



HONG KONG MONETARY AUTHORITY  
香港金融管理局

# **OTC Derivatives Trade Repository**

**Reporting Service**

**Reference Manual**

**Date:** December 2013  
**Version:** v.1.3

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## VERSION HISTORY

Effective Date	Paragraphs	Amendments
July 2013	First issue v.1.0 (10 December 2012)	Not applicable
July 2013	Updated v.1.1 (30 April 2013)	<p>(1) Removed “CMU” from all references to the trade repository or its members, and replaced “CMU” by “HKMA” in references to the operator of the TR, to better reflect that the CMU and the TR are operating independently of each other</p> <p>(2) Changed all references to “FinNet” to “ICLNet” as the operation of FinNet was taken over by the HKICL in March 2013, and the service was renamed to become ICLNet</p> <p>(3) Updated 3<sup>rd</sup> and 4<sup>th</sup> paragraph of Clause 2 on background to reflect the implementation of the Interim Reporting Arrangement by the HKMA</p> <p>(4) Added the Agency Terms to be observed by reporting agents nominated by TR Members:</p> <ul style="list-style-type: none"> <li>- updated 2<sup>nd</sup> and 5<sup>th</sup> paragraph of Clause 7.2</li> <li>- updated Appendix TR.8 , the “Agent Nomination Form”</li> <li>- added “Agency Terms” as an appendix to Appendix TR.8</li> <li>- updated Appendix TR.9A to align with the descriptions in the updated Appendix TR.8</li> </ul> <p>(5) Revised 1<sup>st</sup> paragraph of Clause 8.3 to clarify that part of the Mandatory Information required to be submitted to the TR is conditional in nature</p>

Effective Date	Paragraphs	Amendments
July 2013	Updated (30 April 2013) (cont'd)	<p>(6) Updated the description for Global LEI in 2<sup>nd</sup> paragraph of the description for Global LEI in the “<i>Identifiers for reporting or transacting parties</i>” section of Clause 8.4 and in Note 1 of Appendix TR.3, to reflect the latest international standards on issuance of pre-LEIs</p> <p>(7) Added a new paragraph (last paragraph) to Clause 9.2 to clarify that the linking report produced by the TR system is an optional tool to facilitate TR Members to identify and resolve potential reporting errors</p> <p>(8) Insertion of a Personal Information Collection Statement as Annex 7 to meet the relevant requirements in the Personal Data (Privacy) Ordinance</p> <p>(9) Miscellaneous changes</p>
July 2013	Updated v.1.2 (26 July 2013)	<p>(1) Revised the 3<sup>rd</sup> paragraph of Clause 4.1 in regard of change to member list.</p> <p>(2) Revised the 5<sup>th</sup> paragraph of Clause 4.1 to reflect service subscription information on TR Members will be available in the TR Member List.</p> <p>(3) Revised the 2<sup>nd</sup> paragraph of Clause 8.1 to require no report should be made when no change to a reported trade.</p> <p>(4) Revised the 3<sup>rd</sup> paragraph of “Maintenance of reporting or transacting party identifiers at the HKTR” under Clause 8.4 to</p>

July 2013	Updated (26 July 2013) (Cont'd)	<p>reflect information on changes of TR Members' third party-assigned identifiers will be available to TR Members.</p> <p>(5) Updated Annex 2 Fee Scale for Reporting Service.</p>
December 2013	Updated v.1.3 (2 December 2013)	<p>(1) Updated the 3<sup>rd</sup> and 4<sup>th</sup> paragraph of Clause 2 to reflect the introduction of interim reporting requirements by the HKMA</p> <p>(2) Updated the 5<sup>th</sup> paragraph of Clause 8.4 to reflect the latest development on the Global LEI System</p> <p>(3) Updated the 2<sup>nd</sup> paragraph of Clause 8.6 on the description of the service outage window of the HKTR</p> <p>(4) Updated the 1<sup>st</sup> and 2<sup>nd</sup> paragraph of Clause 9.2 to provide better clarity on the transaction linking process</p> <p>(5) Updated the notes under the table for identification number in Appendix TR.3 to reflect the latest development on the Global LEI System and to clarify the requirement for SWIFTBIC</p>

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## APPENDICES

		<b>Version date</b>
TR.1	TR Membership Application Form	December 2012
TR.2	TR Member Record of Authorized Signatures	December 2012
TR.3	TR Member Profile Maintenance Form	December 2013
TR.4	TR Member Administrative Account Setup Form	December 2012
TR.5	Broker List of TR Member	December 2012
TR.6	Designation of Hong Kong Dollar Account for Settling Fees and Charges	December 2012
TR.7	Direct Debit Limit of Settlement Bank	December 2012
TR.8	Agent Nomination Form (with Agency Terms)	July 2013
TR.9A	Agent Profile Maintenance Form for Reporting Service	July 2013

## ANNEXES

		<b>Version date</b>	<b>Availability</b>
1	HKTR Reporting Service Product Scope	July 2013	Attached
2	Fee Scale for Reporting Service	July 2013	Attached
3	Reporting Service Agreement	July 2013	Available on request
4	Hong Kong Trade Repository Administration and Interface Development Guide – Reporting Service	December 2013	Available on HKMA-TR Web
5	HKTR Reporting Service Training Materials (Compact Disc)	December 2013	Available on request
6	Operating Procedures for Hong Kong Trade Repository – User Manual for Participants	December 2013	Available on request
7	Personal Information Collection Statement	July 2013	Attached

## **1. INTRODUCTION**

This OTC Derivatives Trade Repository Reporting Service Reference Manual (“Manual”) describes the reporting service for over-the-counter (“OTC”) derivatives transactions (“Reporting Service”) provided by the OTC Derivatives Trade Repository (“HKTR”) of the HKMA to TR Members in accordance with, and subject to any limitations contained in their Reporting Service Agreements with the HKMA. Any of the provisions of this Manual or of circulars may be varied at any time upon written notice to that effect being given by the HKMA to TR Members without their agreements.

### **1.1 Purpose**

Set out in this Manual are the procedures for TR Membership and communications, the security provision underlying the Reporting Service and details of the various processes. The Appendices at the back of this Manual provide sample forms for use by TR Members.

### **1.2 Contact for TR Service**

All requests for further information relating to the Reporting Service described in this document should be directed to:

Trade Repository,  
Hong Kong Monetary Authority  
55<sup>th</sup> Floor  
Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong  
Telephone : (852) 8100 3115  
Facsimile : (852) 2878 1679  
e-mail : [hktr@hkma.gov.hk](mailto:hktr@hkma.gov.hk)

For technical support and enquiries on the operation of the computer system for accessing and making use of the Reporting Service, please contact the Hong Kong Interbank Clearing Limited (“HKICL”) at:

**Services Support**

Hong Kong Interbank Clearing Limited

Telephone : (852) 2533 1100

Facsimile : (852) 2533 1123

e-mail : [hkicl@hkicl.com.hk](mailto:hkicl@hkicl.com.hk)

### **1.3 Related Documents**

The following documents issued by the HKMA may contain further information in relation to the operation of the Reporting Service:

- (a) Operating Procedures for Hong Kong Trade Repository - User Manual for Participants (Administrative Functions)
- (b) Operating Procedures for Hong Kong Trade Repository - User Manual for Participants (Trade Functions – Reporting Service)
- (c) Operating Procedures for Hong Kong Trade Repository - User Manual for Participants (Trade Functions – Reporting Service - Appendix)
- (d) Hong Kong Trade Repository Administration and Interface Development Guide – Reporting Service (“Reporting Service AIDG”)

### **1.4 Operating Procedures**

For the sake of clarity, the term “Operating Procedures” mentioned in this Manual includes this OTC Derivatives Trade Repository Reporting Service Reference Manual and circulars issued by the HKMA from time to time.

## 2. BACKGROUND

The global financial crisis in 2008 triggered a global movement to improve transparency and reduce counterparty risks in the OTC derivatives markets, resulting in reforms to the OTC derivatives markets on various fronts. The reform measures adopted by the international regulatory community include requiring all OTC derivatives transactions be reported to trade repositories (“TRs”) and all standardized OTC derivatives transactions be cleared at central counterparty (“CCP”) clearing facilities.

A TR is a centralised registry that maintains an electronic database of records of OTC derivatives transactions. By collecting and providing OTC derivatives transactions information to regulatory authorities, the TR plays a vital role in supporting authorities in carrying out their market surveillance responsibilities, which will help maintain stability of the financial systems. It also helps increase transparency in the market, promotes standardisation and provides a level of consistency in the quality and availability of transaction data.

To meet international standards, the HKMA announced in December 2010 to establish a TR in Hong Kong under the Central Moneymarkets Unit (“CMU”), and that a link will be developed between the TR and the CCP for OTC derivatives to be launched by Hong Kong Exchanges and Clearing Ltd. to allow eligible transactions to be passed to the CCP for central clearing. The HKMA also worked in concert with the Government and the Securities and Futures Commission (“SFC”) to build a regulatory regime for the OTC derivatives markets under the Securities and Futures Ordinance (“SFO”), including requirements for mandatory reporting to the TR of the HKMA and mandatory clearing at designated CCPs. In August 2013, the HKMA introduced interim reporting requirements to require Licensed Banks (“LBs”) to report OTC derivatives transactions to the TR of the HKMA. The interim reporting requirements would remain in effect until the regulatory regime under the SFO takes effect.

Under the regulatory regime to be effected by the SFO, Authorized Institutions (“AIs”) and Approved Money Brokers (“AMBs”) licensed and regulated by the HKMA under the Banking Ordinance, Licensed Corporations (“LCs”) licensed and regulated by the SFC under the SFO, and other Hong Kong persons involving in OTC derivatives transactions and meeting certain conditions will be required to report specified OTC derivatives transactions conducted, originated or executed by them to the HKTR. Under the interim reporting requirements, however, only LBs are mandatorily required to report, covering transactions they conduct with other LBs. Hereinafter, the regulatory regime to be effected by the SFO and the interim reporting requirements will be collectively referred to as “OTC regulatory regime”.

The HKTR provides an electronic system for collecting, keeping and maintaining details of OTC derivatives transactions efficiently, securely and in conformity with market standards. Entities subject to mandatory reporting requirements under the OTC regulatory regime can discharge their reporting obligations only by reporting to the HKTR.

## **2.1 Enquiries on Mandatory Reporting Requirements**

AIs should direct their enquiries on the mandatory reporting requirements to their usual supervisory contacts at the Banking Supervision Department of the HKMA.

AMBs should direct their enquiries on the mandatory reporting requirements to their usual contacts at the Payment Systems Oversight and Licensing Division of the Banking Conduct Department of the HKMA.

Entities or persons other than an AI or an AMB should direct their enquiries on the mandatory reporting requirements to the SFC at: [enquiry@sfc.hk](mailto:enquiry@sfc.hk).

### 3. REPORTING SERVICE

The HKTR provides service to TR Members who are or may be subject to the mandatory reporting requirements under the OTC regulatory regime for capturing, maintaining and updating the details of OTC derivatives transactions through its electronic system (“HKTR system”), primarily for the TR Members to discharge their mandatory reporting obligations.

Transactions reported to the HKTR are effected by agreements between the parties to the transactions. The fact that they are reported to and maintained by the HKTR does not of itself confer any legally binding effect on such transactions.

#### 3.1 HKTR Reporting Service Product Scope

The types of OTC derivatives product supported by the Reporting Service of the HKTR (“HKTR Reporting Service Product Scope”) are basically determined with reference to the types of product subject to mandatory reporting under the OTC regulatory regime.

Over time, new OTC derivatives products may be added to the Reporting Service as the scope of products subject to mandatory reporting under the OTC regulatory regime expands.

The HKTR Reporting Service Product Scope can be found in **Annex 1**. The updated list is also available in the HKTR Section of the HKMA website. Changes to the list will be advised to TR Members through circulars. TR Members should also make reference to the OTC regulatory regime to ascertain, among the products supported by the HKTR, which products are subject to mandatory reporting.

## **3.2 Business Day**

The term “business day” as stipulated in this Manual means a day other than a Saturday, a Sunday or a day which is a general holiday as specified in the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong) except otherwise specified in the relevant chapters of this Manual.



## **4. PARTICIPATION PROCEDURES**

### **4.1 TR Membership**

A reporting entity must join the HKTR as a TR Member before it can make reports of OTC derivatives transactions to the HKTR.

Application for TR Membership must be made in writing to the HKTR. Prior to becoming a TR Member, each successful applicant is required to enter into a contractual agreement with the HKMA, i.e. the Reporting Service Agreement. Each successful applicant will be assigned and advised a unique TR Member code to represent its identity in the HKTR system.

The list of TR Members and their TR Member codes can be found in the HKTR section of the HKMA website. The list will be updated regularly. Changes to the list will also be advised to TR Members.

The Reporting Service Agreement, which incorporates the provisions of this Manual, as updated from time to time, together with any directions given in circulars by the HKMA, sets out the terms and conditions of the Reporting Service Agreement with which a TR Member is required to comply.

It should be noted that apart from the Reporting Service, the HKTR may also provide matching and confirmation service to TR Members (“Matching and Confirmation Service”), primarily for facilitating them to fulfil their statutory clearing obligations under the OTC regulatory regime. The Matching and Confirmation Service is provided independently of the Reporting Service, and is subject to a different set of procedures. Transactions reported to the HKTR under the Reporting Service cannot be applied to the Matching and Confirmation Service. A TR Member may be subscribing to only one or both of the Services (Reporting Service and Matching and Confirmation Service) of the HKTR. The Service subscribed by individual Members is indicated in the List of TR Members published by the HKTR.

## 4.2 Operational Information

Before joining the Reporting Service, a TR Member must supply certain operational information to the HKTR by completing and submitting the following forms to the HKTR:

- (a) TR Membership Application Form, at Appendix TR.1
- (b) TR Member Record of Authorized Signatures form, at Appendix TR.2
- (c) TR Member Profile Maintenance Form, at Appendix TR.3
- (d) TR Member Administrative Account Setup Form, at Appendix TR.4
- (e) Broker List of TR Member (optional), at Appendix TR.5
- (f) Designation of Hong Kong Dollar Account for Settling Fees and Charges form, at Appendix TR.6
- (g) Direct Debit Limit of Settlement Bank form, if applicable, at Appendix TR.7

Unless otherwise required by or agreed with the HKTR, the above completed forms must be submitted to the HKTR at least 10 business days before the date on which the TR Member can commence making use of the Reporting Service, subject to the completion of other relevant logistical and technical arrangements, e.g. access to different reporting channels (see Clause 7.1) may require different amount of lead time to establish.

After the TR Membership has commenced, any changes to the operational information must be notified to the HKTR in writing, supported by updated version of the relevant forms, if applicable. Unless otherwise required by or agreed with the

HKTR, TR Members should notify the HKTR a change at least 10 business days before the change takes effect.

### **4.3 Obligations of TR Member**

All TR Members must fulfil the following obligations:

- (a) All TR Members shall have systems in place which are complementary to the HKMA/HKICL's contingency arrangements so as to enable HKMA/HKICL to ensure timely recovery of its usual operation in the event of occurrence of an adverse contingency affecting such operation. Such contingency arrangements shall be modified from time to time in the manner required by the HKMA, and the HKMA shall notify TR Members the changes accordingly.
- (b) TR Members shall participate in the contingency drills arranged by the HKMA/HKICL from time to time so as to verify the readiness of TR Members' contingency arrangements.
- (c) TR Members shall participate in various member/simulation tests arranged by the HKMA/HKICL from time to time so as to prepare themselves ready for any new service to be launched.

The HKMA will monitor through HKICL the performance by TR Members of these obligations under the arrangements.

In the event that HKICL becomes aware of any non performance by any TR Member of its obligations under these arrangements, HKICL shall as soon as practicable inform the TR Member concerned and request it to ensure performance of the relevant provision, and inform the HKMA of such incident.

## **5. LEAVING THE REPORTING SERVICE**

### **5.1 Termination Notice**

At least 30 calendar days' notice in writing is required if a TR Member is to withdraw from the Reporting Service or terminate its TR Membership.

### **5.2 Termination Arrangements**

If a TR Member has not instructed the HKTR to quit the transactions at the HKTR (to signify that the Member will no longer report on the transactions) before leaving the Reporting Service or terminating its TR Membership, the HKTR will automatically apply a quit status to all the transactions of the Member on the date of the Member's leaving the Service or terminating the Membership.

After a TR Member leaves the Reporting Service, or terminates its TR Membership, the information of OTC derivatives transactions previously reported by the Member to the HKTR under the OTC regulatory regime will continue to be stored at the HKTR. However, the transaction records can no longer be amended or updated for events that happen after the date on which the TR Member leaves the Service or terminates the Membership.

## **6. SUSPENSION OR TERMINATION BY THE HKTR**

### **6.1 Suspension or Termination of Access to Service**

Under the terms of the Reporting Service Agreement, the HKMA may suspend or terminate the membership of a TR Member or its access to the Reporting Service under specified circumstances. On suspension or termination of a TR Membership, the HKTR will:

- (a) prevent the TR Member from accessing the Reporting Service until the HKMA authorises otherwise.
- (b) inform other TR Members as soon as practicable about the suspension or termination.
- (c) where the TR Member subject to suspension or termination of access to the Reporting Service is an AI or an AMB, inform Banking Supervision Department or the Payment Systems Oversight and Licensing Division of the Banking Conduct Department of the HKMA respectively about the suspension or termination.
- (d) where the TR Member subject to suspension or termination of access to the Reporting Service is an entity or a person other than an AI or an AMB, inform the SFC about the suspension or termination.

The Reporting Service will, however, continue to be in operation subject to the terms and conditions of the Reporting Service Agreement. Unlike in the case of termination, the HKTR will not apply a quit status to the transactions that the Member reported to the HKTR before the suspension. The transactions, however, will not be accessible by the Member for updating during the suspension period.

## **7. CONNECTING TO THE HKTR**

### **7.1 Connection and Information Submission Channels**

TR Members have to submit trade information of OTC derivatives transactions to the HKTR for reporting through the channels specified by the HKTR. All TR Members can submit trade information to the HKTR through internet. TR Members that are users of ICLNet and SWIFTNet can also submit trade information via such two channels. For the avoidance of doubt, TR Members may adopt multiple channels for the submission of trade information of different transactions, of same or different products, to the HKTR simultaneously.

The system connection and interface of TR Members with the HKTR for trade information submission should be developed and established in conformity with the specifications set out in the Reporting Service AIDG. Submission of trade information via the established channels must also be made in conformity with the standards specified in the AIDG, for example, standards of file format, file naming convention, configuration of parameters under different channels, user authentication, etc.

### **7.2 Submission of Trade Information through an Agent**

The HKTR accepts TR Members to submit trade information for reporting through an agent. A TR Member opting to submit trade information through an agent has to nominate the agent to the HKTR. The agent can be a third party service vendor or another TR Member, including the counterparty to the TR Member in the transaction.

TR Members may nominate an agent to the HKTR using the Agent Nomination Form at Appendix TR.8. The TR Member should specify the scope of information to be submitted by the agent on its behalf using the Agent Profile Maintenance Form for Reporting Service at Appendix TR.9A. The agent should acknowledge the nomination by the TR Member in both Forms, and supply certain operational

information required by the HKTR, e.g. contact information, authorized signatories and technical information related to the connection and submission modes to be adopted by the agent. The agent should also agree to observe the terms and conditions for accessing the HKTR system (“Agency Terms”) specified by the HKTR (Appendix to Appendix TR.8).

Subject to the agent meeting the relevant technical, logistical and documentation requirements to the satisfaction of the HKTR, the HKTR will confirm with the TR Member and the nominated agent the date for the nominated agent to commence reporting for the Member (in the form of the Approval Confirmation in Appendix TR.8). If an agent is not a TR Member, it will be assigned and advised of a unique Agent Code to represent its identity in the HKTR system. The HKTR system will reject trade information submitted by an agent on behalf of a TR Member before the commencement date for reporting by the agent as confirmed with the Member, or if the trade information submitted by the agent is not in conformity with the relevant standards.

According to the Reporting Service Agreement signed with the HKMA, the TR Member will assume full responsibility over the activity of its agent in accessing the Reporting Service on its behalf.

The termination of the appointment of an agent or any changes to the reporting scope of the agent must be notified to the HKTR in writing, supported by the updated Agent Profile Maintenance Form for Reporting Service, if applicable. Unless otherwise required by or agreed with the HKTR, TR Members should notify the HKTR a change at least 10 business days before the change takes effect. The Agency Terms applicable to an agent in respect of the agent’s appointment by a TR Member will cease to be effective when the agent’s appointment is terminated by the TR Member.

For the avoidance of doubt, a TR Member can simultaneously submit trade information directly and through agents. A TR Member can appoint multiple agents

for submitting trade information, in same and different products. An agent can submit trade information on behalf of different TR Members.



## **8. TRADE INFORMATION SUBMISSION**

### **8.1 Trade Information Submission Approach**

The HKTR supports both the life-cycle approach and the snapshot approach for capturing and maintaining OTC derivatives transactions for reporting purposes. Except in the case of backloading an outstanding transaction to the HKTR, where the snapshot approach has to be adopted, reporting entities may opt to adopt the life-cycle approach or the snapshot approach for reporting trade events. For the avoidance of doubt, reporting entities may adopt different reporting approaches for different transactions.

Under the life-cycle approach, reporting entities have to submit trade information at inception and on subsequent trade events individually and sequentially, in chronological order, as they occur until the expiry or scheduled termination of the transaction. Each submission made will therefore signify a single trade event. Reporting entities adopting the snapshot approach for reporting a transaction, on the other hand, have to report “snapshots” of the transaction, each may incorporate the effects of multiple trade events. The trade events covered by each snapshot, however, must take place on the same trade day. Like trade events under the life-cycle approach, snapshots of a transaction should be reported to the HKTR one by one sequentially and, in chronological order. Hereinafter, trade events under life-cycle reporting approach and snapshots under snapshot reporting approach are to be collectively referred to as “trade events”. For the avoidance of doubt, if there is no change to the information of a transaction reported to the HKTR, reporting entities should not make a report to the HKTR in respect of the transaction.

In the case of backloading, TR Members have to submit trade information of the outstanding position (snapshot) of the transactions. New trade events of an outstanding transaction can be submitted to the HKTR only after the transaction has been backloaded to the HKTR.

Trade events applicable to transactions in different types of OTC derivatives product may be different, due to differences in the economic substance and underlying of different products. Generally, the trade events supported by the HKTR for reporting include backloading, trade inception, amendment of transaction details and early termination of trade. In addition, TR Members may initiate requests to manage the trade events submitted to the HKTR, e.g. withdrawal, quit. For details of the trade events applicable to different products and under different circumstances, please refer to the Reporting Service AIDG.

Each trade event should be backloaded or submitted to the HKTR only once. In the event that a TR Member is simultaneously making use of multiple channels or agents for trade information submission, it must ensure that there is no duplication of submission through the various channels and agents.

## **8.2 Responsibility of Submitting Trade Information**

According to the OTC regulatory regime if both transacting parties of an OTC derivatives transaction are subject to the mandatory reporting requirement, they are required to report trade information of their respective side of the transaction to the HKTR, except where an exemption applies, e.g. under the regulatory regime to be effected by the SFO, for Hong Kong persons other than an AI, LC or AMB transacting with an AI, LC or AMB on a transaction subject to mandatory reporting, they are not required to report the transaction if the transaction is reportable by the counterparty AI, LC or AMB.

TR Members should make reference to and observe the requirements in the OTC regulatory regime in determining whether they are required to make a report on an OTC derivatives transaction to the HKTR.

### 8.3 Scope of Trade Information to be Submitted

The scope of information of a trade event of an OTC derivatives transaction required to be submitted to the HKTR for reporting purposes depends on the nature of the event, the type of product to which the transaction belongs and the relevant requirements of the OTC regulatory regime. The information to be reported is classified into mandatory and optional information. Mandatory information is information that a TR Member must supply to the HKTR. Mandatory information comprises information essential to the HKTR for administering and processing the transaction, e.g. purpose, event type, etc., and core transaction details, e.g. transacting parties, prices/rates, amounts, etc. Part of the Mandatory Information is conditional in nature, meaning that it is required only under specified condition(s), e.g. unique transaction identifier is required only if it exists for the transaction. Optional information is information that the TR Member can decide whether to supply together with the mandatory information, and mainly comprises transaction information other than the core details, e.g. payment and settlement conventions.

For details of the information to be submitted for different trade events and products, and under different circumstances, and the classification of the information into mandatory and optional information, please refer to the Reporting Service AIDG.

In response to local and international regulatory development, the scope of information to be submitted and the classification of the information into mandatory and optional information may be adjusted. The HKTR will notify TR Members of any changes, and update and re-issue the Reporting Service AIDG to specify the changes.

## 8.4 Format of Trade Information Submission

TR Members should observe the standards specified in the Reporting Service AIDG in terms of the format and contents of the information to be submitted to the HKTR for reporting purposes.

### *Format of information submission*

Trade event records submitted to the HKTR must be in either Extensible Markup Language (“XML”) (the extended Financial Products Markup Language (“FpML”)) format or Comma Separated Value (“CSV”) format. The technical specifications for representing individual transaction details under the two formats, e.g. the nature, length and layout of the data strings, may also be different. A TR Member may opt to adopt the format that can best suit its requirements and technical capability. For the avoidance of doubt, a TR Member may opt to adopt different formats for submitting trade information of different transactions to the HKTR. For details of the technical specifications of trade information submission under the two formats, please refer to the Reporting Service AIDG.

The HKTR accepts submission of a trade event request file containing records of multiple OTC derivatives transactions and multiple trade events of a transaction. When preparing and submitting files containing trade event information to the HKTR, reporting entities also have to observe other technical standards set out in the Reporting Service AIDG, e.g. file identification and authentication standards, and configuration standards applicable to the two information formats and different submission channels, i.e. internet, ICLNet and SWIFTNet.

### *Contents of information submitted*

The contents of individual data strings contained in a transaction record should reflect the value of the corresponding transaction details applicable to or referred to in the trade event agreed by the transacting parties, e.g. the price/rate level, transaction

amount, transaction date, etc., and may vary from one transaction to another. However, TR Members are required to observe the enumerations and coding schemes set out in the Reporting Service AIDG in representing some transaction details so as to facilitate processing of the transactions by the HKTR. The enumerations and coding schemes cover, for example, product codes, currency codes, reference rate codes, transacting party identifier codes, documentation codes, codes for signifying applicable payment or settlement conventions, etc. The majority of the codes specified in the enumerations and coding schemes are consistent with the practices and standards that have been widely adopted by the industry.

### *Identifiers for reporting or transacting parties*

As set out in the enumerations and coding schemes in the Reporting Service AIDG, the HKTR can support several types of third party-assigned identifier for indicating the identity of the reporting or transacting party of a transaction. If none of such third party-assigned identifier is available for a party, a unique internal customer/counterparty reference code assigned by the reporting entity (same code to be used for identifying the same party in all transactions reported by the reporting entity) meeting the specifications in the AIDG can be used. Where a party possesses several types of third party-assigned identifiers, the identifier to be reported for indicating the identity of the party should be determined by the order of priority applicable to the different types of identifier specified by the HKTR, except where the party is a TR Member. Specifically, among the various types of third party-assigned identifier that may be available, the one of the highest level of priority in the following list should be reported to represent the identity of the party:

- 1<sup>st</sup> Priority: Global Legal Entity Identifier (“Global LEI”) issued under the Global LEI System established by the Regulatory Oversight Committee (ROC) of the Global LEI System.

If the Global LEI is not yet available, pre-LEI identification codes (“pre-LEIs”) issued by pre-Local Operating Units (pre-LOUs) that have been

endorsed by the ROC. The ROC will make an announcement when a pre-LOU is endorsed to issue pre-LEIs. The HKTR will notify TR Members the announcements made by the ROC.

OR

TR Member code assigned and published by the HKTR

2<sup>nd</sup> Priority: SWIFT BIC (Business Identifier Code) issued by SWIFT under ISO 9362

3<sup>rd</sup> Priority: Number of the Certificate of Incorporation (“CI”) (for locally incorporated companies)/Certificate of Registration (“CR”) (for companies incorporated overseas) issued by the Companies Registry of Hong Kong

4<sup>th</sup> Priority: Business Registration Number (“BRN”) issued by the Inland Revenue Department of Hong Kong

Since TR Members are required to supply and update their own third party-assigned identifiers to the HKTR, a reporting entity can opt to report any one of such identifiers for a party if the party is a TR Member. The list of TR Members, their TR Member codes and other third party-assigned identifiers that they have registered with the HKTR can be found in the HKTR section of the HKMA website. The list will be updated regularly. Upon request of a counterparty TR Member, TR Members should supply the relevant identifiers to the counterparty TR Member for reporting to the HKTR.

Reporting entities are not required and should not supply any identity information of transacting party that is a private individual. Where a transacting party is a private individual, reporting entities should supply to the HKTR a private and unique reference code for referring to the private individual (to be applied to all transactions

with the same private individual), and have to indicate that the transacting party belongs to the private individual type.

*Maintenance of reporting or transacting party identifiers at the HKTR*

For transactions reported to the HKTR but not yet matured, TR Members are required to review the identifiers reported by them and update those that are no longer valid:-

- for transactions carrying internal customer/counterparty reference codes, to review whether any of the third party-assigned identifiers specified by the HKTR have become available for the parties for whom the internal customer/counterparty reference codes have been reported, and replace the codes by the available third party-assigned identifiers of the highest level of priority
- for transactions carrying third party-assigned identifiers, to review whether those identifiers have become invalid, e.g. the reporting or transacting party no longer possesses an identifier or an identifier of a higher level of priority has become available for the reporting or transacting party. The TR Member should obtain valid identifiers from the relevant parties and update the records at the HKTR. Again, no update is required to change any valid third party-assigned identifiers reported for a TR Member. For the avoidance of doubt, after a TR Member relinquishes its Member status, the TR Member code reported for it should be replaced by another valid identifier according to the specified order of priority.

The HKTR will notify TR Members when an entity becomes a TR Member, when a TR Member relinquishes the Member status or when a TR Member reports that its third party-assigned identifier(s) has/ have been changed, to facilitate TR Members to keep track of and report the appropriate identifiers arising from changes related to TR Member status or when any of the third party-assigned identifier(s) is no longer valid.

For identifiers reported for parties that are not TR Member, TR Members should review and update them at least annually, say during annual reviews of the banking or trading facilities for the parties. The HKTR will issue half-yearly reminders to remind TR Members.

### *Identifiers for transactions*

To facilitate the HKTR system to link up two sides of a transaction reported by the two transacting TR Members, and to facilitate TR Members to efficiently identify and resolve potential reporting errors, TR Members on both sides of a transaction are required to supply a unique and same transaction identifier (“UTI”) when reporting their respective side of the transaction to the HKTR. To facilitate future global sharing and aggregation of TR data, the HKTR does not require a UTI be developed specifically for Hong Kong but would adopt the UTI required under other jurisdictions. The acceptable UTI is specified in the Reporting Service AIDG. Over time, UTI in other jurisdictions may be added and the HKTR will notify TR Members accordingly. The TR Member possessing the specified UTI should supply the UTI to the counterparty TR Member for reporting, e.g. when only one side of the transaction is subject to the reporting requirement in the relevant jurisdiction.

If a specified UTI is not available for a transaction, the transacting TR Members may opt to agree among themselves a unique link reference for the transaction and supply the reference as optional information to the HKTR to aid in the trade linking and error resolution processes.

## **8.5 Timeframe for Trade Information Submission**

The HKTR has not set any minimum or maximum time limit for reporting a transaction or a trade event to it after the transaction or event is agreed by the transacting parties.



TR Members, however, should observe the schedule, rules and requirements in the OTC regulatory regime, if any, on the time for reporting a transaction or a trade event to the HKTR for meeting the relevant mandatory reporting requirements.

## 8.6 HKTR System Window for Capturing Trade Information

The HKTR system is open 7 days a week and 24 hours a day for capturing information of OTC derivatives trades submitted by TR Members except during certain outage windows for system maintenance and software migration. The outage windows for submitting trade events to the HKTR through different channels are set out in the table below.

Channel	Monday to Saturday (Hong Kong time)	Sunday (Hong Kong time)
UI upload via SWIFTNet FileAct via SWIFTNet	0:30 - 4:00	23:00 (Sat)– 12:00 (and additional outage period published by SWIFT from time to time, if any)
FTS via ICLNet	0:30 – 4:00	23:00 (Sat) – 5:00
UI upload via Internet	0:30 – 4:00	23:00 (Sat) – 5:00

During the Monday-to-Saturday outage windows, while TR Members will not be able to upload trade event request files through the user interface (“UI”) functions via the internet or SWIFTNet, they can continue to submit files through FileAct via SWIFTNet or File Transfer Service (“FTS”) via ICLNet as the files will be queued in the system and will be automatically captured for processing after the system resumes operation.

During the Sunday outage window, the user interface (“UI”) functions via the internet or SWIFTNet, File Transfer Service (“FTS”) via ICLNet and FileAct via SWIFTNet are not available. Members will not be able to upload trade event request files during the period.

## **9. TRADE VALIDATION AND LINKING**

### **9.1 Transaction or Trade Event Validation**

Upon receiving a trade event request file from a TR Member, the HKTR system will validate the format, contents and syntax of the file as well as that of the individual trade event records contained in the file. If an error is detected, the whole file or individual trade event records will be rejected, depending on whether the error occurs at file level or trade event record level. A response will be provided to the TR Members submitting the trade event request file about whether the file or individual trade event records have been accepted or rejected.

Trade event records successfully validated will then go through the linking process.

### **9.2 Transaction Linking**

To help ensure the quality of the data of OTC derivatives transactions at the HKTR, and to facilitate TR Members to identify and resolve potential reporting errors, the HKTR system will identify, compare and link up updated records of transaction conducted between TR Members (recognised by the HKTR system based on the identification numbers supplied by TR Members under the TR Member Profile Maintenance Form at Appendix TR.3). Updated records of transaction conducted between a TR Member and a non-TR Member will not be linked and will be classified as single-sided transactions in the HKTR system.

The linking process will be conducted by batch mode and performed once everyday. For trade events of a transaction reported to have been agreed between a TR Member and a counterparty TR Member on a trade day, the HKTR system will aggregate the effect of the trade events and compute a resultant position of the transaction for the trade day. The HKTR system will then search for and link it up with updated position of the transaction of the counterparty TR Member bearing matching information (but in opposite direction) in a set of core transaction details (primary reporting terms) of

the transaction. TR Members can check from the HKTR system those transaction records that have been linked.

Where a TR Member finds that its transaction has been mistakenly linked to another transaction of the counterparty TR Member, e.g. the transaction should be linked to another transaction bearing same primary reporting terms but is different in other aspects, and considers it necessary to correct the link, e.g. for bringing consistency with internal records, the TR Member may initiate a request to relink the transaction.

Where the primary reporting terms of an updated transaction of the TR Member cannot be matched with that of the counterparty TR Member, e.g. the counterparty TR Member has not yet reported all the trade events to the HKTR or a reporting error has been made by one of the transacting TR Members, the updated transaction of the TR Member will be deemed to be unlinked. TR Members can check from the HKTR system the unlinked transactions to facilitate them to identify and resolve potential discrepancies.

The reports on unlinked or unmatched transactions produced by the TR system are optional tools to facilitate TR Members to identify and resolve potential missing or unmatched transactions. It is not a mandatory requirement for TR Members to make use of such reports to identify and resolve reporting errors, nor are TR Members required to resolve the transactions identified in such reports within any specified timeframe. TR Members, however, must have in place effective controls to ensure that their transactions are reported timely and accurately, and any errors in reporting can be promptly identified and resolved.

## **10 REPORTING SERVICE REPORTS**

### **10.1 Types of Report**

There are three types of report:

- (a) System reports –generated automatically by the system. Reports are generated in off-line batch mode at pre-defined time or after a specific event, and can be delivered via file transfer or viewed/downloaded via UI function
- (b) Enquiry-Initiated User Requested reports – Reports are generated in background mode. Users can check report generation status, view or download the generated report via the View Report List function
- (c) UI Enquiry reports – Reports are tied to the enquiry functions, showing the same result set as the enquiry. Reports are generated in on-line real-time mode and then sent to the browser front-end for the user's viewing

Please refer to the various User Manuals for Participants of the Operating Procedures for Trade Repository for the summary of report list, report samples, and the schedule and procedures for retrieving the relevant reports through different channels and in different formats.

### **10.2 Reconciliation of Reports**

TR Members should download all the reports under the Reporting Service and reconcile their reports on a daily basis. Any discrepancies should be reported to the HKMA as soon as practicable and in any event, not later than 7 business days from the date of the relevant report. If any report is reported to be incorrect, the HKMA will make the relevant investigation and if applicable, re-issue the report revised as necessary.

## **11. CONTINGENCY ARRANGEMENTS**

### **11.1 Local Terminal Service**

In case a TR Member cannot access the HKTR system through its own production facilities due to prolonged system connectivity problems with SWIFTNet, the TR Member may make use of the Local Terminal Service (“LTS”) provided by the HKICL to access the Reporting Service. The TR Member can generate the relevant trade event request files from its own system, and then upload the files to the HKTR system directly at the terminals located at the office of the HKICL.

LTS should be used as the last resort for accessing the Reporting Service. TR Members should rely on their own backup facilities for contingency operations. In case a TR Member needs to utilise LTS under contingency situation, the TR Member has to apply to the HKICL directly in accordance with the arrangements promulgated by the HKICL.

### **11.2 Typhoon and Rainstorm Procedures**

The Reporting Service of the HKTR will remain accessible under rainstorm and typhoon scenarios. TR Members can continue to send trade events to the HKTR system for reporting purposes. TR Members, however, should observe the schedule, rules and requirements in the OTC regulatory regime, if any, on the time for reporting a trade event to the HKTR for meeting the relevant statutory reporting requirements under a typhoon or rainstorm scenario.

## 12. BILLING

In entering into an agreement for subscribing to any service of the HKTR, TR Members will undertake to pay a membership fee if applicable.

TR Members using the Reporting Service will also be subject to transaction charges based on the usage of the HKTR system.

The TR Membership fee and the transaction charges for the Reporting Service are set out in the fee scale in **Annex 2**. The updated scale is available in the HKTR section of the HKMA website. Changes to the scale will be advised to TR Members through circulars.

### 12.1 Settlement Arrangements

For TR Members which are also CMU Members (participants of CMU service offered by the CMU in respect of safe custody, recording and transfer of debt securities) and are direct participants in the Hong Kong dollar Real Time Gross Settlement (“RTGS”) system (“Direct Participant TR Members”), their fees are settled through their own settlement accounts maintained with the HKMA. Other TR Members are required to appoint a settlement bank (“Appointed Settlement Bank”) which is a CMU member and a direct participant in the Hong Kong dollar RTGS system for the settlement of their fees.

TR Members are required to designate their settlement accounts and authorise the CMU to debit the fees from the designated accounts by using the Designation of Hong Kong Dollar Account for Settling Fees and Charges form (“Account Designation Form”) at Appendix TR.6.

To enable direct debiting of fees by the CMU from the designated settlement accounts, Direct Participant TR Members and Appointed Settlement Banks shall authorise and instruct the CMU to set up direct debit limits in the CMU system. The CMU system

makes reference to the last four digits of the TR Member Code (“HKTR Billing Code”) in referring to a TR Member in the system. Direct Participant TR Members should advise the CMU the direct debit limits to be set in the Account Designation Form at Appendix TR.6. Appointed Settlement Banks should advise the CMU the direct debit limits to be set for their clients in the Direct Debit Limit of Settlement Bank form at Appendix TR.7.

## 12.2 Billing Arrangements

All fees are invoiced in Hong Kong dollar and billed monthly to TR Members. The arrangements are as follows:

- (a) The total amount of fees payable will be advised to Members on the 10<sup>th</sup> day of the following month or next business day if the 10<sup>th</sup> is not a business day to the contacts for the Reporting Service specified by Members in the TR Member Profile Maintenance Form in Appendix TR.3.
- (b) On the business day following the billing day, Members shall ensure that sufficient funds are arranged in their respective settlement accounts.
- (c) The total fees will be automatically debited from the settlement account designated by Members (as at Appendix TR.6) on the 15<sup>th</sup> or the following business day if 15<sup>th</sup> is not a business day.
- (d) Upon completion of the billing process, the RTGS system will format the settlement advices in MT900 format and distribute to the TR Members or its Appointed Settlement Banks via SWIFT. The advice will bear the HKTR Billing Code of the TR Member concerned for reference.

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**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.1

**TR Membership Application Form**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_  
Name of Institution

We request for your approval for \_\_\_\_\_ (Name of the Applicant) to be admitted as a Member of the OTC Derivatives Trade Repository operated by the Hong Kong Monetary Authority (TR Member). We understand that the continuation of a TR Membership is subject to the TR Member's compliance with the applicable service agreement with the Monetary Authority, and rules and operating procedures from time to time prescribed by the Monetary Authority. The Monetary Authority may suspend or terminate the membership of a TR Member in the event of a breach of any of the agreement, rules and operating procedures.

Applicant Institution :

(Legal Full Name)

Address :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone :

Facsimile :

\_\_\_\_\_

Name(s) of person(s) to contact in  
respect of this application :

\_\_\_\_\_  
\_\_\_\_\_

e-mail address :

\_\_\_\_\_

\_\_\_\_\_  
Authorized Signature(s)  
Company Chop

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# Hong Kong Monetary Authority OTC Derivatives Trade Repository

Appendix TR.2

## TR Member Record of Authorized Signatures

To : Trade Repository, Hong Kong Monetary Authority  
Address: 55/F, Two International Finance Centre, 8 Finance Street,  
Central, Hong Kong  
Facsimile: (852) 2878 1679

Date: \_\_\_\_\_

Name of TR Member : \_\_\_\_\_

TR Member Code : \_\_\_\_\_ Telephone Number : \_\_\_\_\_

Address : \_\_\_\_\_

The persons in the table below are authorized to sign for and on behalf of us under (please tick as appropriate):

- ☐ Reporting Service
- ☐ Matching and Confirmation Service

AUTHORIZED SIGNATURE AND/OR STAMP	AUTHORIZED SIGNATURE AND/OR STAMP
NAME AND TITLE (IN BLOCK LETTERS)	NAME AND TITLE (IN BLOCK LETTERS)
AUTHORIZED SIGNATURE AND/OR STAMP	AUTHORIZED SIGNATURE AND/OR STAMP
NAME AND TITLE (IN BLOCK LETTERS)	NAME AND TITLE (IN BLOCK LETTERS)
AUTHORIZED SIGNATURE AND/OR STAMP	AUTHORIZED SIGNATURE AND/OR STAMP
NAME AND TITLE (IN BLOCK LETTERS)	NAME AND TITLE (IN BLOCK LETTERS)
SIGNING INSTRUCTIONS :	

(Please add a new page if there are more authorized signatures to specify)

\_\_\_\_\_  
Authorized Signature(s)  
Company Chop

*The signed original of the completed form must be submitted to the HKMA*

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**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.3

**TR Member Profile Maintenance Form**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( \_\_\_\_\_ )  
Name of TR Member TR Member Code

We refer to the appointment of our institution as a TR Member, the following are the information of our institution:

**Type of Institution** (please tick as appropriate)

- ☐ Institution authorized or approved under the Banking Ordinance
- ☐ Full Licensed bank ☐ Restricted Licence Bank
- ☐ Deposit Taking Company ☐ Approved Money Broker
- ☐ Licensed Corporation under the Securities and Futures Ordinance
- ☐ Others

**Place of Incorporation** (please tick as appropriate)

- ☐ Hong Kong ☐ Outside Hong Kong, please specify \_\_\_\_\_

**Identification number** (please provide all those numbers that your institution possesses)

Global Legal Entity Identifier or pre-LEI <sup>1</sup>  Issued by: _____	
SWIFT BIC (Business Identifier Code issued by SWIFT under ISO9362) <sup>2</sup>	
Number of the Certificate of Incorporation (CI) or Certificate of Registration (CR) issued by the Companies Registry of Hong Kong <sup>3</sup>	

Business Registration Number (BRN) issued by the Inland Revenue Department of Hong Kong <sup>3</sup>	
Clearing Member Code at the OTC derivatives CCP of the HKEx	

Notes

- (1) Global Legal Entity Identifier (“Global LEI”) refers to the unique identifier for legal entity issued under the Global LEI System established by the Regulatory Oversight Committee (ROC) of the Global LEI System. If the Global LEI is not yet available, please provide pre-LEI identification code (“pre-LEI”) issued by a pre-Local Operating Unit that has been endorsed by the ROC for issuing identification codes to meet reporting and other regulatory purposes, if any.
- (2) Please provide the eight character SWIFT BIC referring to the Hong Kong office/branch of your institution, if any.
- (3) Please provide certified true copy of the certificate

**Contact information for Reporting Service**

Contact Person :

Telephone number :

Facsimile number :

Address :

Group/individual e-mail :

**Contact information for Matching and Confirmation Service**

Contact Person :

Telephone number :

Facsimile number :

Address :

Group/individual e-mail :

\_\_\_\_\_  
Authorized Signature(s)

Company Chop

**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.4

**TR Member Administrative Account Setup Form**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( \_\_\_\_\_ )  
Name of TR Member TR Member Code

We refer to the appointment of our institution as a TR Member, please set up administrative account(s) for our institution to access the User Interface (“UI”) of the TR system (please tick one or both as appropriate):

☐ through Internet [Please provide SSL Client Certificate DN if this is chosen]

☐ through SWIFTNet [Please provide SWIFT User DN if this is chosen]

SSL Certificate DN:

---

---

---

SWIFTNet User DN:

---

---

---

(Please also send a copy-and-paste-able copy of DN to the HKTR for accurate account setup purpose through email with a subject of “Admin Account Setup – TR Member Code” )

\_\_\_\_\_  
Authorized Signature(s)

Company Chop

*The signed original of the completed form must be submitted to the HKMA*

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**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.5

**Broker List of TR Member**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( \_\_\_\_\_ )  
Name of TR Member TR Member Code

The transactions of our institution may be brokered by the following broker(s):

<u>Broker Name</u>	<u>Broker address</u>
<u>Broker Name</u>	<u>Broker address</u>
<u>Broker Name</u>	<u>Broker address</u>
<u>Broker Name</u>	<u>Broker address</u>

(Please add a new page if there are more brokers to specify)

\_\_\_\_\_  
Authorized Signature(s)

Company Chop

*The signed original of the completed form must be submitted to the HKMA*

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# Hong Kong Monetary Authority OTC Derivatives Trade Repository

Appendix TR.6

## **Designation of Hong Kong Dollar Account for Settling Fees and Charges**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( )  
Name of TR Member TR Member Code\*

We agree to settle the fees and charges arising from service provided by the HKTR to our institution by direct debit from our Hong Kong dollar settlement account specified below, on instructions from the Monetary Authority.

(Please tick the appropriate box below and supply the corresponding settlement account information)

☐ My institution is a CMU Member and a direct participant of the Hong Kong dollar RTGS System, please direct debit from the following settlement account of my institution:

Account Number: \_\_\_\_\_

Please set up a direct debit limit of \_\_\_\_\_ in the CMU system for debiting the fees and charges from the above Account.

☐ My institution is not a CMU Member or a direct participant of the Hong Kong dollar RTGS System

Name of Settlement Bank: \_\_\_\_\_

Our Account Number with the Settlement Bank: \_\_\_\_\_

Contact Person and Phone Number: \_\_\_\_\_

We have given standing authorisation to the above bank to accept such instructions from the Monetary Authority. We have also agreed with the above settlement bank on the direct debit limit for our maximum settlement amount for fees and charges arising from the service provided by the HKTR. A direct debit limit form for our institution will be forwarded to you directly from our settlement bank.

---

Authorized Signature(s)

Company Chop

(\*The CMU system makes reference to the last 4 digits in the TR Member Code of a TR Member in referring to the TR Member in the system. The 4 digits will be applied in setting up the direct debit limit in the CMU system.)

**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.7

**Direct Debit Limit of Settlement Bank**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( )  
Name of Settlement Bank CMU Member Code

We have agreed with our client, \_\_\_\_\_, (TR Member Code\*) on the direct debit limit for its maximum settlement amount for the fees arising from the service offered by the HKTR. We have also received standing authorisation from our client to accept settlement instructions from the CMU.

The settlement details of our client are as follows:

Account Name : \_\_\_\_\_

Settlement Account

Number in our book : \_\_\_\_\_

Please set up a direct debit limit of \_\_\_\_\_ in the CMU system for debiting the fees and charges arising from the service offered by the HKTR to our client from the above Account.

\_\_\_\_\_  
Authorized Signature(s)

Company Chop

(\*The CMU system makes reference to the last 4 digits in the TR Member Code of a TR Member in referring to the TR Member in the system. The 4 digits will be quoted in the settlement advice for reference.)

*The signed original of the completed form must be submitted to the HKMA*

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**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.8

**Agent Nomination Form**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( )  
Name of TR Member ("Member Principal") TR Member Code

We refer to clause 7 of the reporting service agreement between the Monetary Authority and our institution dated \_\_\_\_\_ ("Reporting Service Agreement").

Unless defined in this form or the context otherwise requires, a term defined in the agency terms as appended to this form ("Agency Terms") has the same meaning in this form.

Please be informed that the Member Principal nominates \_\_\_\_\_  
(Name of the Nominated Agent) ("Nominated Agent") to submit trade information of OTC derivatives transactions of our institution to the HKTR.

The Member Principal assumes full responsibility in respect of the activities of the Nominated Agent in accessing the Reporting System on behalf of the Member Principal, as further set out in the Reporting Service Agreement. The Member Principal understands that, pursuant to the Reporting Service Agreement and the Agency Terms, the Monetary Authority may, in the Monetary Authority's sole and absolute discretion and with immediate effect, stop the Nominated Agent from accessing the Reporting System or the Agency Reporting Service in the event of a breach of any of the agreement, rules and operating procedures by our institution or the Nominated Agent or for any other reason in the Monetary Authority's sole and absolute discretion, without incurring any liability whatsoever from either the Member Principal or the Nominated Agent (whether under contract, in tort or otherwise).

**Details of Nominated Agent**

Nominated Agent:

(Legal Full Name)

If Nominated Agent is a TR Member,

its TR Member code

Address :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*The signed original of the completed form must be submitted to the HKMA*

Telephone :

Facsimile :

Name(s) of person(s) to contact in  
the Nominated Agent :

e-mail address :

**Details of Process Agent**

If the Nominated Agent is not resident, incorporated or registered in Hong Kong, the details of the Nominated Agent's process agent, for the purposes of clause 20 of the Agency Terms, are as follows:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Date appointed: \_\_\_\_\_

In the event the Monetary Authority approves of the appointment of the Nominated Agent, the Monetary Authority shall send to the Nominated Agent a confirmation of the Monetary Authority's approval of the nomination of the Nominated Agent and, if relevant, any conditions, requirements or procedures in relation to such approval, substantially in the form set out in page 3 of this form ("Approval Confirmation"), in any manner described in Clause 21 (Notices) of the Agency Terms.

The Nominated Agent agrees to be bound by the terms of the Agency Terms in the event the Monetary Authority sends an Approval Confirmation to the Nominated Agent. The Agency Terms shall take effect on the Agency Approval Date (as specified in the Approval Confirmation).

\_\_\_\_\_  
Authorized Signature(s) of Nominated Agent  
Company Chop

\_\_\_\_\_  
Authorized Signature(s) of Member Principal  
Company Chop



### **Approval Confirmation**

The Monetary Authority has, subject to the conditions below, approved the nomination of the Nominated Agent specified in this Agent Nomination Form on the Agency Approval Date. The Nominated Agent is therefore bound by the terms of the Agency Terms as of the Agency Approval Date.

Date of approval (the "Agency Approval Date"): \_\_\_\_\_

### **Conditions of approval**

The approval by the Monetary Authority above is subject to the following conditions:

SIGN BY

On behalf of the Monetary Authority

In the presence of:

Witness

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Appendix to Agent Nomination Form

HONG KONG MONETARY AUTHORITY

AND

[*NOMINATED AGENT*]

---

AGENCY TERMS

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## **BETWEEN:**

- (1) THE MONETARY AUTHORITY, appointed pursuant to section 5A(1) of the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong) of 55<sup>th</sup> Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong ("**HKMA**"); and
- (2) the person identified as the "Nominated Agent" in the Agent Nomination Form (as defined below) ("**Nominated Agent**").

## **WHEREAS:**

- (A) The Nominated Agent has been nominated by the Member Principal (as defined below) to submit Transaction Records (as defined below) on its behalf under an Agency Arrangement (as defined below), and HKMA has agreed to such Agency Arrangement and will provide the Agency Reporting Service to the Nominated Agent to enable the Nominated Agent to carry out its obligations under such Agency Arrangement.
- (B) These Agency Terms set out the terms and conditions on which HKMA has agreed to provide the Agency Reporting Service to the Nominated Agent.

## **THE PARTIES AGREE** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1** In these Agency Terms:

"**Affected Party**" has the meaning given to it in Clause 15.1 (*Force Majeure*));

"**Agency Approval Date**" means the date specified as the "Agency Approval Date" in the Agent Nomination Form;

"**Agency Arrangement**" means the arrangement between the Nominated Agent and the Member Principal whereby the Nominated Agent is appointed by the Member Principal to submit Transaction Records under the Agency Reporting Service on behalf of and as agent of the Member Principal;

"**Agency Reporting Service**" means the service to be provided by HKMA to the Nominated Agent to enable the Nominated Agent to, among other things:

- (a) submit Transaction Records to HKMA on behalf of the Member Principal for the purposes of fulfilling the Member Principal's obligations under the Reporting Requirements (which will be validated and (where relevant) linked by HKMA for the purposes of verifying the accuracy of such Transaction Records);
- (b) where a Transaction Record has been submitted under the Agency Reporting Service and the Transaction specified in such Transaction Record has been amended or terminated, submit an updated Transaction Record reflecting the relevant amendment(s) or termination; and
- (c) request reports and receive notifications of, among other things, Transaction

Records,

through the Reporting System, in accordance with, and as further described in, these Agency Terms;

**"Agency Terms"** mean the agreement between HKMA and the Nominated Agent, as constituted by, and set out in, the Agent Nomination Form, the Approval Confirmation, these Substantive Provisions and any Annexes, as amended, restated, revised, updated or supplemented from time to time;

**"Agent Nomination Form"** means the agent nomination form in the form substantially set out in Appendix TR.8 of the Reference Manual: (a) a copy of which has been duly executed by the Nominated Agent and the Member Principal; and (b) to which these Agency Terms are appended;

**"Annex"** means each of the following, as amended, restated, revised, updated or supplemented from time to time (whether in accordance with Clause 18 (*General*) or otherwise):

- (a) Reference Manual;
- (b) Hong Kong Trade Repository Administration and Interface Development Guide (Reporting Service) ; and
- (c) any other material or document (whether in electronic or physical form), including any operational procedure, guide, instruction or manual, which is, by prior written notice to the Nominated Agent, designated by HKMA to be an Annex;

**"Approval Confirmation"** means the confirmation of the approval of the Nominated Agent (including, if relevant, any conditions, requirements or procedures in relation to such approval) specified as the "Approval Confirmation" in the Agent Nomination Form;

**"Authority"** means any governmental, regulatory, administrative or law enforcement body and/or court or tribunal of competent jurisdiction;

**"Business Day"** means a day other than a Saturday, a Sunday or a day which is a general holiday as specified in the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);

**"Charge"** means the one-off charge of HK\$10 which is payable by the Nominated Agent to HKMA on the Agency Approval Date;

**"Clause"** has the meaning given to it in Clause 1.2.12 (*Definitions and Interpretation*);

**"Confidential Information"** has the meaning given to it in Clause 9.1 (*Confidentiality*);

**"Data Subject"** has the meaning given to the expression "data subject" in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);

**"Direction"** has the meaning given to it in Clause 2.2.2 (*Using the Agency Reporting Service*);

**"Disclosing Party"** has the meaning given to it in Clause 9.1 (*Confidentiality*);

**"Dispute"** has the meaning given to it in Clause 19.2 (*Governing Law and Jurisdiction*);

**"Force Majeure Event"** means an event beyond the reasonable control of the Affected Party and unknown to the Affected Party at the date of these Agency Terms including, without limitation, strike, lock-out, labour dispute, (but excluding strikes, lockouts and labour disputes involving employees of the Affected Party or its subcontractors), act of God, war, riot, civil commotion, malicious damage (but excluding malicious damage involving the employees of the Affected Party or its subcontractors), compliance with any Law, accident, breakdown of plant or machinery, fire, flood and storm;

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China;

**"Intellectual Property Rights"** means:

- (a) patents, trademarks, service marks, registered designs, applications and rights to apply for any of those rights, trade, business and company names, internet domain names and email addresses, unregistered trademarks and service marks, copyrights, database rights, rights in software, algorithms, source code, object code, know-how, rights in designs and inventions and other intellectual or industrial property rights;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in sub-Clause (a) above;
- (c) rights of the same or similar effect or nature as or to those in sub-Clauses (a) and (b) which now or in the future may subsist in any jurisdiction; and
- (d) the right to sue for any infringement of any of the foregoing rights;

**"ISDA"** means the International Swaps and Derivatives Association, Inc.;

**"ISDA Master Agreement"** means the standard form ISDA 2002 Master Agreement or the standard form 1992 ISDA Master Agreement (Multicurrency – Cross Border), as applicable, as published by ISDA;

**"Law"** means any and all:

- (a) treaties, acts, ordinances, regulations, by laws, orders, awards, proclamations, directions and practice notes (whether civil, criminal or administrative) of any country, state, territory or Authority concerning any matters, including but not limited to, capital adequacy, prudential limits, liquidity, reserve assets or Tax;
- (b) authorisations, certifications, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the

carrying out of these Agency Terms;

- (c) laws governing any contract or any other relationship;
- (d) other laws from which legal rights or obligations may arise (including without limitation, by way of decisions or judgments of any Authority); and
- (e) official directives, requests, guidelines, or policies (whether or not having the force of law) with which responsible banks generally comply in carrying on their business;

**"Maintenance Period"** means any period of time that HKMA determines, in HKMA's sole and absolute discretion, as a period during which HKMA's hardware or software systems relating to the Agency Reporting Service are non-operational, restricted or hampered in any manner which will, or potentially will, affect any aspect of HKMA's provision of the Agency Reporting Service, due to any maintenance, upgrade, modification or repair of such systems (whether scheduled or otherwise) or other similar event;

**"Member Group"** means all persons whom HKMA has for the time being agreed are to be provided with the "Reporting Service" (each as a "Member" under the terms of a separate reporting service agreement, in each case between such person and HKMA and as such terms are defined in such reporting service agreement);

**"Member Principal"** means the person identified as the "TR Member" in the Agent Nomination Form;

**"Nominated Agent Group"** means all persons whom HKMA has for the time being agreed are to be provided with the "Agency Reporting Service" (each as a "Nominated Agent" under the terms of a separate set of agency terms, in each case between such person and HKMA and as such terms are defined in such agency terms), together with the Nominated Agent;

**"Nominated Agent User"** means any individual which the Nominated Agent has nominated under the Reporting System as being authorised by the Nominated Agent to access and use the Reporting System on behalf of the Member Principal under the terms of, and in accordance with, these Agency Terms;

**"Officer"** means an officer, employee, agent, nominee, custodian or professional adviser (including auditor, accountant and legal adviser) or any other person acting in any (duly authorised) representative capacity;

**"Party"** means each of HKMA and the Nominated Agent, and **"Parties"** means both of them;

**"Personal Code"** means each private and unique reference code created (or to be created) by:

- (a) the Member Principal; or
- (b) where authorised by the Member Principal, the Nominated Agent on behalf of the Member Principal,



to reference a counterparty to a Transaction who is an individual, in accordance with paragraph 8.4 of the Reference Manual;

**"Personal Data"** means any data or information in any form:

- (a) constituting "personal data" as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong); and/or
- (b) which may allow or assist (or potentially allow or assist) HKMA to ascertain the identity of any counterparty to a Transaction who is an individual (including without limitation, any data or information which in any way links or connects the Personal Code of an individual to any other data or information which allows or assists HKMA to ascertain the identity of such individual);

**"Receiving Party"** has the meaning given to it in Clause 9.1 (*Confidentiality*);

**"Reference Manual"** means the OTC Derivatives Trade Repository – Reporting Service Reference Manual, as revised by HKMA from time to time;

**"Reporting Requirements"** means at any time:

- (a) the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) and any subsidiary legislation made under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) in effect (or, as the case may be, expected to come into effect); and/or
- (b) any other Law,

in each case which obliges certain persons to report certain over-the-counter derivatives transactions to HKMA;

**"Reporting System"** means the internet-based system which allows the Nominated Agent to access and use the Agency Reporting Service;

**"Schedule"** has the meaning given to it in Clause 1.2.12 (*Definitions and Interpretation*);

**"Substantive Provisions"** means the terms and conditions of these Agency Terms (including any Schedules to these Agency Terms), but excluding any Annexes, as amended, restated, revised, updated or supplemented from time to time (whether in accordance with Clause 18 (*General*) or otherwise);

**"Taxes"** of an entity means taxes (including profit, capital gain, goods and services and value added or indirect taxes), levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, such entity's overall net income;

**"Transaction"** means any transaction specified in a Transaction Record; and

**"Transaction Record"** means the record specifying the details (in the format

specified under the relevant Annexes, or otherwise as specified in writing by HKMA) of any over-the-counter derivative transaction submitted by the Nominated Agent to HKMA in accordance with these Agency Terms, regardless of the status of such Transaction Record as indicated in the Reporting System.

1.2 In these Agency Terms, a reference to:

1.2.1 Clause and Schedule headings are for ease of reference only;

1.2.2 a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made or other thing done under the statutory provision from time to time;

1.2.3 a document is a reference to that document as modified or replaced from time to time;

1.2.4 any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.2.5 "such as" or "for example" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

1.2.6 a person includes a reference to any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having a separate legal entity;

1.2.7 a person includes a reference to that person's legal personal representatives, successors and permitted assigns;

1.2.8 the singular includes the plural and vice versa (unless the context otherwise requires);

1.2.9 the masculine gender shall include the feminine and neuter and vice versa (unless the context otherwise requires);

1.2.10 a time of day is a reference to the time in Hong Kong, unless expressly provided to the contrary;

1.2.11 if any provision (or any part of a provision) of these Agency Terms may be or becomes invalid, illegal or unenforceable in any respect, that shall not affect or prejudice the validity, legality and enforceability of the remaining provisions (or the remaining parts of the relevant provision, as the case may be); and

1.2.12 a "**Clause**" or "**Schedule**", unless the context otherwise requires, is a reference to a clause of or schedule to these Agency Terms.

1.3 These Agency Terms are constituted by the Agent Nomination Form, the Approval Confirmation, these Substantive Provisions and any Annexes, as amended, restated,

revised, updated or supplemented from time to time, and together they form a single agreement between HKMA and the Nominated Agent.

- 1.4 Except where expressly stated otherwise, time shall not be of the essence for the supply of the Agency Reporting Service by HKMA to the Nominated Agent.
- 1.5 The Nominated Agent, in consideration for HKMA permitting the Nominated Agent and each relevant Nominated Agent User to access and use the Reporting System in accordance with these Agency Terms, agrees to be bound by, and to accept the terms set out in, these Agency Terms.

## 2. **USING THE AGENCY REPORTING SERVICE**

- 2.1 The Nominated Agent understands, acknowledges and agrees that:

- 2.1.1 the Reporting System is provided to the Nominated Agent on an "as-is" basis;

- 2.1.2 HKMA shall retain exclusive control over the Reporting System;

- 2.1.3 the Nominated Agent shall be responsible for obtaining and using any software, hardware and any other equipment necessary or desirable for it to access and use the Reporting System;

- 2.1.4 the Member Principal shall be solely responsible for complying with the Member Principal's obligations under the Reporting Requirements and all or any other applicable Laws with respect to the reporting of transactions, record-keeping and the maintenance of records; and

- 2.1.5 the Nominated Agent shall be solely responsible for complying with, and HKMA makes no representation that, the Agency Reporting Service will satisfy, or is capable of satisfying, the Nominated Agent's obligations under any agreement between the Nominated Agent and the Member Principal and all or any other applicable Laws.

- 2.2 Notwithstanding any other Clause of these Agency Terms, HKMA may, in HKMA's sole and absolute discretion, without incurring any liability to the Nominated Agent whatsoever:

- 2.2.1 vary, suspend or terminate the Agency Reporting Service by giving prior written notice to the Nominated Agent; or

- 2.2.2 refuse to act or refrain from acting on any instruction or information (including any instruction or information in connection with any Transaction Record or disclosure of Confidential Information) submitted by the Nominated Agent (including any Nominated Agent User) (each instruction or information, a "**Direction**"),

in each case, including without limitation, where HKMA, in HKMA's sole and absolute discretion, determines or believes that:

- (a) any condition or procedure to be fulfilled or performed by the Nominated Agent as set out in the Approval Confirmation has not been fulfilled

or performed;

- (b) a Direction is not given or received in the manner specified by HKMA;
- (c) HKMA otherwise would or would likely be in breach of, or non-compliance with, any applicable Law;
- (d) it would not be reasonable or practicable to act on a Direction or provide the Agency Reporting Service;
- (e) a Direction or a set of Directions constitute(s) an abuse or misuse of the Agency Reporting Service, including without limitation, where HKMA, in HKMA's sole and absolute discretion, considers that such Direction or set of Directions is or are given by the Nominated Agent for any reason(s) other than to fulfil the Member Principal's obligations under the Reporting Requirements;
- (f) a Direction or the provision of the Agency Reporting Service requires any action by, or information from, HKMA:
  - (i) otherwise than on a Business Day;
  - (ii) during a Maintenance Period;
  - (iii) at a time when a Black Rainstorm Warning is issued or may be issued or a typhoon signal No. 8 or greater is hoisted or may be hoisted;
  - (iv) at a time when the Reporting System is, according to the Reference Manual, not scheduled to be in operation;
  - (v) at a time when a Force Majeure Event exists or has occurred in respect of which HKMA is the Affected Party; or
  - (vi) when any other event or circumstance exists or occurs and/or may exist or occur which HKMA determines may have a similar effect to one or more of the events or circumstances set out in paragraphs (i) to (v) above;
- (g) a Direction or the provision of the Agency Reporting Service would cause a breach of these Agency Terms and/or any other agreement between HKMA and the Nominated Agent or between HKMA and the Member Principal;
- (h) a Direction or the provision of the Agency Reporting Service is not in accordance with HKMA's usual business practices and procedures or any of HKMA's internal policies;
- (i) such variation, suspension, termination or refusal is necessary for HKMA to continue to provide (i) the Reporting Service to any member of the Member Group, or (ii) the "Agency Reporting Service" (as defined in the relevant agency terms) to any person within the Nominated Agent Group; and/or
- (j) a Direction (or purported Direction) has not been properly authorised by the Nominated Agent or a Nominated Agent User.

### 3. **CHARGE, PAYMENT AND TAX**

The Nominated Agent shall pay HKMA the Charge, without any deduction or withholding for or on account of any Tax, in the manner specified by HKMA.

### 4. **NOMINATED AGENT'S OBLIGATIONS**

4.1 The Nominated Agent agrees and undertakes to HKMA that it shall at all times:

4.1.1 comply with all applicable Laws and these Agency Terms;

4.1.2 not do anything or omit to do anything that would cause the Member Principal to breach the terms of the reporting service agreement between HKMA and the Member Principal;

4.1.3 notify HKMA promptly in writing of any:

(a) changes to information previously provided to HKMA, including any change to its name and, if applicable, its shareholders, directors or any material provision of its constitutive documents;

(b) error, dispute, breach of any privacy, confidentiality or secrecy obligation or suspicion of fraud or illegality in connection with the Agency Reporting Service; and

(c) variation, suspension or termination of the Agency Arrangement.

For the avoidance of doubt, this Clause 4.1.3 is in addition, and without prejudice, to any other notification obligations of the Nominated Agent as set out in the Reference Manual;

4.1.4 ensure that each Nominated Agent User is adequately experienced, trained, qualified and skilled for the purpose of accessing and using the Reporting System;

4.1.5 ensure that access to the Reporting System will be limited to one or more Nominated Agent Users, each of whom shall use the Reporting System within the scope of his/her employment and solely for the Nominated Agent's business purposes;

4.1.6 put in place and maintain effective security measures to safeguard the Agency Reporting Service (including the Reporting System) from:

(a) any access or use by an unauthorised person; and

(b) any computer virus, worm, Trojan horse, malware or other harmful computer code;

4.1.7 perform all acts (including without limitation, maintaining its systems and participating in any drill exercises or tests in accordance with any contingency arrangements) as required by and in accordance with these Agency Terms (including any Annex);

- 4.1.8 at HKMA's request, do all things and execute all instruments and documents and provide HKMA with all materials, evidence and information as HKMA may in HKMA's sole and absolute discretion consider necessary or desirable for giving full effect to these Agency Terms or for securing to HKMA the full benefit of all rights, powers and remedies conferred on HKMA under these Agency Terms;
- 4.1.9 use the latest templates for submitting Transaction Records as notified to the Nominated Agent by HKMA in accordance with Clause 21 (*Notices*) from time to time;
- 4.1.10 to the extent permitted under applicable Law, supply HKMA with all information concerning the Nominated Agent that is reasonably requested by HKMA and is:
  - (a) related to the Nominated Agent's use of the Agency Reporting Service or Reporting System; or
  - (b) reasonably and in good faith deemed by HKMA to be necessary in connection with any obligation of HKMA under any agreement relating to the Agency Reporting Service or any applicable Law;
- 4.1.11 not provide, transfer or submit any Personal Data to HKMA except where, and to the extent, necessary for the Nominated Agent to fulfil the Member Principal's obligations under the Reporting Requirements; and
- 4.1.12 where the Nominated Agent provides, transfers or submits any Personal Data to HKMA (whether in accordance with these Agency Terms or otherwise), to:
  - (a) perform all acts; and
  - (b) provide HKMA with all information and assistance,in each case which is necessary for HKMA to fulfil HKMA's obligations under any applicable Law in connection with such Personal Data.

## **5. INSTRUCTIONS AND USERS**

- 5.1 The Nominated Agent may, in accordance with the relevant Annexes, nominate one or more individuals, who shall be Officers of the Nominated Agent, as authorised to access and use the Reporting System as Nominated Agent Users.
- 5.2 The Nominated Agent understands, acknowledges and agrees that:
  - 5.2.1 all Nominated Agent Users may be able to access all the data under the Transaction Records submitted by the Nominated Agent under the Reporting System;
  - 5.2.2 it shall ensure that all Nominated Agent Users act (or refrain from acting) so as to ensure compliance by the Nominated Agent with all its obligations set forth in these Agency Terms;

- 5.2.3 HKMA shall be entitled, without further enquiry, to execute or otherwise act upon instructions or information (including without limitation, Transaction Records) or purported instructions or information (including without limitation, Transaction Records) received from each Nominated Agent User or any person HKMA believes in good faith to be a Nominated Agent User;
- 5.2.4 all instructions received by HKMA from a Nominated Agent User or any person HKMA believes in good faith to be a Nominated Agent User shall be binding on the Nominated Agent; and
- 5.2.5 the Nominated Agent shall be solely and fully responsible for the acts and omissions of each Nominated Agent User.

## **6. AGENCY CONDITIONS**

- 6.1 The Nominated Agent understands, acknowledges and agrees for the benefit of HKMA that, notwithstanding anything else in these Agency Terms (or the reporting service agreement entered into between the Member Principal and HKMA):
  - 6.1.1 without prejudice to Clause 7.1.6 (*Representations and Warranties*), the Nominated Agent, when effecting the Agency Arrangement or otherwise accessing and using the Reporting System on behalf of the Member Principal, is at all times acting as agent of the Member Principal and not as principal;
  - 6.1.2 the Nominated Agent, when acting in its capacity as agent of the Member Principal, may only access and use the Agency Reporting Service for the purpose of effecting the Agency Arrangement with the Member Principal and therefore may only submit the Transaction Records of the Member Principal under the Agency Arrangement with the Member Principal (and not the "Transaction Records" of any other entity). For the avoidance of doubt, each Nominated Agent and Nominated Agent User shall not be restricted from submitting transaction records:
    - (a) of any other member of the Member Group in its capacity as agent for such member of the Member Group; or
    - (b) for itself as principal in respect of any transactions it has entered into as principal;
  - 6.1.3 in consideration for HKMA permitting the Nominated Agent and each relevant Nominated Agent User to access and use the Reporting System in accordance with these Agency Terms, HKMA shall in no circumstance be liable to any Nominated Agent or Nominated Agent User (whether under contract, in tort or otherwise) in connection with the Agency Arrangement; and
  - 6.1.4 HKMA may, in HKMA's sole and absolute discretion, at any time and with immediate effect:
    - (a) revoke HKMA's approval of the Nominated Agent to use and access the Agency Reporting Service;
    - (b) terminate the right of the Nominated Agent User(s) to access and

use the Reporting System; and/or

- (c) terminate these Agency Terms,

without incurring any liability whatsoever to either the Member Principal or the Nominated Agent (whether under contract, in tort or otherwise).

- 6.2 Any amendment, modification, variation or termination of the Agency Arrangement may only be in accordance with the procedures set out in the Reference Manual and these Agency Terms.

## 7. **REPRESENTATIONS AND WARRANTIES**

- 7.1 The Nominated Agent represents and warrants to HKMA at all times that:

- 7.1.1 it has the capacity, power and authority to enter into and perform its obligations under these Agency Terms;

- 7.1.2 these Agency Terms constitutes the legal, valid, binding and enforceable obligations of the Nominated Agent;

- 7.1.3 any act or omission of the Nominated Agent (including any Nominated Agent User) in connection with the Agency Reporting Service or the Reporting System (including without limitation, the access to and use of the Agency Reporting Service or Reporting System) does not and will not breach any applicable Laws;

- 7.1.4 it is not aware of any matter which might or will adversely affect its ability to perform its contractual obligations under these Agency Terms;

- 7.1.5 the execution of these Agency Terms by it, the performance by it of its obligations and duties under these Agency Terms and its use of the Agency Reporting Service (including without limitation any submission of any data by it to HKMA under the terms of these Agency Terms) do not and will not breach the terms of any agreement to which it is a party, or by which it is otherwise bound or any privacy, confidentiality, fiduciary or secrecy obligations which it owes to any party;

- 7.1.6 it is entering into these Agency Terms as principal for its own benefit and not for the benefit of another person;

- 7.1.7 it has all licences, authorisations, consents, approvals and permits required by all applicable Laws in order to perform its obligations under these Agency Terms, including without limitation, all consents required for:

- (a) any transfer or disclosure (whether or not in accordance with these Agency Terms) of Personal Data by the Nominated Agent to HKMA;

- (b) any use, handling or storage of such Personal Data by HKMA in accordance with these Agency Terms; and



- (c) any transfer or disclosure of such Personal Data by HKMA to:
    - (i) any Authority in Hong Kong or otherwise;
    - (ii) any person in connection with HKMA's provision of the Agency Reporting Service to the Nominated Agent;
    - (iii) any person in connection with HKMA's compliance with any Law (including, without limitation, any Reporting Requirements) or any order, judgment, decision, directive or request of any Authority, for any purpose whatsoever (including without limitation, the prevention of money laundering, terrorist financing and other criminal activities); and
    - (iv) otherwise in accordance with these Agency Terms (including, without limitation in accordance with the terms of Clause 9 (*Confidentiality*));
- 7.1.8 it has not provided, transferred or submitted any Personal Data to HKMA except where, and to the extent, necessary for the Member Principal to fulfil the Member Principal's Reporting Requirements; and
- 7.1.9 any Personal Data provided by the Nominated Agent to HKMA (whether in accordance with these Agency Terms or otherwise):
  - (a) has been collected by lawful means; and
  - (b) is accurate in all material respects so far as the Nominated Agent is aware; and
- 7.1.10 there is no:
  - (a) publicly available information; or
  - (b) information provided directly or indirectly by the Nominated Agent to HKMA (save for information provided to HKMA at the request of HKMA in accordance with Clause 11.4 (*Personal Data*)),

which would allow HKMA to be able to ascertain from the Personal Codes the identity of any counterparty to a Transaction who is an individual.
- 7.2 HKMA does not make, and hereby expressly disclaims, any representation, warranty or undertaking:
  - 7.2.1 in respect of the Agency Reporting Service or the Reporting System;
  - 7.2.2 that any method of accessing the Reporting System is secure;
  - 7.2.3 in respect of any Agency Arrangement, and the Nominated Agent acknowledges and agrees that HKMA has not renewed the terms of any Agency Arrangement and takes no responsibility for the terms of such Agency

Arrangement and/or any other terms agreed between the Nominated Agent and the Member Principal;

7.2.4 that any Transaction or Transaction Record:

- (a) will constitute enforceable, legal, valid and binding obligations, or will otherwise give rise to any duly-formed and legally binding contract under any Laws;
- (b) will evidence any Transaction in accordance with any applicable documentation or master document;
- (c) is accurate or complete; or
- (d) will be successfully completed or performed;

7.2.5 that any Transaction Record or any other data held by HKMA will be admissible in a court of Law or other proceeding;

7.2.6 that any Transaction is:

- (a) required to be reported to HKMA under the Reporting Requirements applicable to the Member Principal or otherwise in accordance with any applicable Law; or
- (b) compliant with any and all applicable Laws and does not breach or violate any applicable Law;

7.2.7 that any party to a Transaction will fulfil its obligations under such Transaction to the other party; or

7.2.8 in respect of the creditworthiness or financial position of the Member Principal, any member of the Member Group or any other party to a Transaction.

## 8. **LIABILITY**

8.1 HKMA and HKMA's Officers shall not be liable to the Nominated Agent for any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense of any kind or nature whatsoever and howsoever caused in connection with the operation by HKMA of the Agency Reporting Service or the Reporting System or any part thereof (whether or not resulting from a failure to satisfy the Member Principal's obligations under the Reporting Requirements), including, without limitation, any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense (whether or not resulting from a failure to satisfy the Member Principal's obligations under the Reporting Requirements) arising directly or indirectly from or as a result of:

8.1.1 any inadequacy, deficiency, defect or error of the Agency Reporting Service, the Reporting System or any linking or validation of Transaction Records in relation to the Agency Reporting Service;

8.1.2 any discrepancy between any Transaction Record and the corresponding actual trade data or any other relevant document or data (including without

limitation, any confirmation or evidence of the relevant Transaction);

- 8.1.3 any delay in providing or failure to provide the Agency Reporting Service or the Reporting System;
- 8.1.4 any interruption, variation, suspension or termination of the Agency Reporting Service or the Reporting System (including, without limitation, arising directly or indirectly from HKMA exercising HKMA's rights under Clause 2.2 (*Using the Agency Reporting Service*) or otherwise);
- 8.1.5 where HKMA relied, acted or refused to act or refrained from acting on any instruction (or purported instruction) from a Nominated Agent User or any person HKMA believes in good faith to be a Nominated Agent User (including in circumstances where such instruction or purported instruction is unauthorised or given by an unauthorised person) or any person HKMA suspects may not be a Nominated Agent User, including, without limitation, any reliance by HKMA in good faith on any instructions or other communication in person or by telephone, facsimile, email or other electronic means;
- 8.1.6 any information howsoever provided to HKMA or any of HKMA's Officers in any form, including any Transaction Record, that is incomplete, erroneous or inaccurate;
- 8.1.7 any Transaction or Transaction Record not being legal, valid, binding and/or enforceable (including, without limitation, where a Transaction is not capable of being enforced);
- 8.1.8 any Transaction Record:
  - (a) not complying with the Reporting Requirements or any other applicable Law;
  - (b) not complying with and/or being consistent with the relevant ISDA Master Agreement or any other master agreement and/or any relevant ISDA-published or other definitions or protocols;
  - (c) not being admissible in a court of law or other proceedings; and/or
  - (d) being incorrect, including where it has been incorrectly submitted, recorded or stored;
- 8.1.9 any virus, default, defect, deficiency or malfunction in or any breakdown, disruption or failure of any telecommunications, computer or other electronic equipment or system (whether or not owned, operated or maintained by HKMA or for the purpose of, or in connection with, the Agency Reporting Service or the Reporting System);
- 8.1.10 the security, confidentiality, accuracy and reliability (or lack thereof) of any document, email, transaction record and any other information transferred through or using the Reporting System;

- 8.1.11 the transfer and/or disclosure of any information by HKMA to any party in compliance with and/or under the terms of these Agency Terms, including without limitation under Clause 9 (*Confidentiality*) of these Agency Terms;
- 8.1.12 the transmission or quality of the data, the quality and availability of any data transmission network or any service interruption, blockage, suspension or interruption in any method of transmission or means of telecommunication (including SWIFT), any communication line, modem connection or other transmission facility, including without limitation as a result of the connection or lack thereof to any website or any internet and/or browser-based system used in relation to the Agency Reporting Service or the Reporting System;
- 8.1.13 the failure by the Nominated Agent to follow the most current version of these Agency Terms or any notice, guideline or other document communicated to it in accordance with Clause 21 (*Notices*);
- 8.1.14 the occurrence of any Force Majeure Event;
- 8.1.15 any act or omission of any third party including, without limitation, any other Authority;
- 8.1.16 any act and/or omission of the Member Principal;
- 8.1.17 any breach of any of the Nominated Agent's obligations under these Agency Terms;
- 8.1.18 HKMA's compliance with any applicable Law in connection with these Agency Terms, the Agency Reporting Service, the Member Principal, any other person of the Nominated Agent Group, any member of the Member Group and/or any Transaction Record; and/or
- 8.1.19 any act or omission of any Nominated Agent User (including without limitation, such Nominated Agent User's use or disclosure of any data it has obtained from, or in connection with, the Agency Reporting Service (including any Transaction Record data)),

unless incurred directly due to the wilful default or reckless disregard of HKMA in respect of HKMA's obligations under these Agency Terms.

- 8.2 Notwithstanding any other term of these Agency Terms, HKMA shall not be liable for any indirect, incidental, consequential or punitive damages, losses or costs including any economic loss, loss of business, loss of profit, loss of reputation, loss of opportunity or for any claim made against the Nominated Agent by any other party, even if advised of the possibility of the Nominated Agent incurring such damages, losses or costs.
- 8.3 The Nominated Agent shall indemnify HKMA and HKMA's Officers against any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense of any kind or nature whatsoever and howsoever arising directly or indirectly from:
  - 8.3.1 HKMA's provision of the Agency Reporting Service to the Nominated Agent;

- 8.3.2 any act or omission of the Nominated Agent, its Officers and/or its Nominated Agent Users (or any person HKMA reasonably believes to be the Nominated Agent, its Officer or its Nominated Agent User) in connection with the Agency Reporting Service, these Agency Terms and/or the Agency Arrangement; and
- 8.3.3 any failure of the Nominated Agent (including any Nominated Agent User) to comply with these Agency Terms, any other obligations applicable to the Nominated Agent or the Member Principal, any of the Member Principal's obligations under the Reporting Requirements or any other applicable Law.
- 8.4 Nothing in these Agency Terms shall limit or exclude HKMA's liability for death or personal injury caused by (i) HKMA's negligence or (ii) the negligence of HKMA's Officers, except as permitted by Law.
- 8.5 The invalidity, illegality or unenforceability of a provision of this Clause 8 (*Liability*) does not affect or impair the continuation in force of the remainder of this Clause.

## 9. **CONFIDENTIALITY**

- 9.1 In this Clause, "**Confidential Information**" means all information from time to time disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") whether before, on or after the date of these Agency Terms including, without limitation:

- 9.1.1 any Transaction Record;
- 9.1.2 any data (including without limitation, any report or analysis) which may be produced as a result of processing any such Transaction Record;
- 9.1.3 any details of the Reporting System (including without limitation, the technical information and specifications of the Reporting System); and
- 9.1.4 any information relating to any product, service, operation, process, plan or intention, product information, know-how, design right, trade secret, market opportunity or business affairs of the Disclosing Party,

but does not include information which:

- (a) is or becomes public information other than as a direct or indirect result of any breach of these Agency Terms by the Receiving Party;
- (b) is identified in writing at the time of delivery as non-confidential by the Disclosing Party or any of its Officers; and/or
- (c) is known by the Receiving Party before the date such information is disclosed to it by the Disclosing Party or is lawfully obtained by the Receiving Party after that date from a third party source which is, as far as the Receiving Party is aware, unconnected with the Disclosing Party and which, in either case, as far as the Receiving Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality in relation to such information.

- 9.2 The Receiving Party shall not transfer or disclose Confidential Information to any third party or use Confidential Information for any reason except as expressly contemplated in these Agency Terms, save that:
- 9.2.1 the Receiving Party may disclose Confidential Information with the prior written consent of the Disclosing Party in the manner consented to;
  - 9.2.2 the Receiving Party may disclose Confidential Information to any of its Officers to the extent that such disclosure is necessary for the purposes of these Agency Terms and each Officer is made aware of, and complies with, the Receiving Party's obligations of confidentiality under these Agency Terms as if the Officer was a party to these Agency Terms;
  - 9.2.3 the Receiving Party may disclose Confidential Information to the extent required by any applicable Law;
  - 9.2.4 HKMA may publicly disclose anonymous data, including without limitation, aggregate positions, transaction activity or statistical data, so long as:
    - (a) individual persons of the Member Group cannot be identified from such data; and
    - (b) such data does not reveal, directly or indirectly, any confidential, proprietary, financial, operational or trading data of the Member Principal; and
  - 9.2.5 HKMA may use and/or disclose any Confidential Information to the extent necessary and/or desirable for HKMA to carry out any of HKMA's functions and duties.
- 9.3 Without prejudice to any other term of these Agency Terms and to the fullest extent permitted by Law, the Receiving Party shall promptly, and in any event within 14 Business Days, inform the Disclosing Party in writing of any disclosure of any Confidential Information of the Disclosing Party to any other entity besides the Receiving Party, in particular specifying:
- 9.3.1 the Confidential Information which was disclosed;
  - 9.3.2 the method by which the Confidential Information was disclosed; and
  - 9.3.3 the identity of the entity to which the Confidential Information was disclosed, unless such disclosure is made by:
    - (a) HKMA and is:
      - (i) necessary for the purposes of HKMA providing the (1) Agency Reporting Service to the Nominated Agent or any other person within the Nominated Agent Group or (2) "Reporting Service" to any member of the Member Group; or
      - (ii) made under the terms of Clauses 9.2.1 (*Confidentiality*) to 9.2.5

(*Confidentiality*); or

(b) the Nominated Agent:

(i) under the terms of Clause 9.2.2 (*Confidentiality*); or

(ii) to the Member Principal or any of the Member Principal's Officers, and is necessary for the purposes of the Nominated Agent providing service to the Member Principal under the Agency Arrangement.

9.4 The Nominated Agent consents to, and agrees to obtain any necessary consent of, and give any necessary notice to, the relevant persons (including any of its relevant Nominated Agent Users or Officers) of, the monitoring and recording of:

9.4.1 any telephone conversation between any Officer or Nominated Agent User of the Nominated Agent and HKMA and/or any Officer of HKMA in connection with these Agency Terms; and

9.4.2 the Nominated Agent's use of the Agency Reporting Service,

and agrees, to the extent permitted by applicable Law, that any data obtained from such monitoring or recording may be submitted as evidence in any proceeding.

## 10. OFFICES AND BRANCHES

If the Nominated Agent is entering into these Agency Terms through an office or branch other than its head or home office, it represents at all times to, and agrees with, HKMA that, notwithstanding the place of booking or branch or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into these Agency Terms through its head or home office.

## 11. PERSONAL DATA

11.1 If the Nominated Agent provides any Personal Data to HKMA (whether in breach of these Agency Terms or otherwise), the Nominated Agent shall promptly notify HKMA of, and take all necessary and/or desirable actions to identify, such Personal Data to HKMA and, where such Personal Data is provided by the Nominated Agent to HKMA in breach of these Agency Terms, immediately remove such Personal Data from the Reporting System.

11.2 HKMA is not responsible for the management or handling of any Personal Data which is provided to HKMA by the Nominated Agent in breach of these Agency Terms.

11.3 Personal Data disclosed from time to time by the Nominated Agent to HKMA (whether or not in breach of these Agency Terms) may, notwithstanding such breach, be used, transferred or disclosed by HKMA:

11.3.1 to any Authority in Hong Kong or otherwise;

11.3.2 to any person in connection with HKMA's provision of the Reporting Service or the Agency Reporting Service;

- 11.3.3 to any person in connection with HKMA's compliance with any Law (including without limitation, the prevention of money laundering, terrorist financing and other criminal activities); and/or
- 11.3.4 otherwise in accordance with these Agency Terms (including, without limitation in accordance with the terms of Clause 9 (*Confidentiality*)).
- 11.4 Notwithstanding any other term of these Agency Terms, the Nominated Agent acknowledges and agrees that, in no circumstance shall the Nominated Agent disclose to HKMA or make public any information which may allow or assist (or potentially allow or assist) HKMA to ascertain the identity of any counterparty to a Transaction who is an individual (including without limitation, any data or information which in any way links or connects the Personal Code of an individual to any other data or information which allows or assists HKMA to ascertain the identity of such individual), unless specifically requested to do so by HKMA.
- 12. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**
- 12.1 For the duration of these Agency Terms, HKMA grants the Nominated Agent a personal, limited, revocable, non-transferable, non-sub-licensable and non-exclusive licence to access and use the Reporting System subject to the terms and conditions of these Agency Terms.
- 12.2 Except as provided in these Agency Terms, the Nominated Agent shall not, without the prior written consent of HKMA:
- 12.2.1 market, exploit or make the Reporting System available to another person or permit another person to use the Reporting System;
- 12.2.2 use the Reporting System on behalf of or for the benefit of another person besides the Member Principal (including for the provision of commercial timesharing, rental or bureau services);
- 12.2.3 reverse engineer, decompile, disassemble, translate or adapt the program code or any other part of the Reporting System;
- 12.2.4 make any copy, modify or create any derivative work of the Reporting System;  
or
- 12.2.5 assign, charge or otherwise dispose of any interest or right in its licence to use the Reporting System.
- 12.3 All Intellectual Property Rights subsisting in, created generated or used by HKMA or HKMA's Officers (or on their behalves) in connection with these Agency Terms (including without limitation, the text of these Agency Terms), the Agency Reporting Service, the Reporting System (as modified from time to time) or any other material or document (whether in electronic or physical form), including any operational procedure, guide, instruction or manual, report (including any request reports), notifications, any Transaction Record and/or template thereof, or the Reference Manual provided in connection with these Agency Terms, are and shall remain the exclusive property of HKMA. The Nominated Agent shall not acquire any right in the Reporting System or any of the foregoing except the limited use rights specified in



these Agency Terms. HKMA shall own all rights in any copy, translation, modification, adaptation or derivative work of the Reporting System or based on any of the foregoing, including any improvement or development thereof.

### 13. **TERMINATION**

13.1 These Agency Terms shall remain in force until terminated in accordance with the procedures set out in the Reference Manual.

13.2 Notwithstanding Clause 13.1 above, HKMA may terminate these Agency Terms with immediate effect at any time by written notice to the Nominated Agent.

### 14. **CONSEQUENCES OF TERMINATION**

14.1 Expiry or termination of these Agency Terms does not affect a Party's accrued rights and obligations at the date of expiry or termination.

14.2 Subject to Clause 14.1 (*Consequences of Termination*) above, each Party shall be released and discharged from any further rights and obligations immediately on the expiry or termination of these Agency Terms, except that any right or obligation (whether accrued or not) under or pursuant to any of Clauses 8 (*Liability*), 9, (*Confidentiality*), 11 (*Personal Data*), 12 (*Ownership of Intellectual Property Rights*), 14 (*Consequences of Termination*), 16 (*Assignment and Subcontracting*), 17 (*Entire Agreement*), 18 (*General*), 19 (*Governing Law and Jurisdiction*), 20 (*Service of Process*) and 21 (*Notices*) together with those Clauses the survival of which is necessary for the interpretation or enforcement of these Agency Terms, shall survive expiry or termination of these Agency Terms and shall continue in full force and effect.

14.3 Upon the expiry or termination of these Agency Terms, the Nominated Agent shall use all reasonable efforts to promptly return to HKMA or destroy, all copies of these Agency Terms and all other documents in connection with the Agency Reporting Service then in its possession, including any copies held in any format in any electronic media, provided that the Nominated Agent shall not be obliged to take such action if doing so would be inconsistent with any applicable Law or its reasonable internal record retention policies.; and

14.3.1 cease to access or use, and give up all its rights in connection with the access and use of:

- (a) the Reporting System;
- (b) the Agency Reporting Service; and
- (c) any document in connection with the Reporting System and/or the Agency Reporting Service.

### 15. **FORCE MAJEURE**

15.1 Without prejudice to any other term of these Agency Terms, if a Party (the "**Affected Party**") is prevented, hindered or delayed by a Force Majeure Event from or in performing any of its obligations under these Agency Terms other than a payment

obligation:

- 15.1.1 the Affected Party's obligations under these Agency Terms are suspended only for so long as the Force Majeure Event continues and only to the extent that it is so prevented, hindered or delayed;
  - 15.1.2 as soon as reasonably possible after the start of the Force Majeure Event the Affected Party will notify the other Party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under these Agency Terms;
  - 15.1.3 the Affected Party will make reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under these Agency Terms; and
  - 15.1.4 as soon as reasonably possible after the end of the Force Majeure Event the Affected Party will notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under these Agency Terms.
- 15.2 Without prejudice to Clause 13 (*Termination*), if the Force Majeure Event continues for more than 30 consecutive calendar days commencing on the day the Force Majeure Event starts, either Party may terminate these Agency Terms by giving not less than 14 calendar days' notice to the other Party.

## 16. **ASSIGNMENT AND SUBCONTRACTING**

- 16.1 The Nominated Agent may not:
- 16.1.1 assign, transfer, charge or otherwise dispose of any interest or right in or in respect of, or purport to assign, transfer, charge or otherwise dispose of any interest or right in or in respect of, any right or obligation under these Agency Terms; or
  - 16.1.2 subcontract the performance of any of its obligations under these Agency Terms,
- without the prior written consent of HKMA.
- 16.2 HKMA may from time to time assign or transfer HKMA's rights and/or obligations in respect of these Agency Terms, in whole or in part, in each case without the consent of the Nominated Agent.

## 17. **ENTIRE AGREEMENT**

- 17.1 These Agency Terms, including the schedules to these Agency Terms, the Agent Nomination Form and the Annexes, constitute the entire agreement between the Parties to these Agency Terms and supersedes all previous agreements between the Parties relating to the subject matter of these Agency Terms.
- 17.2 Each Party acknowledges that it has not relied on or been induced to enter into these Agency Terms by a representation, warranty or undertaking (whether contractual or otherwise) other than those expressly set out in these Agency Terms.

17.3 A Party is not liable to the other Party (in equity, contract or tort (including negligence) or in any other way) for a representation, warranty or undertaking that is not set out in these Agency Terms.

17.4 Nothing in this Clause 17 (*Entire Agreement*) has the effect of limiting or restricting any liability of a Party arising as a result of any fraud.

## 18. **GENERAL**

18.1 The rights and obligations of HKMA and the Nominated Agent under these Agency Terms shall take effect on the Agency Approval Date.

18.2 In the event of any inconsistency between any provision of the Substantive Provisions and any Annex, the Substantive Provisions shall prevail.

18.3 HKMA may in HKMA's sole and absolute discretion, at any time, amend, restate or supplement the Substantive Provisions or any Annex by giving the Nominated Agent no less than five Business Days' written notice of such amendment, restatement or supplement.

18.4 A failure to exercise or delay in exercising a right or remedy provided by these Agency Terms or by any applicable Law does not constitute a waiver of the right or remedy or a waiver of any other right or remedy. No single or partial exercise of a right or remedy provided by these Agency Terms or by Law prevents further exercise of the right or remedy or the exercise of another right or remedy.

18.5 Except where these Agency Terms provide otherwise, the rights and remedies contained in these Agency Terms are cumulative and not exclusive of rights or remedies provided by any applicable Law.

18.6 Except where these Agency Terms provide otherwise, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of these Agency Terms and of each document referred to in it.

18.7 No provision of these Agency Terms creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

## 19. **GOVERNING LAW AND JURISDICTION**

19.1 These Agency Terms and all matters arising from or connected with it are governed by Hong Kong law.

19.2 The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with these Agency Terms (including a dispute relating to the existence, validity or termination of these Agency Terms or the consequences of its nullity) (a "**Dispute**").

19.3 The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- 19.4 Nothing in this Clause 19 (*Governing Law and Jurisdiction*) has the effect of limiting or preventing HKMA from taking proceedings relating to a dispute in connection with these Agency Terms in any other courts with jurisdiction. To the extent allowed by any applicable Law, HKMA may take concurrent proceedings in any number of jurisdictions.

## 20. **SERVICE OF PROCESS**

- 20.1 If the Nominated Agent is not resident, incorporated or registered in Hong Kong:

20.1.1 the Nominated Agent represents and warrants that it has irrevocably appointed the entity whose details are set out in the Agent Nomination Form as the process agent to receive, for it and on its behalf, service of process in any dispute arising out of or in connection with these Agency Terms; and

20.1.2 if for any reason the process agent (or the substitute process agent, as the case may be) is unable to, or will not, act as such, the Nominated Agent shall promptly notify HKMA and within 30 calendar days appoint a substitute process agent acceptable to HKMA.

- 20.2 The Parties irrevocably consent to receive service of process in the manner provided for notices in Clauses 21.1.1 (*Notices*), 21.1.2 (*Notices*) or 21.1.3 (*Notices*). Nothing in these Agency Terms shall affect the right of HKMA to serve process in any other manner permitted by any applicable Law.

## 21. **NOTICES**

- 21.1 Any notice or other communication in respect of these Agency Terms may be given in any manner described below to the address or number or in accordance with the relevant details as set out in Schedule 1 (*Notice Details*) and will be deemed effective as indicated:

21.1.1 if in writing and delivered in person or by courier, on the date and time it is delivered;

21.1.2 if sent by facsimile transmission, on the date and time it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

21.1.3 if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date and time it is delivered or its delivery is attempted;

21.1.4 if sent by the notification and announcement system in the Reporting System, on the date and time it is sent; or

21.1.5 if sent by e-mail, on the date and time it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that

communication will be deemed given and effective on the open of business on the first following day that is a Business Day.

- 21.2 Any notice or announcement may be sent or announced to the Nominated Agent via the notification and announcement system in the Reporting System from time to time in accordance with Clause 21.1.4 (*Notices*). The Nominated Agent undertakes therefore to check the notification and announcement system in the Reporting System regularly, and in any event no less than once each Business Day, for any such notices or announcements.
- 21.3 Either Party may by no less than ten Business Days' prior written notice to the other change the address, facsimile number or e-mail details at which notices or other communications are to be given to it.
- 21.4 Notwithstanding anything else in these Agency Terms, a notice or other communication under Clause 13 (*Termination*) may not be given by any method specified in Clauses 21.1.2 (*Notices*), 21.1.4 (*Notices*) or 21.1.5 (*Notices*).

**SCHEDULE 1**  
**NOTICE DETAILS**

Contact details for notices or communications to HKMA:

Address: 55/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Attention: Trade Repository, Hong Kong Monetary Authority

Facsimile No.: (852) 2878 1679

Telephone No.: (852) 8100 3115

Email: [hktr@hkma.gov.hk](mailto:hktr@hkma.gov.hk)

[Specific Instructions: [•]]

Contact details for notices or communications to the Nominated Agent are set out in the Agent Nomination Form.

**Hong Kong Monetary Authority  
OTC Derivatives Trade Repository**

Appendix TR.9A

**Agent Profile Maintenance Form for Reporting Service**

To : Hong Kong Monetary Authority

Date: \_\_\_\_\_

Facsimile: (852) 2878 1679

From : \_\_\_\_\_ ( \_\_\_\_\_ )  
Name of TR Member ("Member Principal") TR Member Code

We refer to the nomination of \_\_\_\_\_ (Name of the Nominated Agent) by our institution to submit trade information of OTC derivatives transactions to the HKTR on behalf of our institution, please find below the scope of information to be submitted by the Nominated Agent:

**Channels for trade submission by the Nominated Agent** (please tick as appropriate)

- ☐ User Interface ("UI") through Internet and SWIFTNet
- ☐ File Transfer Service ("FTS") through ICLNet
- ☐ FileAct through SWIFTNet
- ☐ Others (to be agreed with the HKMA and confirmed in the Approval Confirmation of the Agent Nomination Form)

**Access by the Nominated Agent to User Interface (UI) Full Functions\*** (please tick as appropriate)

☐ Yes ☐ No

\*UI Full Functions include enquiry functions for trade and trade events

**OTC derivatives to be processed by the Nominated Agent** (please tick as appropriate)

Product Type

Product Sub-type

Interest Rate Swap

☐

IRS Floating vs Fixed  
(deliverable and non-deliverable)

☐

Basis Swap (Floating vs Floating)

☐

Overnight Index Swap (Floating vs Fixed)

FX Non Deliverable Forward

☐

FX Non Deliverable Forward

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Authorized Signature(s) of Nominated Agent  
Company Chop

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Authorized Signature(s) of Member Principal  
Company Chop



# Hong Kong Monetary Authority

## OTC Derivatives Trade Repository

Annex 1

### HKTR Reporting Service Product Scope

The following are the products supported by the Reporting Service of the HKTR:

#### Interest rate derivatives

Product Type	Product Sub-Type	Notional Currency (Single-Currency only)	Floating Rate Index
Interest Rate Swap	IRS Floating vs Fixed (deliverable)	ISO 4217 currencies specified in the Reporting Service AIDG	ISDA-defined Floating Rate Indexes specified in the Reporting Service AIDG
	IRS Floating vs Fixed (non-deliverable)		
	Basis Swap (Floating vs Floating)		
	Overnight Index Swap (Floating vs Fixed )		

#### Foreign exchange derivatives

Product Type	Product Sub-Type	Currency in the currency pair
FX Non Deliverable Forward	FX Non Deliverable Forward	ISO 4217 currencies specified in the Reporting Service AIDG

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# **Hong Kong Monetary Authority**

## **OTC Derivatives Trade Repository**

**Annex 2**

### **Fee Scale for Reporting Service**

#### **TR Membership fee**

No fee or charge applies to the participation and maintenance of a TR Membership.

#### **Transaction fee**

Monthly transaction maintenance fee of HK\$3 per outstanding transaction per month on a per-side basis, i.e. both reporting entities are subject to charge. The fee will be calculated with reference to the number of outstanding transactions (transactions not yet matured) maintained at the TR on the last working day of each month.

Aggregate cap on transaction maintenance fee of HK\$1 million per reporting entity per annum. The cap applicable to a new user will be calculated on a pro-rata basis with reference to the remaining number of month-ends in the calendar year after the user starts reporting.

#### **Supplementary Notes**

1. The fee schedule may be modified by the HKTR from time to time, however, the HKTR undertakes to advise members in advance of such changes
2. All fees are invoiced in Hong Kong dollar and billed monthly to TR members. The total amount of fees payable will be advised to members on the 10<sup>th</sup> day of the following month or the next business day if the 10<sup>th</sup> is not a business day. The total fees will be automatically debited from the settlement account designated by members on the 15<sup>th</sup> day or the following business day if 15<sup>th</sup> is not a business day.

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**Personal Information Collection Statement of the Monetary Authority  
for the Reporting Service under the Trade Repository**

This Personal Information Collection Statement ("**Statement**") sets out the policies and practices of the Monetary Authority ("**MA**") with regard to Personal Data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (the "**PDPO**"), that the MA has collected, and will be collecting, from you from time to time in connection with the MA's provision of the Reporting Service to you and what you are agreeing to with respect to the MA's use of your Personal Data for the purposes and in the manner identified in paragraphs 1 and 2 below. The MA may provide the Reporting Service to you in order to assist you to meet your Reporting Requirements, which oblige you to report to the MA certain over-the-counter derivatives transactions that you may enter into from time to time. Unless defined in this Statement or the context otherwise requires, a term defined in the reporting service agreement between the MA and yourself ("**Reporting Service Agreement**") has the same meaning in this Statement.

**1. Purpose of Collection and Use of Personal Data**

The MA may collect Personal Data from you from time to time and such Personal Data may be used, stored, processed, transferred, disclosed or shared by the MA for one or more of the following purposes:

- a. exercise the functions of the MA as set out in the Banking Ordinance (the "**BO**"), the principal one of which is to promote the general stability and effective working of the banking system;
- b. exercise the powers and duties vested in the MA under the Securities and Futures Ordinance (the "**SFO**"), and for carrying out the MA's functions under the SFO;
- c. transfer or disclose information (including your Personal Data) to other persons in accordance with the provisions of the BO and the SFO;
- d. provide the Reporting Service to you;
- e. perform all of the MA's obligations under any agreement or arrangement with you, including without limitation the Reporting Service Agreement;
- f. perform any Matching Procedures (as defined in Section 2 of the PDPO), verification or other similar procedures the MA may deem necessary or desirable;
- g. enforce any obligations owed by you to the MA, including the collection of any fees or other amounts outstanding from you to the MA;
- h. comply with any of the MA's obligations under any Law (including without limitation any disclosure requirements imposed on the MA); and
- i. comply with any order or request from any Authority in or outside Hong Kong, whether pursuant to any regulatory or investigatory assistance arrangements between the MA and such Authority or otherwise.

Failure to supply such Personal Data as requested by the MA from time to time may result in hindering the MA from performing the MA's functions or providing the Reporting Service to you, and in some cases, may constitute an offence.

## **2. Disclosure and/or Transfer of Personal Data**

The MA may, for one or more of the purposes set out in paragraph 1 above, disclose or transfer your Personal Data to one or more of the following persons in Hong Kong or elsewhere:

- a. any Authority (including other local and overseas regulators as well as government bodies such as the Hong Kong Police and the Independent Commission Against Corruption);
- b. any officer or employee of the MA;
- c. any other member of the Member Group;
- d. any trade repository for over-the-counter derivatives transactions; and
- e. any other person to whom the MA reasonably determines the disclosure or transfer of your Personal Data is necessary for the MA to fulfil the purposes set out in paragraph 1 above.

Your Personal Data may be disclosed or transferred to a location which does not have the legal protection of information equivalent to that in Hong Kong.

## **3. Access to Personal Data**

In accordance with the terms of the PDPO and subject to the provisions and exemptions set out in Part VIII of the PDPO, you have the right to:

- a. check whether the MA holds Personal Data about you, be informed of the kind of Personal Data held by the MA and access such Personal Data;
- b. require the MA to correct any Personal Data relating to you which is inaccurate; and
- c. ascertain the MA's policies and practices in relation to Personal Data held by the MA.

The MA takes all practicable steps to ensure that an individual can ascertain the MA's policies and practices in relation to Personal Data and be informed of the kind of Personal Data held by the MA and the main purposes for which the Personal Data held by the MA are or are to be used.

In accordance with the PDPO, the MA has the right to charge a reasonable fee for the processing of any Personal Data access request.

All enquiries regarding the Personal Data provided or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

Personal Data Privacy Officer (Trade Repository)  
Hong Kong Monetary Authority  
55/F., Two International Finance Centre  
8 Finance Street  
Central, Hong Kong

Please note that all data access requests should be made using the form specified by the Privacy Commissioner for Personal Data, which is accessible from the following link:

<http://www.pcpd.org.hk/english/publications/files/Dforme.pdf>