

**Subject: Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data**

We are writing in response to your letter of 13 March 2016 requesting for reports from member jurisdictions of their planned actions to address legal barriers in relation to trade reporting as follow-up action to the FSB's November 2015 thematic peer review on OTC derivatives trade reporting.

2. Under our domestic reporting requirements, reporting obligation has to be complied with by submission of transaction reports to the trade repository operated by the Hong Kong Monetary Authority (HKTR), as in Table 5 of the peer review report. Foreign domiciled counterparties are not normally subject to our domestic reporting requirements, except in circumstances where an overseas incorporated authorised institution books a transaction in a Hong Kong branch or uses its Hong Kong office to conduct a transaction for a group affiliate. Although TRs in foreign locations cannot be used for purpose of compliance with our reporting requirements, such TRs can be used as agent by a foreign reporting entity in the event that any entity within the group happens to have to report with respect to a transaction under our rules. We intend to keep this mechanism to facilitate any reporting entity, in local or foreign location, to report to the HKTR pursuant to our domestic reporting requirements.

3. Regarding barriers to reporting information into TRs, we reported in the November 2015 peer review that there are no legal or statutory barriers to trade reporting and masking is currently accommodated in our jurisdiction as a transitory measure. Following FSB peer review report recommendations, it is expected that such legal barriers to reporting would be gradually removed by respective jurisdictions towards the deadline of June 2018. To meet the June 2018 timeline to remove masking once barriers to reporting are removed, we plan to (i) review regularly and remove jurisdictions from our 'list of jurisdictions for the purposes of the masking relief' once changes in their domestic law which had prevented the disclosure of counterparty particulars are made; and (ii) discontinue the masking relief by the agreed timeline, subject to the completion of the necessary legislative procedure.

4. Regarding the barriers to authorities' access to TR-held data, we have established appropriate gateway under our regulatory regime to share TR data with local and foreign authorities. Relevant policies and procedures have also been set up to facilitate the process of access to TR data. Regulatory authorities can access the

HKTR data directly via the HKTR web portal after applying for their own unique account. Authorities can also obtain data on a by-request basis.

The objective of trade reporting is to improve transparency of the OTC derivatives market. We appreciate the importance of authorities' mutual access and sharing of TR data and will continue to participate and contribute our effort in global regulatory initiative in enhancing TR data quality and its usage to facilitate monitoring and surveillance of the OTC derivatives markets.

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Further Update as at May 2017

**Masking**

Following our response to the captioned subject in June 2016, we note that some jurisdictions, namely France and Switzerland, have made changes to their own laws to remove certain legal barriers that impede the reporting of counterparty identity information by reporting entities subject to reporting requirements in foreign jurisdictions.

Under our reporting rules, masking is currently accommodated if the reportable transaction involves the submission of counterparty identity information that is prohibited under the laws of, or by an authority or regulatory organization in, a jurisdiction that is designated by the SFC in the published Government Gazette. The rules set out that if the barrier has been removed, the masking relief can no longer be relied upon for new transactions.

We received from industry feedback that despite the change of law to remove the legal barrier, they still have difficulties in providing counterparty identity information for outstanding transactions already reported, along with other residual matters. We are now discussing with industry representatives to explore if and how these problems can be overcome. Subject to the resolution of the problems, we will take steps to remove the relevant jurisdiction from the list.

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