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**Re: Consultation Paper on the Securities and Futures (OTC Derivatives Transactions – Reporting and Record Keeping) Rules**

Dear Sir or Madam:

Managed Funds Association (“MFA”)<sup>1</sup> appreciates the opportunity to provide comments to the Hong Kong Monetary Authority (“HKMA”) and the Securities Futures Commission (“SFC”) on their joint “Consultation Paper on the Securities and Futures (OTC Derivatives Transactions – Reporting and Record Keeping) Rules” dated July 2014 (“Consultation Paper”).<sup>2</sup> MFA strongly supports the goal of enhancing transparency in the over-the-counter (“OTC”) derivatives market, and appreciates the need for the HKMA and SFC to receive timely reporting for OTC derivatives transactions “conducted in Hong Kong”<sup>3</sup> to provide effective oversight of the financial markets. As a general matter, we believe that the HKMA and SFC have taken a reasonable and thoughtful approach to the proposed mandatory reporting obligation that reflects appropriate consideration of the scope of similar reporting regimes in other jurisdictions.

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<sup>1</sup> Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

<sup>2</sup> Available at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=14CP6>.

<sup>3</sup> See Consultation Paper at 20, paragraph 66, for a description of this term.

In this letter, MFA provides comments on proposals in the Consultation Paper where we respectfully believe that modifications or greater clarity from the HKMA and SFC would bolster the effectiveness of, and ease market participants' transition into, the mandatory reporting regime. MFA presents its comments below by order of priority of the issue to our members. In particular, MFA:

- Asks the HKMA and SFC to adopt an equivalence regime that would allow for recognition of other jurisdictions' equivalent regulatory regimes, and permit compliance with those jurisdiction's equivalent regulations to satisfy the mandatory reporting requirement;
- Urges the HKMA and SFC to impose the obligation to report solely on the dealer where a fund manager that is a Type 9 licensed corporation (“**LC**”)<sup>4</sup> transacts on behalf of its fund with the dealer;
- Urges the HKMA and SFC to increase the timeframe for implementation of reporting for the proposed interest rate swaps (“**IRS**”) and non-deliverable forwards (“**NDFs**”) to 12 months;
- Requests that the HKMA and SFC provide necessary guidance on nuances and details relating to reporting of non-deliverable forwards (“**NDFs**”) as they finalize these rules;
- Supports the proposed backloading obligation;<sup>5</sup>
- Emphasizes the importance of maintaining utmost confidentiality of the transaction data reported to the Hong Kong Trade Repository established by the HKMA (“**HKTR**”); and
- Requests that, where a Type 9 LC delegates its reporting obligation to an agent, the HKMA and SFC not require ongoing monitoring by the Type 9 LC of such agent, and instead, require the Type 9 LC to conduct periodic sampling checks in a commercially reasonable manner of such reporting entity.

## **I. Equivalence and International Harmonization**

**Q13. Do you have any comments or concerns about the proposed application of the mandatory reporting obligation to cross-border transactions? If so, please provide specific details.**

MFA greatly appreciates the HKMA's and SFC's recognition of the global nature of the OTC derivatives markets and the efforts of other countries to implement their G-20 commitments.<sup>6</sup> As

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<sup>4</sup> See Schedule 5 of the Securities and Futures Ordinance, available at: [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/\\$FILE/CAP\\_571\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/5167961DDC96C3B7482575EF001C7C2D/$FILE/CAP_571_e_b5.pdf), which defines the activities that subject market participants to registration as Type 9LCs.

<sup>5</sup> See Consultation Paper at 4, paragraph 17(b), which defines “backloading” as reporting of historical transactions (*i.e.*, transactions entered into before the starting day of the reporting mandate, but which are still outstanding on that starting day).

a general matter, we support an internationally coordinated approach to regulation that ensures consistent regulation, reflects the global nature of the OTC derivatives markets, and promotes competition and innovation. In addition, we understand the need to ensure that where a market participant's OTC derivatives transactions are "conducted in Hong Kong" that market participant is subject to regulation in Hong Kong, including the mandatory reporting obligation, and its activities are subject to oversight by the HKMA and SFC. However, we are increasingly concerned that the duplicative scope of the various international regulations, such as reporting mandates, will create substantial regulatory burdens, which if not resolved, could impair the OTC derivatives markets.

For example, in the case of the proposed reporting mandate, as discussed in Section II below, a fund managed by a fund manager that is a Type 9 LC may enter into an OTC derivatives transaction with a U.S. dealer. Under the proposals in the Consultation Paper, as a Type 9 LC subject to Hong Kong regulation, the fund manager would be responsible for reporting that transaction to the HKTR.<sup>7</sup> However, the U.S. dealer would similarly be subject to regulation in the U.S. and be responsible for reporting that OTC derivatives transaction under U.S. rules.<sup>8</sup> Since the U.S. and Hong Kong reporting mandates will be of similar scope, the result is that the OTC derivatives transaction would be subject to overlapping and duplicative reporting requirements. However, as discussed in Section II below, the U.S. dealer has an existing reporting infrastructure, whereas the fund manager does not.

MFA, therefore, urges the HKMA and SFC to consider adopting an equivalence regime that would allow for recognition of other jurisdictions' equivalent regulatory regimes, and permit compliance with those jurisdiction's equivalent regulations to satisfy the related Hong Kong regulations. In the foregoing example, such an equivalence regime would allow the U.S. dealer to report the OTC derivatives transaction under U.S. rules, and such reporting would satisfy the fund manager's obligation in Hong Kong.<sup>9</sup>

While MFA recognizes that the HKMA and SFC have expressed a desire that market participants report data related to OTC derivatives transactions conducted in Hong Kong to the HKTR, we believe the proposed equivalence regime is consistent with the agreement that the SFC reached

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<sup>6</sup> See *id.* at 10, paragraphs 40-41.

<sup>7</sup> See *id.* at 21-22, paragraphs 69-74. See also *id.* at 30-31, paragraphs 96-97, which discusses the application of the reporting obligation to cross-border transactions.

<sup>8</sup> See U.S. Commodity Futures Trading Commission ("CFTC") final rule on "Swap Data Recordkeeping and Reporting Requirements", 77 Fed. Reg. 2136 (Jan. 13, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf> ("CFTC Reporting Rules").

<sup>9</sup> For the avoidance of doubt, we agree that regulators in other jurisdictions should similarly defer to the HKMA and SFC on cross-border transactions where the dealer is a Hong Kong dealer that is a licensed AI, AMB, or LC and is trading with a U.S. fund managed by a U.S. manager not subject to Hong Kong regulation. We made have comments to regulators in other jurisdictions requesting that they give such deference. See MFA letter to the CFTC on its "Proposed Interpretive Guidance and Policy Statement on Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act", dated at August 28, 2012, at 9-10, available at: <https://www.managedfunds.org/wp-content/uploads/2012/08/CFTC-Cross-Border-Guidance-Letter-MFA-AIMA-Final-Letter.pdf>.

with key regulators in other G-20 jurisdictions.<sup>10</sup> Specifically, that G-20 agreement contemplates that each jurisdiction would have an equivalence or substituted compliance regime.<sup>11</sup> In addition, each jurisdiction committed to removing barriers to transaction reporting, and agreed that, “domestic barriers should be removed so that, for example, a foreign participant can report trades with a domestic entity pursuant to the reporting requirements applicable to the foreign participant.”<sup>12</sup>

MFA appreciates that the Consultation Paper permits market participants to appoint trade repositories established in third countries (“**Third-Country TRs**”) as permissible third-party agents for purposes of completing the required reporting to the HKTR.<sup>13</sup> However, our members do not have the ability to compel such Third-Country TRs to report the transactions, and even where such Third-Country TRs are willing, our members have no ability to ensure that the Third-Country TRs comply properly with the reporting requirements.<sup>14</sup> However, we expect the HKMA and/or SFC to enter into memoranda of understandings with regulators in different jurisdictions that would permit the cross-border sharing among regulators of data collected on OTC derivatives transactions.<sup>15</sup> Therefore, we believe that, rather than requiring Third-Country TRs to report to the HKTR, the more efficient solution is, following adoption of the proposed equivalence regime and completion of such memoranda, for the HKMA and SFC to obtain data from their regulatory counterparts in other jurisdictions on transactions conducted in Hong Kong that market participants have reported to Third-Country TRs in such jurisdictions.

We recognize that it is not solely the responsibility of the HKMA or SFC to ensure that international coordination and harmonization of OTC derivatives regulation, including mandatory reporting obligations, proceeds in a thoughtful and expedient manner. Therefore, we have made similar comments to regulators and policymakers in others jurisdictions as well.<sup>16</sup>

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<sup>10</sup> See OTC Derivatives Regulators Group “Report on Agreed Understandings to Resolving Cross-Border Conflicts, Inconsistencies, Gaps and Duplicative Requirements” (Aug. 30, 2013), available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/odrgreport.pdf>.

<sup>11</sup> See *id.* at 2-3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> See Consultation Paper at 46-47, paragraphs 133-134.

<sup>14</sup> For example, if the data fields that market participants’ are required to report to Third-Party TRs under another jurisdiction’s regulatory regime differ slightly (both not materially) from that of the HKMA and SFC, then even where the Third-Party TRs reports that transaction data to the HKTR, there may be technical non-compliance with the reporting mandate.

<sup>15</sup> See *e.g.*, the SFC and CFTC “Memorandum of Understanding concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws” (Oct. 5, 1995), available at: <http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/hksfc95.pdf>, which currently applies only to managed futures. See also *e.g.*, CFTC and Monetary Authority of Singapore “Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities” (Dec. 27, 2013); and CFTC and Japan Financial Services Authority “Memorandum of Cooperation Related to the Supervision of Cross-Border Covered Entities” (Mar. 10, 2014); each of the foregoing available at: [http://www.cftc.gov/International/MemorandaofUnderstanding/mouInfo\\_Sharing\\_for\\_Supervisor](http://www.cftc.gov/International/MemorandaofUnderstanding/mouInfo_Sharing_for_Supervisor), which are the first of the memoranda of understanding that the CFTC expects to enter into to facilitate harmonization of the cross-border regulation of the global derivatives market.

<sup>16</sup> See *e.g.*, MFA Discussion Paper on Equivalence Issues under Article 13(3) of the European Market Infrastructure Regulation, dated June 3, 2014, available at <https://www.managedfunds.org/wp-content/uploads/2014/06/MFA->

We want to emphasize that ensuring that regulations are consistent and not duplicative whenever possible, and that regulators recognize equivalent regulations of other jurisdictions, will serve both the global development of the market as well as the ability of all regulators to oversee it effectively.

## II. Reporting Entities

### **Q5. Do you have any comments or concerns about how we have cast the proposal that AIs and LCs that are registered/licensed for Type 9 RA must report transactions that they have entered into in their capacity as fund managers?**

MFA strongly supports the timely reporting of non-cleared, OTC derivatives contracts to trade repositories, and thus, we agree that the HKMA and SFC should impose the reporting obligation on authorized institutions (“AIs”), approved money brokers (“AMBs”), and other dealers registered as LCs. However, we are concerned about the proposed application of the reporting mandate to non-dealer, fund managers that are Type 9 LCs,<sup>17</sup> and believe that solely dealers that are AIs, AMBs, or LCs (and not also non-dealer fund managers) should have the obligation to report transactions.

Our members will only be subject to the Hong Kong reporting mandate because they are Type 9 LCs<sup>18</sup> that are entering into OTC derivatives transactions on behalf of the funds that they manage. However, for such transactions, a dealer will typically be the fund’s counterparty because, in general, as a function of their role as market makers, there is a dealer counterparty in nearly every derivatives transaction. As a result, dealers already have established robust systems for position and transaction reporting, which they currently use in other markets and could effectively apply in this context as well. Clients of dealers, on the other hand, such as fund managers that are Type 9 LCs, generally do not have similar reporting systems in place and requiring them to establish such systems would be costly. Therefore, MFA believes that the most efficient method to ensure timely transaction reporting would be solely to obligate the dealer to report each OTC derivatives transaction to which it is a party, where the dealer is an AI, AMB, or LC, and its counterparty is a fund managed by a Type 9 LC fund manager.<sup>19</sup>

MFA understands that the Consultation Paper proposes to require both parties to an OTC derivatives transaction to report it to the HKTR such that the fund’s dealer counterparty would already have to report the transaction if that dealer is an AI, AMB, or LC.<sup>20</sup> However, we

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[Discussion-Paper-on-Article-13-EMIR-Equivalence-Final-6-3-14.pdf](#); MFA letter to the CFTC on its notice of “Further Proposed Guidance Regarding Compliance with Certain Swap Regulations” dated Feb. 6, 2013, available at: <https://www.managedfunds.org/wp-content/uploads/2013/02/CFTC-Further-Cross-Border-Guidance-Letter-MFA-AIMA-Final-Letter.pdf>; MFA comment letter to the Monetary Authority of Singapore on its “Consultation Paper on Proposed Regulation of OTC Derivatives” dated March 26, 2012, available at: <https://www.managedfunds.org/wp-content/uploads/2012/03/MAS-OTC-Derivatives-Consultation-Paper-Final-MFA-Letter-3-26-2012.pdf>.

<sup>17</sup> See Consultation Paper at 21-22, paragraphs 69-74.

<sup>18</sup> See *supra* note 4.

<sup>19</sup> For the avoidance of doubt, MFA agrees that in the rare instance of a trade between two non-dealers, the parties to the OTC derivatives transaction should determine which one should be required to report the transaction.

<sup>20</sup> See Consultation Paper at 11, paragraph 43(3); see also *id.* at 18-21, paragraphs 60-68.

disagree with requiring both parties to a transaction to report it. We think it is more efficient and less costly for the HKMA and SFC if only one party to an OTC derivatives transaction reports it because it prevents the HKMA and SFC from receiving duplicative transaction data that they will then need to reconcile. Moreover, requiring only one party to report transaction data is consistent with the approach taken by the CFTC in the U.S.,<sup>21</sup> and it has proven successful and does not appear to have resulted in any gaps in the transaction data received by the CFTC.

In addition, MFA recognizes that not all dealers that are counterparties to funds managed by Type 9 LCs will be AIs, AMBs, or LCs, and thus, subject to Hong Kong regulation. However, for such OTC derivatives transactions, we expect that the relevant dealers are, or will be, subject to mandatory reporting obligations in other jurisdictions that have regulatory requirements equivalent to that of Hong Kong. Therefore, in such circumstances, to prevent market participants from becoming subject to duplicative or conflicting requirements, as discussed in Section I above, MFA urges the HKMA and SFC to recognize the equivalence of other jurisdictions' reporting mandates and permit compliance with those obligations to satisfy compliance with their reporting obligations in Hong Kong.<sup>22</sup>

In addition, MFA appreciates that the Consultation Paper permits a reporting entity to delegate its obligation to a third-party agent, which could include their dealer counterparty.<sup>23</sup> However, in the case of Type 9 LCs, the burden would remain on the fund manager to reach agreement with the fund's dealer counterparty as to that delegation. In other jurisdictions, our members have experienced significant difficulty in obtaining such agreement from dealers, and where the fund manager and dealer were ultimately able to reach agreement, it was frequently a lengthy and time-consuming process to achieve such agreement. Therefore, MFA emphasizes that, if the HKMA and SFC do not impose the reporting obligation directly on funds' dealer counterparties, then it is necessary for the HKMA and SFC to encourage dealers to cooperate with their clients in establishing such delegated arrangements and to provide sufficient time prior to implementation for market participants to put such arrangements in place.<sup>24</sup>

### III. Timing of Implementation

#### **Q20. Do you have any comments or concerns about how the concession period and grace period are proposed to operate?**

With respect to each reportable transaction, the Consultation Paper proposes a 3-6 month timeframe for implementation of the reporting mandate with respect to that product beginning from the time that the product first becomes reportable.<sup>25</sup> MFA strongly urges the HKMA and

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<sup>21</sup> See CFTC Reporting Rules at 2207-2208, §45.8, among other things, providing that if only one counterparty to a swap is a swap dealer, the swap dealer shall be the reporting counterparty.

<sup>22</sup> We agree that, if the dealer counterparty to an OTC derivatives transaction is not subject to equivalent reporting requirements in another jurisdiction, the transaction should be subject to the Hong Kong reporting obligation.

<sup>23</sup> See *supra* note 12.

<sup>24</sup> See Section III below of this letter for further discussion about our recommended timing for implementation.

<sup>25</sup> See Consultation Paper at 40-41, paragraph 120, providing that reporting parties will have a period of up to: (1) 3 months to set up their reporting connectivity to the HKTR; and (2) 6 months (including the aforesaid 3 months) to complete any backloading.

SFC to increase the timeframe for implementation of reporting for the proposed IRS and NDFs to 12 months.

As discussed in Section I and II above, we recommend that the HKMA and SFC impose the reporting obligation directly on the dealer counterparties to a transaction. However, if the HKMA and SFC choose not to do so, once they finalize these rules, fund managers that are Type 9 LCs and conduct trades in Hong Kong on behalf of the funds they manage will be subject to mandatory reporting. In such case, Type 9 LCs, will need time to analyze the final rules and seek guidance on specific questions related to implementation of reporting (*e.g.*, questions related to required data fields and legal entity identifiers). In addition, Type 9 LC fund managers will need sufficient time either to negotiate documentation and put in place delegation arrangements, or to build the necessary reporting infrastructure and connectivity to the HKTR. As mentioned, this process is a lengthy one, and we do not believe fund managers will be able to complete that process within the proposed 3-6 month timeframe.

MFA does agree that, once such delegation arrangements and infrastructure are in place, in the future when the HKMA and SFC require reporting of new products, it is reasonable for the timing of implementation to be shorter than 12 months. However, MFA believes that the HKMA and SFC should consider the appropriate timing for each product on a case-by-case basis as different products present different levels of reporting complexity, and new or unanticipated issues may arise as market participants' begin complying with mandatory reporting.

#### **IV. Reportable Transactions**

##### **Q2. Do you have any comments or concerns about the proposed types of IRS and NDF that will be subject to the mandatory reporting obligation in the initial phase of implementation?**

In the Consultation Paper, the HKMA and SFC propose to require market participants to report certain classes of IRS as well as NDFs in specified currencies and precious metals.<sup>26</sup> MFA supports the approach taken by the HKMA and SFC to phase in the products that will be subject to the reporting mandate, and we agree that the specified classes of IRS and NDF are appropriate for reporting. However, we would appreciate additional clarity regarding how to complete the data fields that the HKMA and SFC will require in respect of reporting of NDFs.

For example, when our members trade NDFs, at times, it is in the context of intermediated, prime brokerage arrangements where our members will enter into an NDF with their prime broker and the prime broker will enter into a back-to-back trade with the executing broker. In such case, it is unclear under the Consultation Paper whether our members would need to report that their prime broker or the executing broker is their counterparty in the transaction. It is also unclear whether the prime broker, the executing broker, or both are responsible for reporting the back-to-back trade.

MFA appreciates that certain mechanics and details related to mandatory reporting will be set forth in the final rules. However, we respectfully request that the HKMA and SFC be mindful of

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<sup>26</sup> See *id.* at 17, paragraph 58.

examples like the foregoing and provide necessary guidance on such nuances and details as they finalize these rules.

## V. Backloading Obligation

**Q17. Do you have any comments or concerns about how the proposed backloading requirement will apply to transactions outstanding on the starting day? If so, please provide specific details.**

MFA strongly supports the HKMA's and SFC's thoughtful, proposed approach to the backloading obligation.<sup>27</sup> In particular, we support providing an exception from the backloading obligation for transactions that an AI, AMB, or LC has "conducted in Hong Kong" and entered into on behalf of a person whose assets it manages.<sup>28</sup> As described in the Consultation Paper, in the case of a Type 9 LC, this exception applies to transactions entered into by the Type 9 LC on behalf of a fund or any other person whose assets they are managing.<sup>29</sup> We agree with the HKMA and SFC that "an AI, AMB or LC may not be able to readily identify which of its past trades were 'conducted in Hong Kong', and it would be disproportionate to require all past trades to be reported".<sup>30</sup> Therefore, we support the HKMA's and SFC's decision to exclude such agency transactions from the backloading obligation, which we believe will ensure that the HKMA and SFC have access to necessary data related to outstanding OTC derivatives transactions without unduly burdening market participants to report retroactively transactions to which they were not a party.

## VI. Confidentiality of Reported Data

**Q25. Do you have any comments or concerns about the proposals on masking counterparty information under certain circumstances as a temporary measure?**

Although the Consultation Paper discusses conflicting confidentiality obligations under the laws of other jurisdictions that would prevent reporting transaction data to the HKTR and sharing arrangements with other regulators and Third-Country TRs,<sup>31</sup> it does not discuss in detail the confidentiality treatment of information reported to the HKTR and shared with third country authorities and trade repositories.

MFA recognizes the need for the HKMA and SFC to have access to information about market participants' activities in order to have a comprehensive view of the markets and effectively oversee the financial system. In addition, we understand that it is necessary to establish the HKTR to collect data for such oversight purposes. At the same time, we want to emphasize the importance of maintaining utmost confidentiality of the transaction data reported.

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<sup>27</sup> See *supra* note 5.

<sup>28</sup> See Consultation Paper at 38-39, paragraph 115(b).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 39, paragraph 117.

<sup>31</sup> See *id.* at 48-49, paragraphs 139-143.

Our members invest heavily in their customized and proprietary investment strategies, which form the foundation of their businesses. As a result, disclosure of position-level information, whether intentional or accidental, could reveal such strategies to the market, and thus, undermine our members' intellectual property and invite copycat behavior.

MFA emphasizes that our concern is not hypothetical. We are aware of instances in other jurisdictions where the confidentiality of client's transaction data at trade repositories was compromised.<sup>32</sup> As a result of the failure of confidentiality protections, market participants may have had access to, and could have traded upon, confidential information of competitors and counterparties.

MFA fully appreciates that the HKMA and SFC already have robust written policies and procedures in place that protect the privacy and confidentiality of data they receive through the HKTR, and that such information is subject to official secrecy set out in the Securities and Futures (Amendment) Ordinance 2014. We also note that, according to the Consultation Paper,<sup>33</sup> the Financial Stability Board is studying the details of the mechanism for the sharing and public disclosure of HKTR data. In this context, MFA would like to emphasize that strong procedures protecting data confidentiality and the identity of market participants is crucial, as the possible consequences of data breaches including by overseas recipients of HKTR data would be of great concern. Given that MFA knows that the HKMA will vigilantly oversee the HKTR, we expect market participants to utilize HKTR with confidence.

## VII. Monitoring of Reporting Agents

### **Q28. Do you have any comments or concerns about the proposed record keeping requirements in relation to mandatory reporting?**

As discussed previously, MFA notes that, to the extent that the HKMA and SFC determine to continue to require Type 9 LCs to report (and not solely dealer counterparties), many such Type 9 LCs generally will need to report via an agent because they will not have the necessary infrastructure to report directly. While the Consultation Paper discusses liability issues that may arise in relation to the appointment of agents,<sup>34</sup> and record keeping obligations in relation to the appointment and monitoring of agents,<sup>35</sup> there is no discussion as to the substantive requirements to appoint and supervise such agent.

MFA expects that, in most cases, the agent appointed by a Type 9 LC will be itself an AI, AMB, or LC (in practice likely their funds' prime broker). However, in rare cases, the appointed reporting agent might be an Third Country TR or other person not regulated in Hong Kong. Where a Type 9 LC appoints a reporting agent whether or not it is not regulated in Hong Kong, MFA believes it would be difficult for an appointing Type 9 LC to monitor such reporting agent

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<sup>32</sup> See Dow Jones Newswires, *CME swaps reporting unit suffered data breach* (Apr. 23, 2013), eFinancialNews.com, available at: <http://www.efinancialnews.com/story/2013-04-23/cme-swaps-reporting-data-breach?ea9c8a2de0ee111045601ab04d673622>, discussing a data leak at CME's derivatives data repository.

<sup>33</sup> See Consultation Paper at 51, paragraph 151.

<sup>34</sup> See *id.* at 47, paragraph 137.

<sup>35</sup> See *id.* at 53, paragraph 155(b)(v).

on an ongoing basis without effectively duplicating the work of the reporting agent. Therefore, we believe that, where a Type 9 LC has delegated its reporting obligation to an agent (*e.g.*, AI, AMB, LC, or Third Country TR), the HKMA and SFC should not require ongoing monitoring by the Type 9 LC, which would be unnecessarily burdensome and duplicative. Instead, MFA recommends that the HKMA and SFC require Type 9 LCs to conduct periodic sampling checks in a commercially reasonable manner to determine that the reporting entity has submitted reports on reportable OTC derivative transactions to the HKTR in accordance with the Hong Kong reporting requirements.

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MFA thanks the HKMA and the SFC for the opportunity to provide comments regarding the Consultation Paper. We strongly support the efforts of the HKMA and SFC to develop a mandatory reporting framework that will provide appropriate transparency of the OTC derivatives market. We would welcome the opportunity to discuss our views in greater detail. Please do not hesitate to contact Carlotta D. King or the undersigned at (202) 730-2600 with any questions the HKMA, SFC or their respective staffs might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice President & Managing  
Director, General Counsel