

CONSULTATION PAPER
ON
THIRD PARTY CLEARING

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Hong Kong Exchanges and Clearing Limited

FOREWORD

The purpose of this paper is to provide an overview on the concept of Third Party Clearing proposed by Hong Kong Exchanges and Clearing Ltd. (HKEx) through Hong Kong Securities Clearing Co. Ltd. (HKSCC), its wholly owned subsidiary.

Third Party Clearing is a new concept introduced to Exchange Participants¹ who may choose to outsource their clearing and settlement commitments in respect of Exchange trades to a third party clearer. HKEx considered various issues and alternatives when designing the working model and assessed them against the market needs, prevalent market practices and risk exposures to HKSCC as the Clearing House.

This paper highlights the key features of Third Party Clearing and provides information as a reference to Exchange and CCASS² Participants in determining the type of participantship that best suits their business needs. This paper also serves as a basis for discussion with market players who will be invited to comment on the proposed model. Other than existing market practitioners, financial institutions that are interested in providing securities transaction clearing services under the Third Party Clearing model will also be invited to discuss and comment on the proposed Third Party Clearing model as described in this paper.

¹ Participants of the Stock Exchange of Hong Kong.

² The Central Clearing and Settlement System of HKSCC.

EXECUTIVE SUMMARY

In Hong Kong, while the concept of Third Party Clearing has long been practiced in the derivatives market, it is not applicable for the clearing and settlement of securities. As both the securities and derivatives markets are now under common ownership, it is seen appropriate to extend Third Party Clearing services to Exchange Participants.

The Securities and Futures Commission (SFC) has also indicated its support to the introduction of Third Party Clearing as a market development measure to improve the settlement risk and efficiency of the securities market. In recent discussions on SCEFI³ II initiatives, Third Party Clearing was considered an important component of the securities clearing infrastructure for the Hong Kong market.

With the introduction of Third Party Clearing, existing and prospective market participants will no longer be required to manage both trading and clearing activities. They will be able to formulate their business models in a more flexible way. They can have different options when choosing the types of participation in HKEx that meet their business requirements. This in turn will help diversify the participant base of both the Stock Exchange of Hong Kong (SEHK) and Hong Kong Securities Clearing Co. Ltd. (HKSCC) and as a result, may improve the risk profile of the markets managed by them.

Third Party Clearing will increase the concentration of trades among fewer clearing participants, which may result in increasing netting efficiency and improving settlement efficiency in the securities market. While the overall settlement risks of the clearing system will be reduced, more overseas players may be attracted to invest in the Hong Kong market. The status of Hong Kong as a major financial center in global markets will be strengthened.

The proposed Third Party Clearing model provides for an automatic flow of all executed trades from a Non-clearing Participant (NCP), an Exchange Participant who is not a CCASS Participant, to a designated General Clearing Participant (GCP) who engages in clearing and settlement operations. The arrangement will be governed by an agreement between the two parties.

To cater for the implementation of Third Party Clearing in CCASS, new categories of participation will be introduced for market participants who are interested in providing Third Party Clearing services. The following two types of CCASS Participants are proposed.

³ Steering Committee on Enhancement of the Financial Infrastructure for Hong Kong.

Participant Category	Nature of Participantship	Required Participantship
General Clearing Participant (GCP)	Either a registered dealer with or without Stock Exchange trading rights or an authorised institution under the Banking ordinance. It can clear trades executed on SEHK for itself and/or for other Non-clearing participants.	SEHK and/or HKSCC
Direct Clearing Participant (DCP)	An Exchange Participant who clears trades for itself only.	SEHK and HKSCC

Existing CCASS Participants will be able to change the types of CCASS participantship upon the implementation of Third Party Clearing provided that they meet the admission criteria and capital requirements of participantship.

Although the proposed model will be developed based on the current legal framework, there are still a number of legal issues that need to be addressed. The computation of securities dealers' liquid capital requirements under the Financial Resources Rules (FRR) of the Securities and Futures Commission Ordinance is a key area that has to be determined for the new types of participantship. HKSCC and SFC will further examine this issue.

Amendments to the existing Rules of SEHK and CCASS Rules are also necessary. However, the existing operational framework of CCASS will remain unchanged as far as practicable to minimise inconvenience to CCASS Participants. CCASS Rules and Operational Procedures will be revised to complement the recommended working model. As the model involves only the take-up of clearing obligations by a third party clearer, there is no change in beneficial ownership of the underlying trade. HKSCC will confirm with the Inland Revenue Department (IRD) that the change of clearing party will not cause any stamp duty issues.

1. Introduction

HKEx is planning to introduce Third Party Clearing (TPC) through HKSCC to the securities market in Hong Kong. This document outlines the proposed model and its key features for discussion purposes.

In principle, the introduction of TPC will enable Exchange Participants to give up their clearing and settlement obligations of all trades executed by them to a third party clearer of HKSCC, which will then clear and settle the trades in CCASS as principal.

The proposed TPC model has been designed with reference to other overseas securities markets that have TPC in place. It provides the automatic flow of all executed Exchange trades from an NCP to a designated GCP which can clear its own trades and also the trades executed by other NCP in CCASS.

With the introduction of TPC, new types of participation in CCASS will be added:

- General Clearing Participant (GCP)
- Direct Clearing Participant (DCP)

In addition to explaining the proposed TPC working model and participant structure, their implications for the existing operations of CCASS Participants in the following areas are also described in this paper:

- Settlement Arrangement with GCP
- Termination of TPC Arrangement
- Risk Management
- Depository and Nominee Services

Finally, we will briefly highlight the following regulatory and legal areas, which will require further study in conjunction with the SFC and Inland Revenue Department (IRD) prior to the introduction of TPC:

- Financial Resources Rules
- Stamp Duty Ordinance

2. Benefits of Third Party Clearing

The provision of TPC by HKEx will benefit the securities market in the following ways:

- More choices of participants
- Higher netting efficiency
- More efficient use of capital
- Lower settlement costs
- Lower settlement risks in the clearing system

2.1 More choices of participants

Currently, an Exchange Participant can execute trades in AMS/3 and clear its own trades in CCASS. That means an Exchange Participant has to be a Broker Participant as well in accordance with the Exchange Rules. With the implementation of TPC, an Exchange Participant has a choice of carrying out only trading business while outsourcing the clearing function to a third party clearer. Since different types of participants will have different admission criteria and capital requirements, existing Exchange and CCASS Participants may apply for a particular participants according to their business needs and financial strength. Over time, the expansion of participants will provide more choices and flexibility for other market players when they assess the cost of entry to the Hong Kong securities market. Consequently, it is expected that more local and overseas institutions will be attracted to join SEHK or HKSCC as Participants.

2.2 Higher netting efficiency

The introduction of TPC may result in a reduction in the overall number of CCASS Participants over time as more Exchange Participants may turn to appoint GCP to clear and settle their trades with CCASS. This will result in a concentration of clearing activities under a relatively smaller group of GCP. As GCP will be allowed to net all CNS positions created by their NCP, the netting efficiency will be higher which in turn will improve the settlement efficiency in CCASS.

2.3 More efficient use of capital

Since NCP need only focus on their trading business as their clearing and settlement operations are being handled by GCP, they will not be required to fulfill the additional funding requirements arising from HKSCC's risk management measures such as guarantee fund contribution, marks and collateral. With GCP, the overall funding requirements will also be reduced as a result of the higher netting efficiency. Subject to discussion with SFC, the Financial Resources Rules (FRR) requirements and capital requirements for NCP may be relaxed through a TPC arrangement. These factors will require less working capital to support clearing activities and the capital freed up can be used for other business and investment opportunities. Alternatively, the financial resources can be re-deployed to developing client servicing and trading activities.

2.4 Lower settlement costs

TPC will enable greater economies of scale in clearing and settlement operations through the use of GCP. NCP will be able to utilise services from GCP who can handle large volumes of trades at relatively lower processing cost. This will help reduce the transaction costs for investors.

2.5 Lower settlement risks in the clearing system

As the number of Exchange Participants choosing TPC increases, GCP who are required to maintain higher paid up share capital will provide stronger financial backing to support the clearing business and fulfill their clearing and settlement obligations. This will help mitigate settlement risk in the longer run.

3. Recommended Working Model

3.1 Additional Types of Participantship

There will be two new types of participantship to replace the existing Broker Participants with the introduction of TPC:

- General Clearing Participant (GCP), and
- Direct Clearing Participant (DCP).

3.1.1 Admission Criteria

- ***GCP***

Under the existing CCASS Rules, only Broker Participants are allowed to clear and settle Exchange trades executed on SEHK in CCASS. However, a GCP is not necessarily required to hold a Stock Exchange trading right, but can still clear securities transactions as principal on behalf of Non-clearing Participants (NCP).

The GCP participantship will be offered to Exchange Participants as well as companies with a registered dealer licence. Authorised institutions that are approved under the Banking Ordinance may also be accepted as GCP.

A GCP can clear its own trades (if it is an Exchange Participant) and accept all the trades executed by an NCP for clearing under the TPC arrangement. An NCP has to appoint a GCP as a third party clearer before it is allowed to commence trading in SEHK. An agreement has to be submitted to HKSCC for approval each time a GCP is appointed by an NCP to clear its trades.

- ***DCP***

Only Exchange Participants are eligible to become DCP. A DCP can only clear its own trades. It cannot be appointed by an NCP as a designated third party clearer. Existing Broker Participants will automatically become DCP under the new participantship structure. All their existing rights and obligations in SEHK and HKSCC will be unchanged.

The current types of participantship in CCASS, Custodians, Stock Pledgees, Stock Lenders, Clearing Agency and Investor Participants, will remain the same, and the category of Broker Participant will no longer exist. Broker Participants will be re-classified as DCP automatically upon the launch of TPC. However, they can also choose to change their participantship and become GCP. Likewise, existing Custodian Participants who wish to perform both custody and clearing functions in CCASS can apply to become GCP. In either case, they must meet GCP admission criteria and capital requirements.

The eligibility for the two new categories of Participants is summarised in the table below:

Category	A registered dealer under the Securities Ordinance		Authorised Institutions under the Banking Ordinance
	Exchange Participant	Non-Exchange Participant	
General Clearing Participant (GCP)	Yes	Yes	Yes
Direct Clearing Participant (DCP)	Yes	No	No

3.1.2 Capital Requirements

As with the existing CCASS Broker Participants, HKSCC will not set any minimum capital requirements for DCP as they are also required to be Exchange Participants and meet the Financial Resources Rules (FRR) as determined by the SFC. The proposed minimum capital requirement for a GCP who is a registered dealer will be HK\$25,000,000. This is in line with what is required by a GCP of HKFE Clearing Corporation Ltd. Authorised Institutions under the Banking Ordinance who wish to become GCP will have to maintain a minimum issued and net paid up share capital of HK\$100,000,000, which is in line with the capital requirement for existing CCASS Custodian Participants.

3.1.3 Admission Fees

All CCASS Participants including GCP and DCP must pay an admission fee to HKSCC. The current admission fees for Broker and Custodian Participants are suggested to apply for DCP and GCP.

The following table summarises the capital requirements for the new types of participants in CCASS:

Category	Admission Fees	Minimum Capital
General Clearing Participant (GCP) – Registered dealer – Authorised Institutions	HK\$50,000 HK\$1,000,000	HK\$25,000,000 HK\$100,000,000
Direct Clearing Participant (DCP)	HK\$50,000	In accordance with Financial Resources Rules as determined by the SFC

Apart from these admission and financial requirements, CCASS Participants, including GCP and DCP should have other qualifications as stipulated by HKSCC, including experience in clearing operations, operational capabilities such as qualified staff, computer equipment, internal risk management and control systems. They will have to demonstrate their business capabilities to the satisfaction of HKSCC.

3.2 Third Party Clearing Model

The TPC model proposed in this paper is applicable to both Continuous Net Settlement (CNS) and Isolated Trades (IT) in CCASS.

Details of the TPC model are outlined below.

- This model refers to a trade give up arrangement between an NCP and a GCP under which trades executed on SEHK automatically flow from the NCP to the GCP. In setting up this arrangement, the NCP should appoint a GCP to take up its clearing obligations as principal of all the related trades executed on SEHK by entering into an agreement between themselves. This agreement should incorporate the terms and conditions prescribed by HKEx⁴ and be lodged with HKSCC for approval prior to the commencement of trading.

⁴ Details of the terms and conditions are yet to be determined.

- At present, AMS/3, the trading system of SEHK, provides real-time information on both open orders and matched trades to Exchange Participants. Depending on the commercial arrangement between the NCP and the GCP, the NCP would also be able to pass this trading related information to its appointed GCP for trade surveillance purposes, and if needed, direct systems interface can be established to capture the data on a real-time basis.
- As all trades executed by an NCP will be cleared by its appointed GCP, the clearing and settlement obligations will be immediately taken up by the GCP. These trades will be captured by CCASS in the name of the GCP. Thereafter, these trades will be processed either by CNS or as IT.
- For trades settled under CNS, HKSCC will act as the central counterparty to the GCP by novation of trades and guarantee their settlement. It follows that all trades of the GCP including those trades from NCP will be netted to achieve the highest netting efficiency. Trade information in respect of each NCP that the GCP provides the clearing services will be made available to the GCP for monitoring purposes.
- Gross settlement of IT will be on bilateral basis directly with the original transaction counterparty of the NCP.
- The existing process for trade amendments of error trades will remain unchanged although when processed by CCASS, these amended trades will be posted to the account of the GCP.

The application of the TPC arrangements for NCP, GCP and DCP are as follows.

	Proposed TPC Model	
	Give up	Take-up
Non-clearing participant (NCP)	YES To GCP	NO
General Clearing Participant (GCP)	NO	YES From NCP
Direct Clearing Participant (DCP)	NO	NO

3.3 Settlement Arrangement with GCP

An NCP who is holding securities for its clients has the following options for securities settlement arrangement with its appointed GCP.

3.3.1 NCP to open an account with GCP

Since NCP will no longer be required to maintain a CCASS account, they may deposit all their clients' securities with their appointed GCP in its own nominee names. Existing procedures allow an NCP to deposit client securities into the CCASS account of a GCP provided that a properly authorised deposit form from the GCP is attached with the share certificates.

The segregated account with statements offered by HKSCC if used can serve for the NCP as an additional record of securities movement information directly from CCASS. The GCP should be granted the authority in its Third Party Clearing Agreement with the NCP to access securities of the NCP for CNS settlement purposes.

3.3.2 Clients to open accounts with GCP

Other than CCASS operations, an NCP may also choose to outsource the client settlement operations and custodian services to a GCP. In this case, the NCP's clients can open accounts directly with the GCP while utilising the NCP's trading related services. All back office operations of the NCP, including client settlement and nominee functions, can then be outsourced to the GCP. This should further improve settlement efficiency as the GCP has direct access to the clients' accounts to manage settlement activities.

3.3.3 NCP to open a custodian account in CCASS

Where the NCP has a unique business need to keep separate their client settlement operations from the GCP and continue to provide independent custodial and nominee services to its clients, it can maintain its own CCASS account and apply to become a Custodian Participant⁵. In this case, when drafting the Third Party Clearing Agreement, consideration should be given to allow for GCP's access to the NCP's securities in CCASS should the NCP fail to fulfill its obligations.

In addition, since CCASS settlement will need to be effected by transferring securities from the NCP's account to the appointed GCP's account in CCASS through the use of Settlement Instructions (SIs), the NCP may not reap the full benefits of TPC as SIs cost both the NCP and the GCP.

⁵ An Investor Participant (IP) account cannot be used in this case by the NCP as all securities held by an IP should be for its own account and not as agent or trustee for any other person according to CCASS Rules.

NCPs will need to manage funding arising from client settlements and be able to settle their obligations with the GCPs. Nevertheless, the GCPs have to make sure that they have funding arrangement in place to settle with CCASS regardless of availability of funds from the NCPs.

3.4 Termination of TPC Arrangement

Either party to a Third Party Clearing Agreement may request termination of the Agreement provided that prior notice is given to HKSCC. Other than voluntary termination, a GCP or NCP in default may also lead to the termination of the Agreement. The existing default procedures of SEHK and HKSCC governing Broker Participants will continue to apply to Exchange Participants and CCASS Participants.

3.4.1 Voluntary Termination

Upon receipt of a notice from a GCP indicating its intention to terminate its TPC agreement with an NCP, HKSCC will notify SEHK to suspend the NCP from trading unless the NCP is able to appoint another GCP by a specified time. The termination of TPC agreement will only take effect when SEHK has suspended the trading facility of the NCP. Nevertheless, the GCP is still obliged to settle all the trades executed by the NCP prior to the termination. The same procedures are applicable for termination of a TPC Agreement initiated by the NCP.

3.4.2 Termination due to Default

If the appointed GCP is in default and cannot fulfill its clearing obligations in CCASS, HKSCC will exercise its rights under CCASS Rules to terminate its participation in CCASS. The trading rights of the NCP concerned will also be suspended by SEHK unless the NCP is able to appoint another GCP by a specified time.

3.5 Risk Management

GCP and DCP will be subject to the same risk management measures as stipulated in CCASS Rules and Operational Procedures, which currently apply to Broker Participants. These, in relation to Exchange trades, include, but are not restricted to, the following :

3.5.1 Contribution to Clearing House Guarantee Funds

Currently, Broker Participants are required to contribute a minimum of HK\$50,000 in respect of each trading right held in SEHK. GCP who do not possess a trading right will also require to make this contribution. In addition, GCP have to pay additional minimum contribution of HK\$50,000 in respect of each trading right held by each of the NCP to whom they provide clearing services.

The existing mechanism of collecting additional contributions from Broker Participants will be applicable to GCP and DCP .

3.5.2 Collection of Marks Obligations and Collateral

Under the current system, novation is exercised for all market contracts and HKSCC collects marks prior to settlement on T+2 based on the CNS trades/positions recorded in the account of Broker Participants. The same principle and process will apply to TPC. Both GCPs and DCPs will be obliged to settle both intra-day and day-end marks in respect of the trades to be cleared in their accounts.

Furthermore, HKSCC continuously monitors the risk exposure to CCASS Participants. Where appropriate, HKSCC may require a Broker Participant to provide collateral. The same principle will apply to GCP and DCP after TPC is introduced. The amount of collateral required will be determined by HKSCC after taking into account its exposure posed to GCP and DCP.

3.5.3 Securities On-hold

Under current money settlement arrangement in CCASS, payment by Broker Participants to HKSCC through their Designated Banks will only be confirmed good and irrevocable on the day following the delivery of securities in CCASS. HKSCC may face risk exposure from the time of delivery of securities in CCASS to the time of confirmation of good payment by the Designated Banks of Broker Participants and the receiving bank of HKSCC. In order to guard against this exposure, CCASS Rules provide until such time as HKSCC is satisfied that it has received payment in full in respect of securities delivered by HKSCC to a Broker Participant under the CNS system on a settlement day or unless otherwise agreed by HKSCC, the title to the securities will not be passed to the Broker Participant. This measure will be applicable to all GCP and DCP under TPC.

The higher netting efficiency achieved through TPC will improve the settlement efficiency of CNS positions in CCASS, which would result in a reduction of HKSCC's settlement risk exposure. The settlement risk arising from the settlement between the NCP and the GCP depends very much on the settlement arrangement agreed by them as documented in the Third Party Clearing Agreement with terms and conditions prescribed by HKEx. The settlement risk associated with client settlement with the NCP will remain largely the same since it depends solely on the NCP's handling of clients' securities transactions and monitoring of their delivery schedules.

HKSCC is considering whether additional risk management measures are required for protection against the potential concentration risk arising from TPC. Further study will be conducted on the risk implications arising from the increase in the number of NCPs and/or the level of CNS positions that are cleared by a GCP under the TPC model.

HKSCC is also studying whether the existing risk management measures should be modified for GCP who are not admitted as licensed dealers but as authorised institutions under the Banking Ordinance.

HKSCC will continue to discuss these outstanding issues with the SFC.

3.6 Depository and Nominees Services

Deposit and withdrawal services will continue to be available to all CCASS Participants. Since some NCP may not have any accounts in CCASS, their physical securities should be deposited for custody purpose in the CCASS Depository through their appointed GCP. However, NCP can deposit securities directly into the GCP account in CCASS if they have proper authorisation from the GCP. It should be noted that any deposit made into the CCASS stock account of a GCP would be deemed a deposit by the GCP when HKSCC applies its risk management measures against defective securities.

Similarly on withdrawals, the certificates registered in the name of HKSCC Nominees Limited will be collected by a GCP for onward delivery to the NCP concerned. However, representatives of the NCP can be appointed by the GCP to collect physical securities directly from CCASS Depository once their details have been properly authorised and submitted to CCASS.

HKSCC provides nominee services to all categories of CCASS Participants in respect of their securities holdings in CCASS. For NCPs who do not have any accounts in CCASS, their appointed GCPs will have to provide nominee services to them and/or their clients depending on the settlement arrangement that they have put in place as discussed in section 3.3.

3.7 Fees

The fee to be charged for the trade give up facility on a GCP is yet to be determined. In any case, any proposed fee will be subject to SFC approval.

4. Legal Issues

4.1 Financial Resources Rules (FRR)

Securities dealers, if not exempted, are obliged to comply with the liquid capital requirements of the rules made under Section 28 of the Securities and Futures Commission Ordinance. The creation of additional types of participantship will need to be reflected in the FRR. SFC will endeavour to revise the FRR to reflect these new categories of participants. HKEx will work closely with the SFC on this issue.

4.2 Stamp Duty Ordinance

The appointment of clearing participant under TPC arrangement will not involve any change in the beneficial ownership of the securities traded, and will not attract stamp duty. HKEx will confirm this with the Stamp Duty Office.

5. Other Markets

In the course of designing the model of TPC, HKSCC has studied the TPC services of other securities markets as well as the derivatives market. However, unlike derivatives market, there are only a few securities clearing houses around the world offering TPC. These include Euronext, London Clearing House (LCH) and Australian Stock Exchange (ASX). Besides Euronext, LCH and ASX which introduced TPC a few years ago, Singapore Stock Exchange (SGX) is also planning to introduce TPC.

In the study, it was found that the types of TPC models and types of participantship varied with different clearing houses. Nevertheless, the common motive for these countries to introduce TPC was to allow greater flexibility for participants who would like to engage in the business of clearing and settlement.

Euronext, LCH and ASX have different types of clearing participantship which are summarised in the following table:

Types of Participants	Euronext – Clearnet	LCH – EquityClear	ASX – CHESS
General Clearing Participant	√	√	√
Trading Only Participant	√	√*	√
Individual Clearing Participant	√	√	√
Clearing Only Participant	X	X	√

* Trading Only Participant, which is a defined term for ease of reference in LCH, is not a member of LCH. There is no admission fee applied for Trading Only Participant.

For Euronext, the Trading Only Participants can appoint an exclusive General Clearing Participant for specific types of products such as securities and derivatives. There are separate GCP for securities and derivatives.

Since LCH provides clearing services for different trading platforms like London Stock Exchange (LSE) and Virt-x (VTX), a Trading Only Participant needs to enter into separate agreement with the General Clearing Participant in respect of each trading platform in order to utilise third party clearing services in LCH.

Euronext and ASX have adopted the same TPC model as proposed by HKEx in this paper. All trades of the trading participants are automatically routed to the exclusive designated clearing participant for clearing.