HKSFA 香港財經分析師學會
THE HONG KONG SOCIETY OF FINANCIAL ANALYSTS

16th September 2013

Sent by Email

Bills Committee on Securities and Futures (Amendment) Bill 2013
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Sirs,

Re: Securities and Futures (Amendment) Bill 2013

The Hong Kong Society of Financial Analysts is pleased to comment on the Securities and Futures (Amendment) Bill 2013.

In Part IIIA, Division 2 adds new provisions to impose reporting, clearing and trading obligations (obligations) on prescribed persons in respect of OTC derivative transactions specified by rules made under the SFO. The provisions are —

(i) impose the reporting obligation (obligation to report specified OTC derivative transactions to the MA);
(iv) provide that if the prescribed person is a locally incorporated authorized financial institution, the obligations include another element, namely to ensure that subsidiaries of that institution specified by the MA report specified OTC derivative transactions to the MA, clear them with a designated CCP and execute them only on a designated trading platform;

Since majority of the OTC derivatives activity conducted by prescribed persons in Hong Kong is not booked in Hong Kong, the Hong Kong arm is in the most cases the sales desk and trading desk rather than the client facing entity. Given the unique feature of Hong Kong's market, we agree the proposed mandatory reporting obligation should apply to all prescribed persons that originate or execute in the transaction. We therefore suggest a pragmatic approach for mandatory reporting in accordance with the reporting rules.

(ii) impose the clearing obligation (obligation to clear specified OTC derivative transactions with a designated central counterparty (CCP));

We support the imposition of mandatory clearing obligation. In addition, we believe a common and consistent reporting should be promoted by international authorities across jurisdictions to reduce the potential for CCPs competing on the basis of lower costs or reduced requirements.

(iii) impose the trading obligation (obligation to execute specified OTC derivative transactions only on designated trading platforms);

We are supportive of exchange trading but at the early stage of market reform, the imposition of a mandatory trading obligation at the outset may not be desirable. We believe at this juncture as long as CCPs will conduct a thorough and regular analysis of risks, cost-effective of clearing and maintain operational reliability, trading can occur over multiple venues.

In Part IIIA, Division 5 relates to SIPs and one of the main provisions is (a) new section 101O (the requirement to notify positions that have reached the notification level and the creation of an offence for non-compliance);

We propose to focus not only on product class, but also on the underlying security, e.g. a specific stock or credit.

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In Part 3, Division 2 adds a new Schedule 11 to the SFO to provide transitional arrangements for activities that fall within Type 11 RA and Type 12 RA and the new components of Type 7 RA and Type 9 RA. In substance, the transitional period in relation to each regulated activity is 6 months from the commencement of the application of the SFO to the regulated activity.

We believe the proposed transitional period should be determined based on the reasonable time to set up system infrastructure. We suggest having selective large corporations for pilot program and test run for industry readiness before full implementation of mandatory reporting.

In Part IIIA, Division 3 empowers the SFC to designate CCPs and trading platforms with the consent of the MA and after consultation with the Financial Secretary (FS).

We welcome the proposal to accept overseas CCPs as obtaining authorization as an ATS provider and providing clearing services in Hong Kong. Mutual CCP recognition across jurisdiction is important and can assist in resolving the potential cross-border conflicts. Since the Hong Kong OTC derivatives market is relatively immature and fragmented, once it builds critical mass we support the premise of Japan and Australia's version of having domestic CCPs. Competition amongst CCPs may encourage innovative margin netting and pooling models which hopefully provide greater efficiency for OTC derivatives trading.

Yours sincerely,
For and on Behalf of
The Hong Kong Society of Financial Analysts

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