



By E-mail

Supervision of Markets Division
Securities and Futures Commission
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Hong Kong

30 December 2015

Email: ATSGuidelines@sfc.hk

Dear Sirs and Madams

Consultation on Proposed Amendments to the Guidelines for the Regulation of Automated Trading Services

The Futures Industry Association ("**FIA**"), the International Swaps and Derivatives Association, Inc. ("**ISDA**") and the Asia Securities Industry & Financial Markets Association ("**ASIFMA**") (collectively, the "**Associations**") welcome the opportunity to respond to the on the Consultation Paper on the Proposed Amendments to the Guidelines for the Regulation of Automated Trading Services ("**ATS Guidelines**") (the "**Consultation Paper**") issued by the Securities and Futures Commission ("**SFC**") on 20 November 2015.

FIA is the leading trade organisation for the exchange traded and centrally cleared derivatives markets worldwide. FIA's membership includes international and regional banking organisations, clearing houses, exchanges, brokers, vendors and trading participants. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and to promote high standards of professional conduct. Further information is available at www.fia.org.

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 68 countries. These members include a broad range of derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Further information is available at: www.isda.org.

ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. Further information is available at www.asifma.org.



FIA, AISFMA and ISDA's responses

We set out our detailed responses to the Consultation Paper below.

1. Timing for implementation and transitional periods

In the Consultation Paper, it is noted that the clearing leg of the expanded definition of ATS will be implemented first and it will be implemented at the same time that mandatory clearing is implemented. We understand that implementation of mandatory clearing in Hong Kong is expected to be introduced in mid-2016.

The Associations have previously submitted a letter to the SFC on 5 November 2015 relating to the proposed introduction of mandatory clearing in Hong Kong ("**November Response Letter**"). We wish to reiterate the requests that were made in the November Response Letter and request that the timeline for introducing the mandatory clearing regime in Hong Kong take into account the timeline for mandatory clearing under the European Market Infrastructure Regulation ("**EMIR**"). It has been recently announced that the obligations under EMIR will commence on 21 June 2016 for certain categories of counterparties¹. We request that the Hong Kong mandatory clearing regime and the expanded definition of ATS be introduced after or upon the commencement of the EMIR obligations (taking into account the different commencement dates for Category 1 and Category 2 counterparties) and sufficient notice be given to provide market participants with sufficient time to prepare for compliance.

We encourage the SFC to provide clarity on whether ATS providers that will require licensing, registration or authorisation under the new OTC derivatives regime will be provided with a reasonable transitional period/no-action period to enable them to continue to provide their services to market participants with minimal disruption and to allow them sufficient time to make the necessary applications and obtain the necessary licences, registrations and authorisations. This will be discussed in further detail below in relation to CCPs.

The industry also seeks clarity on how current applicants of ATS licences/registrations and authorisations (whose applications are currently under review by the SFC) will be treated for example, in relation to the amended core standards. We encourage the SFC to provide a reasonable transitional period/no-action period where necessary.

2. ATS Authorisation and Designation of CCPs

As set out in the November Response Letter (at Q28 on page 12), the industry has concerns about the inclusion of the requirement to clear transactions subject to mandatory clearing through a "Designated CCP" as it reduces the potential benefits that may be derived from a substituted compliance regime. The industry had submitted that market participants should be able to fulfil their clearing obligations in Hong Kong by complying with the clearing obligations of comparable jurisdictions that meet the criteria and standards set by the Hong Kong Monetary Authority ("**HKMA**") and the SFC.

¹ <http://www.esma.europa.eu/news/Press-release-European-swap-clearing-start-June-2016?t=326&o=home>



If the requirement to clear through a "Designated CCP" remains, the industry seeks clarity and certainty and as much notice as possible regarding the status of "Designated CCPs" prior to the commencement of mandatory clearing obligations in Hong Kong to minimise market disruption and fragmentation.

As noted in the November Response Letter (at Q31, page 13), the ability for many market participants to comply with mandatory clearing obligations will be dependent on the designation of certain foreign CCPs (including (i) LCH.Clearnet Limited, (ii) CME Clearing Europe Limited, (iii) Eurex Clearing AG, (iv) Japan Securities Clearing Corporation and (v) NASDAQ OMX Clearing AB).

For reasons given in the November Response Letter, it is imperative that these CCPs become designated CCPs prior to the commencement of mandatory clearing in Hong Kong. We note that a prerequisite to becoming a designated CCP is that the CCP must be an RCH or a Part III ATS provider and that applications for ATS authorization and CCP designation can be submitted simultaneously. Whilst we appreciate that ATS authorization and CCP designation are dependent on the CCPs in question making the relevant applications to the SFC, the industry encourages the SFC to engage with the CCPs listed above and to keep market participants informed of the application status (and timeline for approval) to the maximum extent possible. If a CCP is not authorized under Part III of the SFO or is not designated prior to the mandatory clearing implementation date, we encourage the SFC to provide a reasonable transitional period/no-action period to allow the SFC time to consider the applications whilst giving market participants the certainty that they are still able to use the services of the applicable CCP.

3. Principles for the regulation of ATS Providers

We propose that paragraphs 13 (a), (d) and (g) set out in Part B of the draft ATS Guidelines (annexed to the Consultation Paper on page 4) be amended so that the references to the "*securities and futures industry*" be amended to the "*securities, futures and OTC derivatives industry*".

4. Core Standards of Practice for ATS

We fully support the amendment of the core standards of practice in the ATS Guidelines to take into account international standards and best practices including those published by the Committee on Payments and Settlement Systems ("**CPSS**") and the Technical Committee of the International Organization of Securities Commissions ("**IOSCO**") in the Principles for Financial Market Infrastructures ("**PFMI**").

However, we encourage the SFC to provide clarity on the transitional arrangements that will be given to existing ATS providers in relation to demonstrating compliance with the amended core standards.

In paragraph 15 of the draft ATS Guidelines, the SFC has also recognised that the core standards overlap with certain provisions in the Securities and Futures Ordinance ("**SFO**") dealing with the regulation of intermediaries (e.g. provisions relating to the record-keeping obligations of intermediaries). It is noted that although the core standards are generally intended to apply to all ATS providers, their application to Part V ATS providers will be subject to relevant SFO provisions.



We would be grateful if the SFC can provide greater clarity on which core standards will not apply to Part V ATS providers as they are otherwise captured by SFO provisions. For example, in respect of Standard 9: Reporting, a Part V ATS provider is subject to various reporting obligations under the Securities and Futures (Licensing and Registration) (Information) Rules (“**Information Rules**”) and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“**Code of Conduct**”). We seek clarity on whether a Part V ATS provider will be subject to the requirements set out in paragraph 36 of the Consultation Paper in addition to the Information Rules and the Code of Conduct. Providing further clarity will give Part V ATS providers greater certainty and assist them to assess the impact and understand the scope of the amended ATS Guidelines.

5. Examples illustrating how the ATS Guidelines may be applied in practice

We appreciate that one of the key objectives of amending the ATS Guidelines is to accommodate the implementation of mandatory clearing and the amendments relating to mandatory trading may be implemented at a later stage. However, we encourage the SFC to elaborate and extend the illustrations set out in Part G of the draft ATS Guidelines to provide clarity to the industry on the intended scope of the amended ATS Guidelines and ATS regulation.

For example under the current illustration in “Example 1”, it states that a person is not regarded as offering ATS if the offer is made to existing clients to whom the person already provides any financial services. For a large financial services group, the customer relationship may be with different legal entities within the same corporate group and it would be beneficial for industry to understand the treatment of customers of a related group company.

We also encourage the SFC to consider extending the illustrations to cover scenarios such as:

- (a) providers of middleware
- (b) providers of post trade tools such as portfolio reconciliation and compression
- (c) intermediaries providing direct market access to various markets, exchanges or CCPs
- (d) price discovery or indicative pricing screens and bulletin boards
- (e) single dealer platforms
- (f) hybrid services (voice and electronic)

We understand that it is not the policy intent for some of the above scenarios to fall under the ATS Guidelines and ATS regulation and believe it would be beneficial for market participants if the SFC can provide more clarity in this regard.

We thank you for this opportunity to respond to the Consultation Paper and we are, of course, very happy to discuss with you in greater detail any of our comments.



Please do not hesitate to contact Phuong Trinh of FIA at ptrinh@fiaasia.org, Mark Austen of ASIFMA at mausten@asifma.org or Keith Noyes of ISDA at knoyes@isda.org.

Yours faithfully,

For the **Futures Industry Association**

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