near future. [\[3\]](#)

This memorandum briefly summarizes the Consultation Conclusions Paper and focuses on the issue on which ICI Global commented in response to the Second Consultation Paper – the list of markets and clearing houses for the purposes of the definition of “OTC derivative product.”

Derivatives Traded on SEFs and MTFs Considered “OTC Derivatives” and Subject to HK Reporting and Recordkeeping Rules

Under Hong Kong (“HK”) law, “OTC derivative product” is subject to mandatory reporting. For products traded on a market that is based outside of Hong Kong, HK law permits these to be excluded from the definition of “OTC derivative product” but only if the market is a stock or futures market that satisfy certain criteria. [\[4\]](#) In the Second Consultation Paper,

the HKMA and the SFC sought comment on the proposed list of markets and clearing houses that satisfy the criteria. [5] The HKMA and the SFC, however, had not proposed to include products traded on US swap execution facilities (“SEFs”) and EU multilateral trading facilities (MTFs”) in the proposed list of markets.

Despite comments from ICI Global and others, in the Consultation Conclusions Paper, the HKMA and the SFC determined to define products traded on US SEFs and EU MTFs as “OTC derivatives,” which would subject these products to the HK reporting and recordkeeping rules. The HKMA and the SFC stated that these facilities were commonly used for executing OTC derivative transactions. The HKMA and the SFC were of the view that adding MTFs and SEFs to the list of markets could inadvertently narrow the scope of OTC derivative transactions beyond what was intended. According to the HKMA and the SFC, they would reconsider whether products traded through certain SEFs or MTFs should be excluded from the definition when they have a better understanding of the OTC derivatives market in the future.

Other Issues Raised in Second Consultation Paper

In the Second Consultation Paper, the HKMA and the SFC raised two other issues for comment. With respect to the first issue of the proposed requirements for reporting valuation transaction information, the HKMA and the SFC determined, in light of the comments received, to conduct further consultation on the details of the requirement to report valuation transaction information. On the second issue of the proposed list of jurisdictions to be designated for purposes of the masking relief, the HKMA and the SFC declined to expand the list of jurisdictions. [6]

Other Issues Raised by Commenters

The Consultation Conclusions Paper also discussed comments and requests for clarification on a number of other issues. These include: treatment of futures and options contracts that are traded “off market” but then registered on a market and cleared through a clearing house; exclusion of funds from the definition of “affiliate;” timeframe for reporting “conducted in Hong Kong” transactions; the manner in which certain records must be maintained; and reporting of a unique transaction identifier.

Jennifer S. Choi
Associate General Counsel

endnotes

[1] Conclusions on Further Consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, (May 2015), available at <http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2015/20150515e3a1.pdf> (“Consultation Conclusions Paper”).

[2] In July 2014, the HKMA and the SFC issued a joint consultation paper on proposals for implementing mandatory reporting and related recordkeeping obligations for OTC derivative transactions. See Consultation Paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules (July 2014), available at <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=14CP6> (“First Consultation Paper”). For a summary of ICI Global’s comment letter on the First Consultation Paper, see ICI Memorandum No. 28349 (Aug. 28, 2014), available at

http://www.ici.org/my_ici/memorandum/memo28349. In December 2014, the HKMA and the SFC issued a joint conclusions paper summarizing and responding to the comments on the July consultation and sought further consultation on three ancillary matters. See Consultation Conclusions and Further Consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (November 2014), available at <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=14CP6> (“Second Consultation Paper”). For a summary of the Second Consultation Paper, see ICI Memorandum No. 28545 (Dec. 2, 2014), available at http://www.ici.org/my_ici/memorandum/memo28545. For a summary of ICI Global’s comment letter on the Second Consultation Paper, see ICI Memorandum No. 28605 (Dec. 22, 2014), available at http://www.ici.org/my_ici/memorandum/memo28605.

[3] The HKMA and the SFC plan to work on: extending the mandatory reporting obligation to cover all types of interest rate derivatives and foreign exchange derivatives not covered in the first phase as well as all other classes of OTC derivative products; revised proposals for reporting valuation transaction information; and detailed requirements for mandatory clearing and related recordkeeping in respect of dealer-to-dealer transactions.

[4] The criteria are as follows: (1) the markets operate in jurisdictions whose securities or futures regulator is a member of the International Organization of Securities Commissions (“IOSCO”); (2) the markets are regulated in their home jurisdictions and their regulatory status is comparable to that of a recognized exchange company or recognized clearing house under the Securities and Futures Ordinance (“SFO”); and (3) the markets are regulated by the relevant market regulator, banking regulator or government agency in that jurisdiction.

[5] Consultation Conclusion Paper App. C.

[6] The masking relief would allow reporting entities to mask certain counterparty identifying information when reporting a transaction under specified circumstances, such as where the disclosure is prohibited under the laws of another jurisdiction.