August 17, 2018

Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Comments on the Consultation Paper on the OTC derivatives regime for Hong Kong,
***- Proposed margin requirements for non-centrally cleared OTC derivative transactions*, issued by the Securities and Futures Commission of Honk Kong**

Dear Sirs/Madams:

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on the Consultation Paper on the OTC derivatives regime for Hong Kong - Proposed margin requirements for non-centrally cleared OTC derivative transactions, issued by the Securities and Futures Commission of Hong Kong (HKSFC) on June 19, 2018.

It is our concern that the proposed variation margin requirements (VM requirements) in the consultation paper are different from the corresponding rules stipulated by the Hong Kong Monetary Authority (HKMA) and are not consistent with global standard, and therefore could lead to increased regulatory burdens which may, among other things, undermine the liquidity of the Hong Kong market. We respectfully expect that the following comments will contribute to your further discussion.

III. Instruments subject to the proposed margin requirements

Q2. Do you have any comments on the instruments excluded from the proposed margin requirements, or the application of the requirements to single-stock options, equity basket options and equity index options starting only from 1 March 2020?

(Comments)

FX swaps and FX forwards should be excluded from the proposed VM requirements even when covered entities are an Authorised Institutions (AIs) supervised by the HKMA or Licensed Corporations (LCs) supervised by the HKSFC.

(Rationale)

The consultation paper proposes to apply VM requirements to physically settled FX swaps and FX forwards entered into by AIs and LCs, which is not consistent with global standard[1] and thus could impose excessive burdens on globally active financial institutions. Furthermore, the HKMA's margin rules (*CR-G-14 Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards*) exclude FX swaps and FX forwards from VM requirements. This means that different requirements will be applied in Hong Kong by the HKMA and the HKSFC, which could cause confusion in practice.

There is no other case around the world where different rules apply in the same jurisdiction. Given this, in order to avoid undue confusion, We request to integrate rules within Hong Kong and harmonise them with global rules.

VI. When will the proposed requirements come into effect?

Q9. Do you have any comments on the proposed IM phase-in schedule or the effective date of the VM requirements?

(Comments)

If the HKSFC determines to implement the rules that differ from HKMA's corresponding rules, the HKSFC should provide a period of at least one year to one and a half years from the finalisation of the rules prior to their application.

(Rationale)

Although the consultation paper proposes that the requirements take effect from 1 September 2019, the application of different rules within Hong Kong would cause additional operational burdens, as noted previously. Therefore, in order to ensure the smooth implementation, the HKSFC should ensure a sufficient period of time prior to the application of the rules.

[1] Although in its peer review of Hong Kong issued in February 2018 (http://www.fsb.org/2018/02/peer-revies-of-hong-kong/), FSB proposed that Hong Kong authorities should consider applying VM requirements to physically-settled FX swaps and FX forwards, such transactions are not subject to margin requirements in Japan or Singapore.