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Definitions and interpretation

Unless the context otherwise requires, terms defined in Schedule 1 to the SFO or in the Clearing Rules bear the same meaning when used in the questions and answers below, and transaction is 1 July 2017, i.e. there is a gap of 10 months from the date the Clearing Rules come into operation on 1 September 2016. This is explained in Q6 below.

Persons subject to clearing and record keeping obligations

Q4. Who would be subject to the mandatory clearing and related record keeping requirements?

The Clearing Rules at present are intended to cover specified OTC derivative transactions entered into between major dealers. The clearing and record-keeping obligations apply to the following persons:

(a) an authorized institution (**AI**);

(b) an approved money broker (**AMB**); or

(c) a licensed corporation (**LC**).

In respect of an AI and AMB that is incorporated overseas, the obligations apply only to the transactions that are recorded in the Hong Kong books of that AI and AMB, and transactions that are not recorded in the Hong Kong books are not subject to the obligations.

AIs, AMBs and LCs will need to ensure that their specified OTC derivative transactions are cleared in accordance with the Clearing Rules if circumstances for triggering mandatory clearing are met.

Circumstances clearing obligation is triggered

Q5. Under what circumstances are specified OTC derivative transactions subject to clearing obligation?

An AI, AMB or LC must centrally clear a specified OTC derivative transaction if the following circumstances are all met –

(a) The AI, AMB or LC has reached the clearing threshold. (Please see Q6 to Q10 on clearing threshold, calculation of average total position and average local total position, and types of transactions to be included in the calculation.)

(b) The transaction is entered into on or after the prescribed day for the calculation period in respect of which the AI, AMB or LC reached the clearing threshold for the first time (or for the first time agaw -15.()Tj 0.0l met

https://www.sfc.hk/en/Rules-and-standards/OTC-derivatives-regulatory-regime

Average total position and average local total position

Q9. How should a person calculate its applicable position in relation to its clearing threshold?

For a person that is a local AI/AMB/LC, its applicable position is its average total position which is calculated by taking a simple arithmetic average of the three month-end snapshots of the total position of the person over the 3-month calculation period.

For a person that is an overseas AI/AMB/LC, its applicable position is its average local
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(c) an overnight index swap that has all of the features specified for an item in a row of the table below -

Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.					

defined in the SFO). The IRS, being only an embedded feature of the structure, will not be subject to mandatory clearing.

Q18. Is an IRS created as a result of novation subject to clearing obligation?

An IRS transaction that results from a novation will be subject to clearing if its features meet the specified criteria set out in Schedule 1 to the Clearing Rules. As these features are likely to be the same for both the original trans

Intra-

Q24.

(b) the date from which the jurisdiction is no longer regarded as an exempt jurisdiction and the date must not be backdated, i.e. it must not be earlier than the day the notice is received by the HKMA or the SFC, as applicable.

It is the responsibility of the person (that otherwise has the clearing obligation) to ensure that it is entitled to benefit from the exemption. As and when the total position of an exempt jurisdiction or the total position of all exempt jurisdictions (as the case may be) ceases to meet the requirements under Rule 9(2) of the Clearing Rules, even if a cessation notice has not been sent to the relevant regulator, any new transaction in respect of ***all*** exempt jurisdictions on the list cannot benefit from the exempt jurisdiction incorporated) and the different sets of requirements may be duplicative or conflicting. Substituted compliance addresses such potential duplication or conflict by confirming that compliance with the overseas clearing requirements will suffice.

Rule 11 of the Clearing Rules essentially provides that clearing obligation is taken to have been complied with if the transaction has been cleared under the laws of a comparable jurisdiction through a designated CCP. Specifically, a transaction is taken to have complied with the Clearing Rules if –

(a) under the laws of the comparable jurisdiction, that transaction is required to be cleared with a as the global regulatory reform

Calculation of the applicable position is on a “gross” notional basis, without any netting.

Q36. What happens when the person subsequently reaches the clearing threshold again, after it has given an exit notice to the relevant regulator?

If the person subsequently reaches the clearing threshold after giving an exit notice, it will become subject to clearing obligation again. The calculation methodology for determining whether a person has reached the clearing threshold again will be the same as that for determining whether a person has reached the clearing threshold for the first time. In practice, we do not expect such a situation to arise since the exit mechanism is intended and designed for persons who have permanently changed their business model or trading profile. We will monitor the filing of exit notice and take appropriate action to stem any abnint-(d uf)3.1 jctshoe212 0 [stdha tu (m

<u>Time allowed to clear</u>

Q38. What is the time allowed to comply with clearing obligation?

A transaction has to be cleared with a designated CCP within one business day after excuse for the breach, the Court may impose a financial penalty of up to HKD 5 million. Additionally, the HKMA (in the case of a breach by an AI or AMB) and the SFC (in the case of a breach by an LC) may take disciplinary action against the person in respect of the breach.

Q44. What is the consequence when a person has obtained confirmation from a counterparty that it has not reached the clearing threshold, and subsequently it comes to light that the counterparty has in fact reached the clearing threshold at the relevant time?

Where the person has received the confirmation in good faith, the confirmation should

Annex 1

List of comparable jurisdictions

1. Australia
2. Austria
3. Belgium
4. Brazil
5. Bulgaria
6. Canada
7. Croatia
8. Czech Republic
9. Denmark
10. Estonia
11. Finland
12. France
13. Germany
14. Greece
15. Hungary
16. Ireland
17. Italy
18. Japantaly

10. 1]TJ EMC

Annex 2

List of designated CCPs

1. Chicago Mercantile Exchange Inc
2. Japan Securities Clearing Corporation
3. LCH Limited
4. OTC Clearing Hong Kong Limited