

Enterprise Risk Services
Governance, Regulatory & Risk
Industry Update

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Banking and Securities

FATCA

IRS Notice 2013-69

On 29 October 2013, the Internal Revenue Service (the "IRS") released Notice 2013-69, *FFI agreement for Participating FFI and Reporting Model 2 FFI* (the "Notice"). This Notice provides guidance to foreign financial institutions ("FFIs") entering into an FFI agreement with the IRS under section 1471(b) of the Internal Revenue Code and Section 1.1471-4 of the Treasury Regulations to be treated as participating FFIs. This Notice also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement ("IGA") (reporting Model 2 FFIs) on complying with the terms of an FFI agreement, as modified by IGA.

Section II of this Notice provides background on the statutory and regulatory requirements for FFIs to be exempt from withholding under Chapter 4 of the Internal Revenue Code (the "Code").

Section III of this Notice provides a description of the general responsibilities of participating FFIs and reporting Model 2 FFIs and some of the intended updates to the regulations under Chapter 4 and 61 of the Code and related forms.

Section IV of this Notice describes the procedures for FFIs to register for participating FFI or reporting Model 2 FFI status.

Section V of this Notice provides the draft FFI agreement, which substantially incorporates the provisions set forth in Section 1.1471-4. The FFI agreement will be finalized by 31 December 2013.

HKMA / SFC / HKEX Circulars

On 19 August 2013, the Hong Kong Monetary Authority (the "HKMA") released a circular directing Authorized Institutes ("AIs") to assess the implications of all applicable overseas regulatory requirements including FATCA and ensure compliance, if applicable, by putting in place necessary processes and controls. The HKMA also suggested that the Hong Kong Association of Banks (the "HKAB") and the DTC Association offer appropriate assistance to facilitate the development of good practices for compliance with FATCA and other overseas tax regimes.

On 8 October 2013, Securities and Futures Commission (the "SFC") issued a circular to draw the attention of all Licensed Corporations and Registered Institutions to FATCA. The SFC encouraged Licensed Corporations and Registered Institutions to consider whether they are affected by the obligations imposed on FFIs under

FATCA and to note any announcement made by the Hong Kong Government advising that it has concluded an IGA with the U.S. Government.

On 8 October 2013, Hong Kong Exchanges and Clearing Limited (the "HKEx") also issued a circular to request all participants to assess the potential implications of FATCA on their business operations and where appropriate, consider the need to implement operational and system changes to comply with FATCA.

FFI Registration Website

On 19 August 2013, the IRS announced the launch of the "FATCA Registration Website" which allows FFI to register with the IRS under the FATCA from anywhere in the world, 24 hours a day.

On or after 1 January 2014, FFIs will be able to finalize their registrations by 25 April 2014 in order to be included on the first FFI List to be posted by the IRS on 2 June 2014. As registrations are finalized and approved in 2014, registering FFIs will receive a notice of registration acceptance and will be issued a Global Intermediary Identification Number ("GIIN").

Generally, all FATCA important dates previously announced for the effective date for FFI agreement, the deadline for GIIN registration for the first IRS FFI List, the last date to register for GIIN before withholding begins, the effective date of FFI agreement for registration before withholding begins, and the transition period for affiliated group rule have been pushed back 6 months.

FATCA Milestones and Timelines

FATCA Compliance Action Items	Original Date	New Date
Launch of FFI Registration Website for testing purposes only	15 Jul 2013	19 Aug 2013
Final date for GIIN Registration for inclusion on first FFI List (to avoid withholding)	25 Oct 2013	25 Apr 2014
First Registered FFI List published	2 Dec 2013	2 June 2014
Last date to register for GIIN before withholding begins	31 Dec 2013	30 Jun 2014
Effective date of FFI Agreement for registrations before withholding begins	31 Dec 2013	30 June 2014
30% of U.S. withholding tax will start to apply	1 Jan 2014	1 Jul 2014
Transition Period for affiliated group rule	1 Jan 2016	No change



Basel III

BCBS RCAP

On 15 October 2013, the Basel Committee on Banking Supervision (the "BCBS") released updated procedures, process for conducting jurisdictional assessment under the Regulatory Consistency Assessment Programme (the "RCAP").

The RCAP consists of two distinct but complementary work streams to monitor the timely adoption of Basel III standards, and to assess the consistency and completeness of the adopted standards including the significance of any deviations in the regulatory framework.

The assessment work is carried out on a jurisdictional as well as on a thematic basis. Currently, the focus of the RCAP is put on Basel standards for risk-based capital. This will expand from 2015 to cover Basel III standards on liquidity, leverage and systemically important banks.

HKMA - Basel III Implementation Standard Templates

On 19 August 2013, the HKMA issued the final version of the standard templates (including associated explanatory text) to be used by locally incorporated authorized institutions for the purpose of making disclosure in relation to their capital base under the Banking (Disclosure) (Amendment) Rules 2013.

The standard templates will be required to be used by all locally incorporated AIs ("Authorized Institutions"), except those that are able to meet the exemption criteria outlined in section 3(7) or section 3(8) of the Banking (Disclosure) Rules (the "BDR"), as the case requires.

AIs will be required to use the templates from the date of the publication of their first set of financial statements relating to a balance sheet date on or after 30 June 2013.

In addition, AIs must include the standard disclosure templates in the interim or annual financial statements which it publishes or, alternatively, the interim or annual financial statements must include a direct link to the relevant sections of the AI's website where the full set of completed standard disclosure templates can be found. In this regard, an AI will be required to maintain a "Regulatory Disclosures" section on its website where all the information relating to the disclosure of regulatory capital will be housed. The direct link to this page must be prominently displayed on the home page of an AI's website such that capital related disclosures will be easily available to market participants. In cases where disclosure requirements have been met through publicly available regulatory reports, the Regulatory Disclosures section of an AI's website will have to provide specific links to these reports.

OTC Derivatives

HKEx OTC Derivatives Clearing Services

On 25 November 2013, OTC Clearing Hong Kong (the "OTC Clear") announced that its soft launch of OTC ("Over-The-Counter") derivatives clearing has been completed. OTC Clear is a 75% owned subsidiary of Hong Kong Exchanges and Clearing Limited (the "HKEx"), with 12 financial institutions being its Founding Shareholders holding a collective stake of 25%.

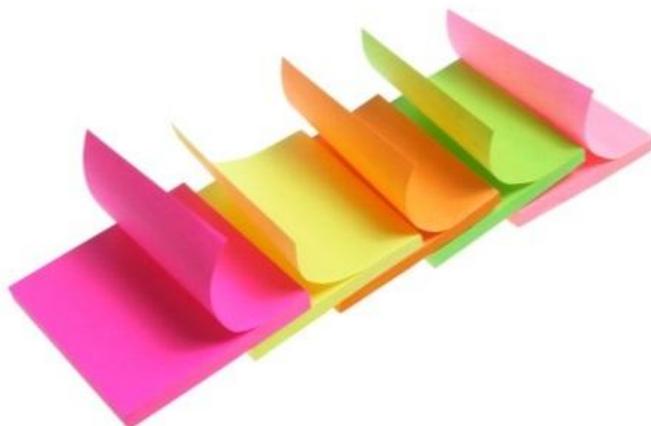
OTC Clear provides clearing of inter-dealer trades on interest rate swap ("IRS") denominated in four currencies: RMB, HKD, USD and Euros. It also offers clearing services for inter-dealer non-deliverable currency forwards ("NDF"), referencing RMB, Taiwan Dollars, Korean Won and the Indian Rupee. Further, OTC Clear plans to introduce client clearing in 2014 after the new legislation through the Securities and Future (Amendment) Bill is in place, and relevant amendments to OTC Clear rules are approved by the SFC.

OTC Clear's first cleared trade was a non-deliverable RMB 7-day repo swap, the first of its kind processed by a clearing house globally.

The Securities and Futures (Amendment) Bill 2013

The Securities and Futures (Amendment) Bill 2013 (the "Bill") was gazetted on 28 June 2013. It is currently being considered by the Legislative Council. It is intended to be the regime established for the regulation of the OTC derivatives market in Hong Kong.

The Bill amends the Securities and Futures Ordinance (the "SFO") to provide for the regulation of participants in the Hong Kong OTC derivatives market by the establishment of two new types of regulated activity under Schedule 5 of the SFO – Type 11 regulated activity (dealing in OTC derivative products or advising on OTC derivative products) and Type 12 regulated activity (providing clearing agency services for OTC derivative transactions). In addition, the existing scope of Type 9 regulated activity (asset management) will be expanded to cover the management of a portfolio of OTC derivative products and the existing scope of Type 7 regulated activity (providing automated trading services) will be expanded to cover the provision of automated trading services for OTC derivative products.



The Bill also provides for the introduction of mandatory OTC reporting and clearing obligations and sets out the transitional arrangements for persons who currently engage in the expanded and new regulated activity.

In addition, the Bill:

- Amends Part XV 'Disclosure of Interests' of the SFO to require that notifications and reports under this Part are filed electronically, and
- Amends the SFO and the Organized and Serious Crimes Ordinance to enable criminal courts to make disgorgement orders for the purpose of recouping gains / profits obtained by illegal acts or market misconduct offence.

HKMA Trade Repository Service Launched

The HKMA's Trade Repository ("HKTR") for OTC derivatives trades in Hong Kong was launched on 29 July 2013.

Trade Reporting

The HKTR provides an electronic system for collecting, keeping and maintaining details of OTC derivatives transactions, primarily for market participants to meet the statutory reporting requirements under the OTC regulatory regime.

Entities eligible to subscribe to the Trade Reporting Service are either: entities subject to mandatory reporting requirement under the OTC regulatory regime; or other entities at the discretion of and subject to conditions specified by the HKMA.

Trade Matching and Confirmation

The HKTR also provides an electronic trade matching and confirmation platform for matching and confirming OTC derivatives transactions, and in conformity with market standards, and submitting the confirmed transactions to the CCP ("Central Counterparty") of the HKEx for clearing. Only clearing members of the OTC derivatives CCP of the HKEx are eligible to subscribe to the Trade Matching and Confirmation Service.



LIBOR / HIBOR Fixing

HKMA SPM CG-7

On 23 August 2013, the HKMA updated and published its Supervisory Policy Manual ("SPM") CG-7 Code of Conduct for Benchmark Submitters (V.2 – 28.08.13) (the "CG-7" or the "Code") to set out the minimum standards on systems of control which the HKMA expects AIs, which are submitting rates for the benchmark fixing process, to put in place, and to provide guidance on what and how to use relevant data in arriving at the data they submit for the fixing process. The CG-7 covers the following basic principles:

Organizational and governance arrangements

AIs must establish and maintain adequate and effective organizational and governance arrangements for the process of making benchmark submissions in line with the Code.

Conflicts of interest

AIs must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making benchmark submissions.

Retention of records

AIs should retain records relevant to the benchmark submission process for a reasonable period of time, in a secure medium that allows the storage of information in a way accessible for future reference, which must not be possible for the records to be manipulated or altered.

Independent reviews

AIs should establish, implement and maintain policies for the regular independent checking of rate submissions and relevant procedures.

Handling complaints and whistleblower reports

AIs should establish, implement and enforce policies and procedures for handling complaints arising from the rate submission process, as well as any whistleblower reports received.

Timely submissions

AIs should implement and maintain systems that are adequate to ensure the consistent and timely delivery of submissions.

CNH HIBOR Fixing

On behalf of the HKMA, on 20 June 2013, the Treasury Markets Association (the "TMA") announced on 24 June 2013 the launch of the new CNH Hong Kong Interbank Offered Rate Fixing ("CNH HIBOR fixing").

Since its announcement in April 2013 on the planned launch of CNH HIBOR fixing, the HKMA has selected 16 banks for contribution of interest rate quotes based on their activity levels in Hong Kong's offshore RMB market, and the TMA has appointed these banks as Contributing Banks for a term of one year. Thomson Reuters has been designated as the Calculating Agent for the computation and dissemination of the CNH HIBOR fixing.

Financial Crime (Anti-Money Laundering / Fraud)

FATF Updated Statements

On 1 November 2013, the HKMA issued a circular to notify all AIs that, the Financial Action Task Force (the "FATF"), on 18 October 2013, has issued updated statement identifying a number of jurisdictions that have strategic deficiencies in their Anti-Money Laundering and Counter-Terrorist Financing ("AML/CFT") regimes.

The statement has 2 key sections.

- (i) Jurisdictions subject to a call on its members and other jurisdictions to apply counter-measures:

Iran: The FATF remains particularly and exceptionally concerned about Iran's failure to address the risk of terrorist financing and the serious threat this poses to the integrity of the international financial system, despite Iran's previous engagement with the FATF and recent submission of information. The FATF reaffirms its call on its members and other jurisdictions to continue to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risk emanating from the jurisdiction.

Democratic People's Republic of Korea (the "DPRK"): The FATF remains concerned by the DPRK's failure to address the significant deficiencies in its AML/CFT regime and the serious threat this poses to the integrity of the international financial system. The FATF calls on its members and other jurisdictions to continue to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risk emanating from the jurisdiction.

- (ii) Jurisdictions with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies:

Algeria, Ecuador, Ethiopia, Indonesia, Kenya, Myanmar, Pakistan, Syria, Tanzania, Turkey and Yemen

These jurisdictions were listed by the FATF as jurisdictions with strategic AML/CFT deficiencies but have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies as of October 2013.

The HKMA therefore cautioned AIs to continue to apply the measures specified in the HKMA's circular letter when handling transactions related to Iran, treat transactions associated with DPRK as posing a Higher AML/CFT risk and subject them to increased scrutiny and enhanced due diligence, and consider applying increased scrutiny to transactions associated with other listed jurisdictions, including enhanced due diligence and ongoing monitoring.

Globally Systemically Important Banks (G-SIBs)

29 G-SIBs

In November 2013, the Financial Stability Board (the "FSB") and the BCBS have updated the list of G-SIBs, using end-2012 data and an updated assessment methodology published by the BCBS in July 2013. One bank has been added to the list of banking groups identified as G-SIBs in 2012, increasing the overall number from 28 to 29. Industrial and Commercial Bank of China Limited ("ICBC") has been added.

For G-SIBs, the higher loss absorbency requirements will be phased in from January 2016, with full implementation by January 2019. The initial requirements in January 2016 will apply to G-SIBs identified in November 2014, using the buckets for higher loss absorbency at that date. Thereafter, the higher loss absorbency requirements for the G-SIBs identified in the annual update each November will apply to them as from January fourteen months later.

Bucket	G-SIBs in alphabetical order within each bucket
5 (3.5%)	Empty
4 (2.5%)	HSBC, JP Morgan Chase
3 (2.0%)	Barclays, BNP Paribas, Citigroup, Deutsche Bank
2 (1.5%)	Bank of America, Credit Suisse, Goldman Sachs, Group Credit Agricole, Mitsubishi UFJ FG, Morgan Stanley, Royal Bank of Scotland, UBS
1 (1.0%)	Bank of China, Bank of New York Mellon, BBVA, Group BPCE, Industrial and Commercial Bank of China Limited, ING Bank, Mizuho FG, Nordea, Santander, Societe Generale, Standard Chartered, State Street, Sumitomo Mitsui FG, Unicredit Group, Well Fargo

NFC Mobile Payment

HKAB Best Practice

On 25 November 2013, the HKAB issued the Best Practice for New Field Communication (the "NFC") Mobile Payment (the "Best Practice").

The Best Practice contains a set of common standards and guidelines covering the following three aspects:

- Security requirements: to ensure the security of e-wallets and the payment process, thereby ensuring the security of services;
- Technical standards: to facilitate interoperability among different NFC infrastructures, mobile devices and terminals and the continued development of NFC mobile payment services by establishing standards with reference to widely applied industry and international standards; and
- Operational process: to enhance user experience by introducing standardized operational process.

Insurance

Solvency II

EIOPA Guidelines

In October 2013, European Insurance and Occupational Pensions Authority (the "EIOPA") issued guidelines for preparation for Solvency II (the "Guidelines"). These aim to ensure that the National Competent Authorities, insurance companies and groups take active steps towards a consistent and convergent implementation of key elements of Solvency II.

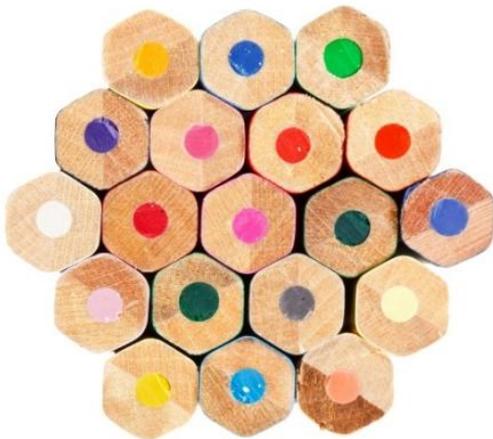
EIOPA Guidelines cover the areas of:

System of Governance

These guidelines address most of the future Pillar 2 principles, apart from the Own Risk and Solvency Assessment (the "ORSA") (addressed in the FLAOR guidelines). No material changes have been made to the guidelines subject to consultation. Most changes to the guidelines are related to the Actuarial function.

Forward Looking Assessment of Own Risks ("FLAOR")

These guidelines address the preparation for the implementation of ORSA. It confirms that insurance and reinsurance undertakings (the "Undertakings") are expected to perform an assessment of their overall solvency needs starting in 2014. However, the assessment of whether the Undertakings would "comply on a continuous basis with the Solvency II regulatory capital requirements and the requirements on the Solvency II technical provisions" has been postponed from 2014 to 2015. The latter requirement would involve those Undertakings representing at least 80% of the market share, as stated in the consultation paper.



Submission of Information to National Competent Authorities (the "NCAs")

These guidelines cover the requirements and criteria for the submission of quantitative and qualitative (i.e., narrative information) information to the corresponding NCAs by insurance and reinsurance undertakings and the participating insurance and reinsurance undertaking or insurance holding company falling within the scope of these guidelines, before the actual implementation of Solvency II.

Quantitative information submission remains subject to the same thresholds as stated in the consultation paper (i.e., insurance and reinsurance undertakings that represent at least 80 % of the national market share are required to submit annual quantitative information, and insurance and reinsurance undertakings that represent 50% of the national market share are required to submit the set of quarterly information). However, the national market share of the branch offices of foreign undertakings should be excluded from the national market share, for the purpose of national market share calculations.

EIOPA has added two weeks to the annual submission deadline for individual and groups annual reporting in the preparatory phase, i.e., a deadline for submission of 22 weeks for individual and 28 weeks for group reports, after reporting year-end starting from the end of 2014. The quarterly deadline remains unchanged at 8 weeks. Finally, EIOPA explicitly recognizes in the introductory section that the information to be included in the quarterly balance sheet as of September 2015 may use simplifications for the technical provisions and, for the other quantitative items, may use estimates to a greater extent than the annual data, for proportionality and materiality reasons. This does not however relax the requirement in that the reported data must comply with the Solvency II standards.

Pre-application for Internal Models

These guidelines deal with the issues that the corresponding NCAs should consider in the pre-application process. EIOPA has added the requirement that undertakings should submit the standard formula Solvency Capital Requirement (the "SCR") (covering both overall SCR and specific risk categories within the scope of the internal mode) at reference dates and deadlines to be agreed with the corresponding NCAs, as part of the pre-application process. The guidelines on the use of the internal model to support decision-making have been simplified.

Investment Management

AIFMD

AIFMD

The Alternative Investment Fund Managers Directive (the "AIFMD") came into force on 22 July 2013 and there have been a number of developments this quarter to ensure firms understand and are applying the rules correctly.

Such could have implications on Hong Kong-based Alternative Investment Fund Managers ("AIFMs") who market AIFs ("Alternative Investment Funds") to European professional investors.

AIFMR

The Alternative Investment Fund Managers Regulations 2013 ("AIFMR") also came into force on 22 July 2013 and implemented the majority of the provisions contained in the AIFMD.

On the same day, Her Majesty's ("HM's") Treasury published a transposition table which shows which provisions of the AIFMD are being transposed into the Financial Conduct Authority (the "FCA") Handbook and/or through secondary legislation and which provisions require no transposition.

ESMA Remuneration Policies under AIFMD

In addition, on 3 July 2013, the European Securities and Markets Authority (the "ESMA") published its guidelines on sound remuneration policies under the AIFMD. The guidelines relate to remuneration policies and practices for AIFMs and their identified staff. Their guidelines seek to ensure the uniform and consistent application of the provisions on remuneration in articles 13 and 22(2)(e) and (f) of, and Annex II to the AIFMD. The guidelines apply from 22 July 2013, subject to the transitional provisions of the AIFMD.

The FCA has since stated that it has written to the ESMA to confirm that it will comply with the guidelines on remuneration policies under the AIFMD. The FCA also confirmed that a firm that holds the permission of managing an Alternative Investment Fund ("AIF") and is a full-scope UK AIFM must make every effort to comply with the guidelines. Firms taking advantage of the transitional provisions in the UK's AIFMD implementation do not need to comply with the guidelines until they are authorized as full-scope UK AIFMs. However, the FCA recommends that these firms start their preparations for implementing the guidelines as soon as possible.

FCA Updates on AIFMD Application Deadlines

On 2 August 2013, the FCA confirmed the following key deadlines for applying for authorization that are relevant to firms already managing AIFs before 22 July 2013:

Deadlines	Authorization Application
No later than 22 January 2014	This is the suggested application deadline for firms seeking an authorization or a Variation of Permission under AIFMD (including small authorized UK AIFMs and depositaries) to allow the FCA up to six months to determine the application
22 April 2014	Firms that need to be authorized as full-scope UK AIFMs or need to be registered, should submit a complete application no later than this date
Until 21 July 2014:	Firms already managing AIFs may continue to manage an AIF without being either authorized with the permission of managing an AIF, or registered as a small registered UK AIFM
22 July 2014	This is the deadline by which firms intending to continue the above activities after that date must apply to be authorized or registered (similar provisions apply to firms requiring authorization to act as trustee or depositary of an AIF)

The FCA is not obliged to determine before 22 July 2014 any application received after 22 April 2014. Therefore, any firm that believes it will not be able to meet the deadlines should contact the FCA as soon as possible.



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