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GUIDELINES ON RISK MITIGATION REQUIREMENTS FOR NON-CENTRALLY CLEARED OVER-THE-COUNTER DERIVATIVES CONTRACTS

1 Purpose

1.1 These Guidelines provide guidance to entities (“OTCD Intermediaries”) exempted under section 99(1)(a), (b) and (c) of the Securities and Futures Act (Cap. 289) for dealing in capital markets products that are over-the-counter derivatives contracts which are not centrally cleared by a clearing house (“non-centrally cleared over-the-counter derivatives contracts”) on the requirements set out in regulation 54B of the Securities and Futures (Licensing and Conduct of Business) Regulations (“the Regulations”). These Guidelines should be read in conjunction with the Regulations.

2 Definitions

2.1 The expressions used in these Guidelines have the same meanings as those found in the Regulations, except where expressly defined in these Guidelines or where the context otherwise requires.

2.2 For the purposes of these Guidelines, the following definition applies:

“financial counterparty” means:

- a) a bank that is licensed under the Banking Act (Cap. 19);
- b) a merchant bank that is licensed under the Banking Act;
- c) a finance company that is licensed under the Finance Companies Act (Cap. 108);
- d) a company or co-operative society that is licensed under the Insurance Act (Cap. 142) to carry on insurance business in Singapore;
- e) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289); and
- f) an entity carrying on any financial services activity in a jurisdiction other than Singapore and is regulated for carrying on that financial services activity by a public authority of that jurisdiction that exercises a function that corresponds to a regulatory function of the Authority under the Securities and Futures Act (Cap. 289), the Banking Act (Cap. 19), the Finance Companies Act (Cap. 108), or the Insurance Act (Cap. 142).

3 Trading Relationship Documentation

3.1 The trading relationship documentation should:

- a) provide legal certainty for non-centrally cleared over-the-counter derivatives contracts;

- b) include all material rights and obligations of counterparties concerning their trading relationship with regard to non-centrally cleared over-the-counter derivatives contracts. Such rights and obligations of the counterparties may be incorporated by reference to other documents in which they are specified; and
- c) be executed in writing or through other equivalent non-rewritable, non-erasable electronic means (without prejudice to subparagraph (b) above).

3.2 The material rights and obligations referred to in paragraph 3.1(b), where relevant, may include:

- a) payment obligation;
- b) netting of payments;
- c) events of default or other termination events¹;
- d) calculation and any netting of obligations upon termination;
- e) transfer of rights and obligations;
- f) governing law;
- g) processes for valuation, portfolio reconciliation and dispute resolution; and
- h) matters related to credit support arrangements (e.g. initial and variation margin requirements, types of assets that may be used for satisfying such margin requirements and any asset valuation haircuts, investment and rehypothecation terms for assets posted to satisfy such margin requirements, guarantees and custodial arrangements for margin assets such as whether margin assets are to be segregated with a third party custodian).

3.3 The retention period for trading relationship documentation should be a minimum of 5 years after the termination, maturity or assignment of any non-centrally cleared over-the-counter derivatives contracts.

4 Trade Confirmation

4.1 An OTCD Intermediary should confirm the material terms of a non-centrally cleared over-the-counter derivatives transaction as soon as practicable after execution of the transaction, including a new transaction resulting from novation. An OTCD Intermediary should also consider adopting policies and procedures to confirm material changes to the legal terms of, or rights and obligations under, the non-centrally cleared over-the-counter derivatives contract, such as those relating to termination prior to scheduled maturity date, assignment, amendment or extinguishing of rights or obligations.

4.2 The material terms confirmed should include terms necessary to promote legal certainty to the non-centrally cleared over-the-counter derivatives transaction, including incorporating by reference, the trading relationship documentation or any other documents that govern or otherwise form part of the trading relationship documentation. A list of possible material terms is set out in the **Annex**.

¹ For instance, any rights to early termination.

- 4.3 The confirmation should be executed in writing through:
- a) non-rewritable, non-erasable automated methods where it is reasonably practicable for the OTCD Intermediary to do so;
 - b) manual means (such as fax); or
 - c) other non-rewritable, non-erasable electronic means (such as email).

4.4 An OTCD Intermediary should implement appropriate policies and procedures to ensure a two-way confirmation is executed with a customer which is a financial counterparty by T+1. Notwithstanding this, an OTCD Intermediary may execute a one-way confirmation by T+1 with a customer which is a financial counterparty if the conditions under paragraphs 4.5(a) and 4.5(b) are met.

4.5 An OTCD Intermediary should implement appropriate policies and procedures to ensure a one-way confirmation is executed with a customer (other than a customer which is a financial counterparty) provided:

- a) both parties to the contract have agreed in advance on this process so that the outcome is legally binding on both parties; and
- b) one-way confirmation is not prohibited under the applicable laws and regulations which govern the non-centrally cleared over-the-counter derivatives transaction that is to be confirmed.

4.6 For non-centrally cleared over-the-counter derivatives transactions concluded after 4.00 pm Singapore time, or with a counterparty located in a different time zone which does not allow for confirmation by the applicable deadline in paragraph 4.4, the OTCD Intermediary should execute the confirmation as soon as practicable but no later than the business day immediately after the applicable deadline in paragraph 4.4.

5 Valuation

5.1 An OTCD Intermediary should agree with its counterparty the process for determining the values of the non-centrally cleared over-the-counter derivatives transactions in a predictable and objective manner for the purposes of exchanging margins. The process should cover the entire duration of the non-centrally cleared over-the-counter derivatives transaction, at any time from the execution of the contract to the termination, maturity, or expiration thereof. All agreements on valuation process should be documented in the trading relationship documentation or trade confirmation and may include matters such as the approach to valuation, the key parameters and the data sources for such parameters.

5.2 The valuation determinations should be based on economically similar transactions or other objective criteria. An OTCD Intermediary may compute the valuation internally or rely on the valuation provided by a third party.

5.3 An OTCD Intermediary should perform periodic review of the agreed upon valuation process to take into account any changes in market conditions. Where changes

are made as a result of the review, the relevant documentation must be updated to reflect such changes.

- 5.4 The OTCD Intermediary should also agree on and document –
- a) the alternative process or approach by which an OTCD Intermediary and its counterparty will determine the value of a non-centrally cleared over-the-counter derivatives transaction in the event of the unavailability, or other failure, of any inputs required to value the transaction;
 - b) any changes or procedures for modifying the valuation process at any time so long as the agreements remain consistent with the applicable law; and
 - c) how a dispute on valuation, if it arises, should be resolved.

6 Portfolio Reconciliation

- 6.1 An OTCD Intermediary should include in its policies and procedures –
- a) the process or method for portfolio reconciliation that it has agreed with its financial counterparties; and
 - b) the process or method that reflects its efforts to conduct portfolio reconciliation with its non-financial counterparties, e.g. by providing, on a periodic basis, a non-financial counterparty with a statement on the material terms and valuations of the non-centrally cleared over-the-counter derivatives contracts entered into with that non-financial counterparty.

6.2 The process or method of portfolio reconciliation in paragraph 6.1 should be designed to ensure an accurate record of the material terms and valuations of the non-centrally cleared over-the-counter derivatives contracts, and identify and resolve discrepancies in the material terms and valuations in a timely manner with the counterparty.

6.3 An OTCD Intermediary should determine the scope and frequency of portfolio reconciliation with a counterparty, taking into account the risk exposure profile, size, volatility and number of non-centrally cleared over-the-counter derivatives transactions which the OTCD Intermediary has with that counterparty. Portfolio reconciliation should be carried out more frequently where the OTCD Intermediary has a higher number of outstanding transactions with its counterparty.

6.4 An OTCD Intermediary may endeavour to conduct portfolio reconciliation at the following frequencies:

No. of outstanding transactions with a counterparty	Frequency of reconciliation
<i>(i) For reconciliation with financial counterparties</i>	
≥ 500	Daily
51 - 499	Weekly
≤ 50	Quarterly

<i>(ii) For reconciliation with other counterparties</i>	
> 100	Quarterly
≤ 100	Annually

7 Portfolio Compression

7.1 An OTCD Intermediary may consider factors such as the risk exposure profile, size, volatility and number of outstanding transactions in assessing whether to conduct a portfolio compression with one or more counterparties. Portfolio compression may be conducted on a bilateral or multilateral basis.

8 Dispute Resolution

8.1 An OTCD Intermediary should agree with and document with its counterparty the mechanism or process for determining when discrepancies in material terms or valuations should be considered disputes and how such disputes should be resolved as soon as practicable.

8.2 Material disputes should be escalated to senior management of the OTCD Intermediary. There should be clear criteria used by the OTCD Intermediary to determine when a dispute is considered material.

8.3 To enable the Authority to monitor disputes involving significant amounts that may cause disruptions to the market, an OTCD Intermediary should report promptly to the Authority any dispute that exceeds S\$25 million which remains unresolved beyond 15 business days.

9 Governance

9.1 The policies and procedures governing trading relationship documentation, trade confirmation, valuation, portfolio reconciliation, portfolio compression, and dispute resolution should be approved by the board of directors or its delegates, and be subject to periodic independent review.

Possible terms for trade confirmation

General fields
Unique transaction identifier
Unique product identifier
Contract type
Identifier of the non-reporting party
Identifier of the reporting counterparty
Start date
Maturity, termination or end date
Settlement method
Settlement or expiration date
Delivery type
The price
Quantity
Execution timestamp
Execution venue
Indication of collateralization
Block trade indicator
Option type
Option premium
Option style
Clearing indicator
Clearing venue
An indication that the swap will be allocated
Asset class: credit/ equity
Indication of the counterparty purchasing protection
Indication of the counterparty selling protection
Information identifying the reference entity
Notional amount
Currency in which the notional amount is expressed
Amount of upfront payment (where applicable)
Currency/ currencies in which upfront payment is expressed in (where applicable)
Payment frequency of the reporting counterparty
Payment frequency of the non reporting counterparty
Asset class: interest rate
Notional amount (leg 1)
Notional currency (leg 1)
Notional amount (leg 2)
Notional currency (leg 2)

Direction (For swaps, whether the principal is paying or receiving the fixed rate. For non-swap instruments and swap options, indicate the instruments that was bought or sold)
Payer (fixed rate), i.e. is the reporting party a fixed rate payer? Yes/No/NA.
Payer of leg 1
Payer of leg 2
Day count convention
Rate of leg 1 (where applicable)
Day count of leg 1 (where applicable)
Floating rate index name/ rate period
Payment frequency of leg 1 (where applicable)
Reset frequency period of leg 1 (where applicable)
Asset class: commodity
Buyer
Seller
Quantity unit
Quantity frequency
Total quantity
Price unit
Price currency
Buyer pay index
Buyer pay averaging method
Seller pay index
Seller pay averaging method
Grade
Hours from through
Hours from through time zone
Days of week
Load type
Asset class: foreign exchange
Currency 1
Currency 2
Notional amount 1
Notional amount 2
Exchange rate