

Commodities regulation in Singapore Part 2: OTC derivatives reporting

June 2019



Commodities regulation in Singapore - Part 2: OTC derivatives reporting

Introduction

For commodity groups with operations in Singapore, navigating the regulatory perimeter is becoming ever more complex. Recent years have seen an increase in regulatory requirements affecting commodities businesses, largely owing to reforms driven by the G20 and implemented by the Monetary Authority of Singapore (MAS). Groups operating in this sector therefore need to verify which, if any, of their activities are subject to regulation, and ensure that their regulated activities are conducted in a compliant manner.

We have prepared a **four-part guide** setting out the key Singapore regulatory requirements and restrictions which groups operating in the commodities sector need to be aware of, and the practical steps they can apply to remain compliant. For the first part of this guide, on licensing, please follow this [link](#). The third and fourth parts will cover market conduct, and anti-money laundering and countering the financing of terrorism.

This second part of our guide outlines how commodity groups may be affected by the Singapore reporting requirements relating to over-the-counter (OTC) derivatives contracts. Please note we have assumed, for the purposes of this part, that the commodity group does not include any entity licensed by the MAS.

OTC derivative reporting requirements

Under the Securities and Futures Act, certain persons who trade or book specified types of OTC derivatives contracts in Singapore must report specified information on their transactions to an MAS-licensed trade repository within two business days of execution. The reporting framework applies in respect of commodity, FX, credit, interest rate and equity derivatives contracts. However, reporting obligations for different categories of transaction are still being phased in on a staggered basis, and not all reporting obligations have taken effect yet.

Persons subject to this requirement principally include certain types of MAS-licensed financial institution, as well as significant derivatives holders (SDHs). Commodity groups which do not have any MAS-licensed entity but which trade or book OTC derivatives contracts in Singapore must assess whether any of their entities qualifies as an SDH and whether, consequently, a requirement to report relevant transactions arises.

SDH assessment

An SDH is a person not licensed by the MAS who is resident in Singapore and whose aggregate gross notional amount of specified derivatives contracts which are booked or traded in Singapore for the year exceeds S\$8 billion.

A derivatives contract is considered to be 'booked' in Singapore if the person's place of business is in Singapore and the derivatives contract exposure is reflected on the balance sheet or profit and loss accounts of that person, and 'traded' in Singapore if the contract is executed by a trader employed in Singapore (which includes any trader seconded to Singapore or present in Singapore for more than 30 days).

The aggregate gross notional amount for the year must be assessed on the last day of every quarter. Where the assessment concludes that a reporting obligation is triggered, the SDH has a further three months to meet the reporting obligations. The following types of OTC derivatives contracts must be included in the calculation:

Last day of the quarter is:

Derivatives contracts to be included

between 1 August 2015 and 1 April 2019	<ul style="list-style-type: none">Interest rate derivatives contracts booked in SingaporeCredit derivatives contracts booked in Singapore
between 1 April 2019 and 1 April 2020	<ul style="list-style-type: none">Interest rate derivatives contracts traded or booked in SingaporeCredit derivatives contracts booked in Singapore
after 1 April 2020	<ul style="list-style-type: none">Interest rate, credit, foreign exchange, commodity and equity derivatives contracts traded or booked in Singapore

Excluded contracts

For the purposes of the reporting rules, the definition of 'commodity derivatives contract' does not include (among others) contracts for the sale and purchase of one or more commodities which have the purpose of fulfilling the needs of the day-to-day operations of the business of one or more of the parties to the contract and which require the seller to deliver, and the buyer to accept delivery of, the underlying commodities (notwithstanding the existence of any cash settlement option) (the End User Exclusion). Consequently, such contracts do not need to be included in the above calculation of gross notional amount for the SDH assessment, and do not need to be reported.

The definitions of other types of derivatives contracts are also subject to certain exclusions, which must be considered where relevant.

Contracts to be reported

Once it has been established that a person is an SDH, the person must report relevant derivatives contracts from the reporting commencement dates set out in the timetable below.

Reportable derivatives contracts include contracts which are booked in Singapore and which, as at the reporting commencement date, have a remaining maturity of at least one year (and these must be reported within six months from the reporting commencement date).

Type of derivatives contract	Reporting commencement date
Interest rate derivatives contracts booked in Singapore	1 October 2014 (for certain types of information – with further information to be reported from 1 November 2015 or 1 October 2018 depending on the type of information)
Interest rate derivatives contracts traded in Singapore	1 October 2019
Credit derivatives contracts booked in Singapore	1 October 2014 (for certain types of information – with further information to be reported from 1 November 2015 or 1 October 2018 depending on the type of information)
Credit derivatives contracts traded in Singapore	1 October 2019
Commodity derivatives contracts booked in Singapore	1 October 2020
Commodity derivatives contracts traded in Singapore	1 October 2020
Foreign exchange derivatives contracts booked in Singapore	1 October 2020
Foreign exchange derivatives contracts traded in Singapore	1 October 2020
Equity derivatives contracts booked in Singapore	1 October 2020
Equity derivatives contracts traded in Singapore	1 October 2020

Use of agents

An SDH needs to report a derivatives contract to which it is a party regardless of whether the contract is entered into by an agent on its behalf. Where a reporting obligation applies to the SDH by virtue of trades booked and/or executed by the SDH, any agent appointed by the SDH will not itself be subject to a reporting obligation in respect of those trades.

Exemptions

Derivatives contracts do not need to be reported where the counterparty is a specified type of person, including (among others) the government of Singapore, a statutory board, a central bank or a specified type of multilateral development agency or international organisation.

Other G20 requirements relating to derivatives

At present, unregulated entities are not subject to the other key regulatory frameworks relating to OTC derivatives contracts introduced by the MAS pursuant to Singapore's G20 commitments. In particular, margin requirements, mandatory clearing and trading requirements, and risk mitigation requirements currently only apply to certain banks, merchant banks and/or finance companies (as applicable) in Singapore. However, commodity groups should keep the development of these obligations under review with a view to assessing whether they may, in due course, be extended so as to apply to any of their group entities.

Recommended practical steps

To ensure that your group operates in compliance with the Singapore derivatives reporting framework, you may wish to ensure that the following practical steps have been taken:

- **Booking or trading in Singapore:** As a first step, it should be determined whether the group books or trades any OTC derivatives contracts in Singapore, as per the definitions outlined above.
- **Relevant derivatives contracts:** If OTC derivatives contracts are booked or traded in Singapore, it should be assessed:
 - which of these are relevant derivatives contracts that count towards the SDH reporting calculation (taking account, for example, of the End User Exclusion which applies in relation to commodity derivatives); and
 - whether the gross notional volume of relevant derivatives contracts booked or traded in Singapore exceeds the reporting threshold of S\$8 billion.
- **Exemptions:** It should also be assessed whether any transactions in relevant derivatives contracts fall within an exemption, such that they do not need to be reported (e.g., where the counterparty is a Singapore governmental body or international organisation).
- **Practical safeguards:** To ensure that your group's activities continue to comply with the Singapore derivatives reporting regime on an ongoing basis, it is advisable to ensure that appropriate practical safeguards are built into the group's compliance infrastructure. In particular:
 - where the gross notional volume of relevant derivatives contracts booked or traded in Singapore is currently below the S\$8 billion reporting threshold but could be at risk of crossing the threshold, the group should ensure it is able to monitor booking and trading activities so that reporting measures can be put in place if and when the threshold is crossed; and
 - groups for whom the reporting obligation is already triggered should ensure they have monitoring arrangements in place to accurately capture and report reportable transactions on an ongoing basis.



“Commodity groups which do not have any MAS licensed-entity but which trade or book OTC derivatives contracts in Singapore must assess whether a requirement to report relevant transactions arises.”

Authors

If you have questions or would like additional information on the material covered in this article, please contact one of the authors.



Hagen Rooke
Counsel
Singapore
+65 6320 5363
hrooke@reedsmith.com



Peter Zaman
Partner
Singapore
+65 6320 5307
pzaman@reedsmith.com



Carolyn Chia
Consultant, Resource Law LLC
Singapore
+65 6805 7329
cchia@resourcelawasia.com



Tania Teng
Associate, Resource Law LLC
Singapore
+65 6805 7323
tteng@resourcelawasia.com

Reed Smith LLP is licensed to operate as a foreign law practice in Singapore under the name and style, Reed Smith Pte Ltd (hereafter collectively, "Reed Smith"). Where advice on Singapore law is required, we will refer the matter to and work with Reed Smith's Formal Law Alliance partner in Singapore, Resource Law LLC, where necessary.

About Reed Smith's Energy & Natural Resources Group

Reed Smith's Energy & Natural Resources Group is multidisciplinary, combining regulatory, transactional, financial and litigation disciplines with a focus on clients operating in the energy and natural resources (ENR) sector and related industries. ENR lawyers are located in all of Reed Smith's offices in the United States, Europe, the Middle East and Asia, providing an exceptional global platform for businesses engaged in the extraction, production and distribution of ENR products and provision of ENR services, or the financing of energy and natural resources projects, anywhere in the world.

Our practitioners work in conjunction with other Reed Smith lawyers who have in-depth knowledge and experience in a range of other disciplines, including litigation, corporate, shipping, finance, global regulatory enforcement, tax and real estate.

Reed Smith is a dynamic international law firm, dedicated to helping clients move their businesses forward.

Our long-standing relationships, international outlook, and collaborative structure make us the go-to partner for speedy resolution of complex disputes, transactions, and regulatory matters.



This document is not intended to provide legal advice to be used in a specific fact situation; the contents are for informational purposes only. "Reed Smith" refers to Reed Smith LLP and related entities. © Reed Smith LLP 2019

- ABU DHABI
- ATHENS
- AUSTIN
- BEIJING
- CENTURY CITY
- CHICAGO
- DALLAS
- DUBAI
- FRANKFURT
- HONG KONG
- HOUSTON
- KAZAKHSTAN
- LONDON
- LOS ANGELES
- MIAMI
- MUNICH
- NEW YORK
- PARIS
- PHILADELPHIA
- PITTSBURGH
- PRINCETON
- RICHMOND
- SAN FRANCISCO
- SHANGHAI
- SILICON VALLEY
- SINGAPORE
- TYSONS
- WASHINGTON, D.C.
- WILMINGTON