



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

## **Consultation Conclusions on the Proposed Regulatory Regime for Depositories of SFC-authorized Collective Investment Schemes**

**and**

## **Further Consultation on Proposed Amendments to Subsidiary Legislation and SFC Codes and Guidelines to Implement the Regulatory Regime for Depositories of SFC-authorized Collective Investment Schemes**

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**February 2022**

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## Foreword

On 27 September 2019, the Securities and Futures Commission (SFC) issued a Consultation Paper on the Proposed Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes (2019 Consultation).

Part I of this paper summarises the comments received and provides the SFC's responses. Part II consults the public on proposed amendments to the relevant subsidiary legislation and SFC codes and guidelines to implement the regime.

The SFC invites market participants and interested parties to submit written comments no later than 30 April 2022 on the proposals in Part II and the draft amendments in Appendices A to C or on related matters which might have a significant impact upon the proposals. Any person wishing to comment on the proposals should provide details of any organisation whose views they represent.

**Please note that the names of the commentators and the contents of their submissions may be published, in whole or in part, on the SFC's website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.**

**You may not wish your name, submission or both to be published by the SFC. If this is the case, please state that you wish your name, submission or both to be withheld from publication when you make your submission.**

Written comments may be submitted as follows:

By mail to:                   The Securities and Futures Commission  
54/F, One Island East,  
18 Westlands Road,  
Quarry Bay,  
Hong Kong

Re: Proposed Regulatory Regime for Depositaries of  
SFC-authorized Collective Investment Schemes - Further  
Consultation on Proposed Amendments to Subsidiary  
Legislation and SFC Codes and Guidelines

By fax to:                   (852) 2877 0318

By online  
submission at:           <https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>

By e-mail to:              ra13-consultation@sfc.hk

All submissions received before the end of the consultation period will be taken into account before the proposals are finalised. A consultation conclusions paper will be published in due course.

Securities and Futures Commission  
Hong Kong

February 2022

## Personal information collection statement

1. This Personal Information Collection Statement (PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>1</sup> will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

### Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
  - (a) to administer the relevant provisions<sup>2</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
  - (b) in performing the SFC's statutory functions under the relevant provisions;
  - (c) for research and statistical purposes; or
  - (d) for other purposes permitted by law.

### Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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<sup>1</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance.

<sup>2</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

## Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

Data Privacy Officer  
Securities and Futures Commission  
54/F, One Island East,  
18 Westlands Road,  
Quarry Bay,  
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

## Executive summary

1. In September 2019, the Securities and Futures Commission (SFC) issued the Consultation Paper on the Proposed Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes (2019 Consultation).
2. The 2019 Consultation proposed a framework for a new regulated activity, Type 13 (RA 13), to regulate top-level trustees and custodians (ie, the depositaries) of SFC-authorized collective investment schemes (CIS) under the Securities and Futures Ordinance (SFO) (relevant CIS). The proposal enhances the regulation of public funds and is part of the strategy to reinforce Hong Kong as an international, full-service asset management centre.
3. The consultation ended in December 2019. Nine written submissions were received, including from trustee companies, industry associations and law firms. A list of respondents (other than those who requested anonymity) is set out in Appendix D.
4. Respondents generally supported the proposals, agreeing that they are comparable with other leading international markets and would strengthen Hong Kong's position as a leading asset management centre. Key comments related to the scope of RA 13 and how it would apply to individuals who are staff of a depositary. Other comments sought clarification of various technical issues, in particular the requirements for depositaries in the proposed Schedule 11 to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct). There were also comments seeking clarification of existing requirements.
5. Part I of this paper sets out the Consultation Conclusions on the Proposed Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes. It summarises the key comments received and provides our responses.
6. Given the support for the RA 13 framework, the SFC will move the proposals forward, maintaining close dialogue with the industry and other stakeholders. The Consultation Paper on Proposed Amendments to Subsidiary Legislation and SFC Codes and Guidelines to Implement the Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes is set out in Part II and Appendices A to C to this paper.
7. We would like to thank all respondents and the industry for their time and effort in providing us with their detailed comments on the proposals in the 2019 Consultation and those in Part II.
8. The 2019 Consultation, the responses (other than those requested to be withheld from publication) and this paper are available on the SFC website at [www.sfc.hk](http://www.sfc.hk).

## Part I – Consultation conclusions on the proposed regulatory regime for depositaries of SFC-authorized collective investment schemes

### Proposed scope

- Question 1:** Do you have any comments on the proposed scope of RA 13?
- Question 2:** Do you have any comments on the proposed exemption for trustees which only act for MPF products?
- Question 3:** Do you think any other exemptions are necessary? If so, what are they and why are they necessary?

### Proposed scope

#### *Public comments*

9. Most respondents agreed with the proposed scope of the regime covering top-level trustees and custodians. One respondent asked whether a depositary operating outside Hong Kong would fall within the scope of RA 13. Another respondent asked whether a company in Hong Kong which is delegated by an offshore depositary to perform the latter's depositary functions (in whole or in part) in Hong Kong would fall within the scope of RA 13.

#### *The SFC's response*

10. In general, offshore entities that do not carry on a business in a regulated activity (RA) in Hong Kong will not need to be licensed by or registered with the SFC.
11. As stated in the 2019 Consultation<sup>3</sup>, the SFC's policy intent is to capture only top-level trustees or custodians (ie, depositaries) which carry on a business in RA 13 in Hong Kong. A depositary's delegates (such as its sub-custodians) will not fall within the proposed scope of RA 13, regardless of whether such delegates operate within or outside Hong Kong.

### Exemptions

#### *Public comments*

12. While most respondents supported the proposal to exclude trustees of pure MPF products<sup>4</sup> from RA 13 to minimise regulatory duplication<sup>5</sup>, a few suggested that trustees of pooled retirement funds (PRFs) should also be exempted. There were also suggestions that approved pooled investment funds which are authorised for offering to the retail public (retail APIFs) should be exempted because trustees of retail APIFs are

<sup>3</sup> Paragraphs 15 and 16 of the 2019 Consultation.

<sup>4</sup> As explained in the 2019 Consultation, pure MPF products are approved by the MPFA and authorised by the SFC under section 104 of the SFO and pursuant to the SFC Code on MPF products. The Mandatory Provident Schemes (General) Regulation (Cap. 485A, Laws of Hong Kong) also requires pooled investment funds invested under MPF schemes to be authorised by the SFC.

<sup>5</sup> MPF-approved trustees are subject to the direct supervision of the Mandatory Provident Fund Schemes Authority (MPFA).

MPF-approved trustees regulated by the MPFA and a consistent approach should be adopted for retail APIFs and pure MPF products.

13. Two respondents also commented that the proposal would add significant compliance costs.

*The SFC's response*

14. PRFs are not pure MPF products as they do not generally fall within the MPFA's regulatory remit. Accordingly, it would not be appropriate to exempt PRF trustees.
15. The SFC maintains its view that retail APIFs should be distinguished from pure MPF products for the reasons stated in the 2019 Consultation<sup>6</sup>.
16. With regard to compliance costs, given that depositaries perform an important role with respect to public CIS, it is necessary for them to be regulated. Since a majority of the proposed requirements are based on existing Product Code<sup>7</sup> requirements, any additional compliance costs should not be substantial.

Other comments regarding the scope of RA 13

*Public comments*

17. A respondent suggested defining the business functions of an RA 13 depositary for better clarity. Another respondent commented that RA 13 should be defined by reference to an "activity" instead of a "role" for consistency with other types of RA.

*The SFC's response*

18. In view of the comments and subsequent discussions with the industry, we have revised our approach. RA 13 will be defined by reference to the activity of providing depositary services for a relevant CIS and propose to set out the core functions of a depositary in the definition. Our revised approach is discussed in paragraph 22 and Section 1 of Part II.

**Licensing and conduct requirements**

- |                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Question 4:</b> Do you have any comments on the proposed licensing scope applicable to staff members of RA 13 depositaries?</p>                                             |
| <p><b>Question 5:</b> Do you agree with the proposal to apply the existing licensing criteria to persons licensed or registered for RA 13? If not, please explain your views.</p> |

<sup>6</sup> Paragraph 21 of the 2019 Consultation.

<sup>7</sup> As defined in paragraph 9 of the 2019 Consultation, the Product Codes collectively refer to the Code on Unit Trusts and Mutual Funds (UT Code), the Code on Pooled Retirement Funds (PRF Code), the Code on Real Estate Investment Trusts (REIT Code), and the Code on Open-Ended Fund Companies (OFC Code). Open-ended fund companies which are offered to the public in Hong Kong (ie, those which are registered and authorised under section 104 of the SFO) and their key operators (including the custodians) are required to comply with all applicable requirements under the UT Code as well as Section I of the OFC Code.

## Licensing requirements for individuals

### *Public comments*

19. The 2019 Consultation proposed that individuals performing a regulated function in relation to an intermediary's business of "acting as a depositary" should be licensed representatives (LRs) or relevant individuals for RA 13. Specifically, staff who perform more than a clerical role<sup>8</sup> in a business function directly relating to the depositary's discharge of its regulatory obligations set out in the Product Codes should be LR or relevant individuals<sup>9</sup>.
20. Most respondents took the view that the proposed scope was too wide and the phrase "more than a clerical role" was unclear. There were also suggestions that only staff responsible for oversight functions should be required to be licensed or registered for RA 13, while staff who perform fund administration (such as fund accounting and fund valuation), transfer agency or registrar functions should not.
21. Some respondents asked whether individuals who are staff of an RA 13 depositary's delegates (but not staff of the depositary) and perform depositary functions on behalf of the delegate would be required to be licensed or registered for RA 13.

### *The SFC's response*

22. As mentioned in paragraph 18, we propose that RA 13 be defined as an activity of "providing depositary services for a relevant CIS" with reference to two core functions of a depositary, being (a) custody and safekeeping of scheme property and (b) oversight of the operation of the relevant CIS to ensure that it is operated in accordance with its constitutive documents.
23. As a result of these changes, the licensing scope applicable to individuals will be aligned with these two core functions as elaborated in paragraphs 24 and 25.
24. With respect to the custody and safekeeping of scheme property:
  - (a) where a depositary delegates this function to another entity (eg, a sub-custodian), staff of the depositary responsible for monitoring the performance of the delegate will need to be licensed or registered for RA 13; and
  - (b) where a depositary performs part or all of this function within the firm, staff of the depositary who are empowered to approve instructions or transactions for custody-related purposes (eg, approving payments or asset transfers, signing-off cash reconciliation) in respect of a relevant CIS and those who assume oversight duties over the performance of this function will need to be licensed or registered for RA 13; whereas staff who are engaged in custody operations without such approving powers or oversight duties will generally not be subject to the licensing obligations under the RA 13 regime.

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<sup>8</sup> A "clerical role" generally refers to the performance of routine tasks following established procedures which do not require staff to make business decisions.

<sup>9</sup> Paragraph 23 of the 2019 Consultation.

25. With respect to the oversight of scheme operations, staff of a depositary responsible for performing the duties of this function in respect of a relevant CIS should be licensed or registered for RA 13. Broadly speaking, oversight duties encompass the monitoring of various operations of the CIS including, amongst others, compliance with investment and borrowing restrictions, cash flow, fund accounting and valuation, as well as the issue, repurchase, redemption and cancellation of the units or shares of the CIS. Nevertheless, where a depositary also acts as the fund administrator, transfer agent or registrar for a relevant CIS, staff of the depositary who are engaged to provide such services are generally not required to be licensed or registered for RA 13, unless they also have an oversight responsibility in respect of these operations based on the particular business model and governance structure adopted by the depositary<sup>10</sup>.
26. Given the proposal to exclude delegates and sub-delegates from the RA 13 definition, it should be clear that individuals who are staff of these delegates will not be required to be licensed or registered.

#### Other comments on licensing requirements

##### *Public comments*

27. Two respondents asked for clarification of which Managers-in-Charge (MICs) need to be approved as responsible officers (ROs).
28. One respondent asked whether staff members in sales and marketing functions would be required to be licensed.
29. Another respondent sought guidance on whether an individual's overseas depositary experience which is not directly related to SFC-authorized CIS would be considered as relevant industry experience. Another asked whether there would be any exemptions from the local regulatory examination requirements.

##### *The SFC's response*

30. Under the current licensing regime, the MICs of the overall management oversight function and MICs of key business lines of a licensed corporation (LC) should be ROs. The MICs of other core functions<sup>11</sup> are generally not required to be licensed. The same expectation will apply to RA 13.
31. In view of the revised approach for defining RA 13 mentioned in paragraph 22, the marketing of a depositary's services by itself does not fall within the scope of "providing depositary services for a relevant CIS". Therefore, individuals who solely perform marketing activities for a depositary will not be subject to the licensing obligation under the RA 13 regime.
32. Relevant industry experience generally refers to hands-on working experience acquired through carrying on RAs in Hong Kong or similar regulated activities

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<sup>10</sup> Based on our discussions with the industry, we understand that depositaries currently adopt different business models and governance structures in performing their oversight function in respect of relevant CIS. While the SFC does not mandate a particular business model or governance structure, a depositary should ensure that its oversight function is carried out effectively by among other things, deploying sufficient staff (who are suitably qualified) to perform this function, having regard to its scale of operations including the number and the complexity of the relevant CIS under its oversight.

<sup>11</sup> Including operational control and review, risk management, finance and accounting, information technology, compliance and anti-money laundering and counter-terrorist financing.

elsewhere<sup>12</sup>. Accordingly, experience in providing depositary services, regardless of whether the experience was acquired in Hong Kong or overseas, will be recognised for licensing purposes in relation to RA 13.

33. As set out in the 2019 Consultation<sup>13</sup>, the SFC will provide a grandfathering arrangement (ie, attending training courses in lieu of passing local regulatory examinations) for practitioners when implementing the RA 13 regime. In addition, an individual may apply for an exemption from the recognised industry qualification and the local regulatory framework paper requirements if he or she satisfies the exemption criteria set out in the Guidelines on Competence<sup>14</sup>.

### Financial resources requirements

**Question 6: Do you agree with the amounts proposed for the financial resources requirements for RA 13 licensed corporations under the Financial Resources Rules<sup>15</sup>? If not, please explain your views.**

#### *Public comments*

34. There were no objections to the proposed requirement for an RA 13 LC to have a minimum paid up share capital of HK\$10,000,000 (which is similar to the current financial resources requirement under the Product Codes) and a minimum liquid capital of HK\$3,000,000.
35. One respondent who is not a depositary commented that the removal of the option currently available under the Product Codes for a trustee or custodian to rely on its parent company's standing commitment or undertaking to meet the financial resources requirements may be burdensome.

#### *The SFC's response*

36. Given that no potential RA 13 depositaries indicated that they are unable to meet the proposed requirements, which are consistent with the requirements for other types of RAs, we will proceed with the proposal. Please see Part II and Appendix A.

### Professional indemnity insurance requirement

**Question 7: Do you agree with the proposed requirement for RA 13 depositaries to maintain a professional indemnity insurance policy with respect to their RA 13 business? If not, please explain your views.**

<sup>12</sup> Paragraph 4.1.8 of the Guidelines on Competence.

<sup>13</sup> Paragraph 47 of the 2019 Consultation.

<sup>14</sup> Paragraph 4.4 of the Guidelines on Competence.

<sup>15</sup> Securities and Futures (Financial Resources) Rules (Cap. 571N, Laws of Hong Kong) (FRR).

*Public comments*

37. One respondent asked if registered institutions (RIs) could be exempted from the professional indemnity insurance requirement. Another respondent sought clarification of whether a self-insurance programme provided at the group level for an RA 13 depository within a banking group would be adequate.

*The SFC's response*

38. A depository, regardless of whether it is a RI or a LC, should maintain professional indemnity insurance coverage commensurate with its business, in line with the requirements applicable to certain other intermediaries<sup>16</sup>. The insurance can be maintained at either group or entity level. We will proceed with the proposal to set out this requirement in the proposed Schedule 11. Please see Part II and Appendix B.

**Conduct and internal control requirements**

- Question 8:** Do you agree with the proposal to rely on existing provisions in the Product Codes for the regulation of RA 13 depositories? If not, please explain your views.
- Question 9:** Do you agree with the proposals (i) to remove the requirement for the submission of annual internal control reports and (ii) for the provision of additional internal control requirements in the proposed Schedule 11 to the Code of Conduct? If not, please explain your views.

*Public comments*

39. Respondents generally agreed with the proposal to rely on existing provisions in the Product Codes for the regulation of RA 13 depositories and, while there were some specific comments on the detailed provisions, the introduction of the proposed Schedule 11 to the Code of Conduct. Respondents also welcomed the proposal to remove the submission of annual internal control reports.

*The SFC's response*

40. Given the support received, the SFC will proceed with the proposal. Please see part II and Appendix C.

- Question 10:** Do you have any comments on the proposed Schedule 11? For requirements which are oversight functions of the depository under the proposed Schedule 11, the term “relevant operator(s)” has been used to refer to the party or parties which should be subject to the depository’s oversight. Do you have any comments on the use of this term? We would welcome any input regarding which specific party should appropriately be subject to the depository’s oversight.

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<sup>16</sup> For example, paragraph 1.2(e) of the Fund Manager Code of Conduct.

41. There were extensive comments on the proposed Schedule 11. In view of some of the comments and subsequent discussions with the industry, we have revised Schedule 11 as set out in Part II and Appendix B to this paper for further consultation. The following summarises the main comments received and the SFC's responses.

### Scope of Schedule 11

#### *Public comments*

42. There were general comments that the scope of certain requirements under Schedule 11 were wider than Appendix G to the UT Code and suggestions that the language in Appendix G be adopted instead.
43. There were also comments that a depositary should not be required to assume primary responsibility for activities which are carried out by the depositary but are beyond the scope of RA 13 (eg, fund accounting and valuation).

#### *The SFC's response*

44. While every effort has been made to reflect the regulatory objectives of Appendix G in Schedule 11, it should be noted that Appendix G contains terms of reference for an audit, whereas Schedule 11 sets out specific regulatory obligations and is part of the Code of Conduct. As such, it is necessary for the obligations in Schedule 11 to be clear and aligned with other provisions of the Code of Conduct. We have reviewed the provisions which respondents suggested impose wider or new obligations compared to existing ones in the UT Code<sup>17</sup> and are satisfied that the revised proposed Schedule 11 reflects the obligations expected of RA 13 depositaries.
45. Under the proposed scope of RA 13, depositaries have oversight obligations over the operation of a CIS. Where a depositary carries out these operational functions itself (eg, by acting as the transfer agent or fund administrator), it would be held primarily responsible for them.

### Relevant operators

#### *Public comments*

46. A few respondents were of the view that the existing framework for open-ended fund companies (OFCs) does not require the custodian to oversee the board of directors and suggested removing the board of directors from the definition of "relevant operators". One respondent also asked whether "relevant operators" covers sub-custodians.

#### *The SFC's response*

47. Notwithstanding the specific oversight obligations in the Product Codes, a core function of a depositary is to have oversight of a relevant CIS to ensure that it is operated in accordance with the constitutive documents. This oversight obligation is the same regardless of the identity of the operator performing the activity. Under the UT Code<sup>18</sup>,

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<sup>17</sup> Examples of provisions in the proposed Schedule 11 which a respondent suggested may be new or wider than existing ones in the UT Code include: the requirements for depositaries to (a) report to the management company matters which may affect the depositary's ability to discharge its functions; (b) have in place policies and procedures to address actual or potential conflicts of interest (instead of only "conflicts of interest"); (c) safeguard all CIS property (instead of only physical assets).

<sup>18</sup> For example, obligations under 4.5 (b), (c), (e), (g) and (h) of the UT Code.

the oversight obligations of a depositary include, for example, oversight of the issue of units or shares of the relevant CIS. These activities may be carried out by the board of directors of an OFC, the management company or other operators. Hence, the board of directors is a “relevant operator” for the purposes of these requirements. On the other hand, sub-custodians are delegates of the depositaries and are not “relevant operators”.

### Communication with management company

#### *Public comments*

48. A majority of the respondents suggested adding an explicit requirement for management companies to provide relevant information to depositaries<sup>19</sup> to enable depositaries to discharge their functions and obligations.
49. A respondent commented that the management company should be the party to promptly report material breaches or issues to the depositary instead of the other way round. There was also a suggestion that a depositary’s reporting obligations be restricted to material breaches by itself or its delegates.
50. Two respondents suggested that communication with the management company with respect to a depositary’s business continuity plan (BCP) is necessary only if there would be an impact on the services provided to the relevant CIS or the management company.

#### *The SFC’s response*

51. Reporting obligations are existing requirements imposed on depositaries under the Product Codes. Given that a depositary has oversight of the operations of a CIS, it should be aware of reportable breaches regardless of which party the breach is attributed to. We are also of the view that management companies and depositaries should effectively communicate breaches or other material issues relating to the operation of the CIS to one another. They are also expected to coordinate to ensure that breaches or issues are reported to the SFC<sup>20</sup>. Consequential amendments to the UT Code and the REIT Code have been proposed.
52. Paragraph 5(b) of Schedule 11 has been revised so that the depositary will only need to notify the management company of material exceptions to its BCP which may have a material adverse impact on the operation of the CIS or the discharge of the depositary’s obligations.

### Delegation

#### *Public comments*

53. A few respondents suggested that a depositary’s obligations regarding the selection and ongoing monitoring of its own delegates should be distinguished from the oversight of the management company’s delegates. It was suggested that Schedule 11 should be clarified to require a management company to have primary responsibility for the

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<sup>19</sup> Such as material breaches.

<sup>20</sup> Please refer to the existing requirements under 4.5(k) and Note 2 of 5.10(d) of the UT Code (which also apply to the PRF Code), and paragraphs 8A(2)(ii)&(iii), 8A(6) and 8A(7)(ii) of Appendix G to the UT Code. Please also refer to paragraph 6 of Section V (Compliance) of the Internal Control Guidelines.

delegates and third parties that it appoints and that the depositary's responsibilities for these delegates and third parties should be confined accordingly.

*The SFC's response*

54. Depositaries are required to have oversight of the relevant CIS to ensure that it is operated in accordance with the constitutive documents of the CIS. In order to discharge this oversight function, depositaries are responsible for monitoring the relevant operational activities, whether they are carried out by delegates appointed by the depositary itself, or third parties appointed by other operators (including but not limited to the management company). A note to paragraph 6 of Schedule 11 has been added to clarify this expectation.

Pricing error or exception reporting

*Public comments*

55. Two respondents commented that it is the management company's obligation to report pricing errors and exceptions and not the depositary's. They suggested that a depositary should only report these to the SFC if the management company has not done so.

*The SFC's response*

56. There is no inconsistency between the proposed requirements and the respondents' comments. As explained in paragraph 51 above, we expect the depositary to maintain effective communication with the management company, particularly in relation to pricing errors or exceptions which would need to be reported under the regulatory requirements or may adversely impact the operations of the CIS, the orderliness of the market or investors' interests.

Cash flow monitoring

*Public comments*

57. A respondent said that the requirement to seek prior written consent from the depositary regarding cash placed with others<sup>21</sup> should be part of the controls to address conflicts of interest and it is unnecessary for a depositary to grant prior written consent to itself. The respondent also suggested that a depositary should not be required to identify all cash flows which are inconsistent with the operations of the relevant CIS, but only those cash flows which are "significant".

*The SFC's response*

58. In view of the comments, we have revised the proposals<sup>22</sup> so that a depositary must ensure relevant operators have effective controls in place for obtaining all necessary prior written consent from the depositary for connected party transactions. The requirement regarding connected party transactions is now in paragraph 15 of Schedule 11.

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<sup>21</sup> Paragraph 13(b) in the draft Schedule 11 in the 2019 Consultation (now paragraph 15(c)(ii)).

<sup>22</sup> Paragraphs 13(b) and (c) in the draft Schedule 11 in the 2019 Consultation are combined and moved to under paragraph 15 (Connected party transactions entered into by or on behalf of the relevant CIS) in the revised draft Schedule 11. Please refer to Appendix B.

59. We are of the view that all cash flows which are inconsistent with the operations of the relevant CIS should be identified, even if they are insignificant.

### Investment monitoring

#### *Public comments*

60. In response to the proposal<sup>23</sup>, a respondent commented that ensuring the accuracy of investment records is the management company's responsibility; depositaries maintain and reconcile asset records to enable the management companies to do so. Other respondents suggested that a depositary should have oversight of the management company's policies and procedures relating to investment records.

#### *The SFC's response*

61. The proposed requirement has been revised to clarify that a depositary should provide the management company with its reconciled records of relevant CIS property and transactions executed on behalf of the relevant CIS to facilitate the management company's verification of the accuracy of its investment records. This aligns with the policy intent of the existing requirements<sup>24</sup> which is to ensure the accuracy of investment records.

### Custody and safekeeping of relevant CIS property

#### *Public comments*

62. One respondent commented that Appendix G does not include the proposed requirement<sup>25</sup> for a payment or asset transfer on behalf of a relevant CIS to be authorised by the depositary and the depositary's obligation to ensure that the management company has properly authorised or obtained authorisation for the payment or asset transfer. Another respondent commented that a depositary should monitor rather than manage custody risks. Two respondents sought clarification that a depositary should properly safeguard only physical assets.

#### *The SFC's response*

63. The authorisation requirement is based on the principle that all payments and asset transfers, or other dealings on behalf of a relevant CIS, should be properly authorised in accordance with the constitutive documents of the relevant CIS. We have revised the proposal<sup>26</sup> to clarify our expectations by setting out guidance on the depositary's oversight obligation where a payment or asset transfer need not be authorised by the depositary.
64. More importantly, custody risks need to be managed and not just monitored in order for the depositary to discharge its obligations. In addition, a depositary should safeguard all assets and not only physical assets.

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<sup>23</sup> Paragraph 14(c) of the draft Schedule 11 in the 2019 Consultation.

<sup>24</sup> Under 8A(13)(iii) of Appendix G to the UT Code.

<sup>25</sup> Paragraph 15(h) in the draft Schedule 11 in the 2019 Consultation.

<sup>26</sup> Paragraph 14(j) and note to paragraph 14(j).

## Key operators

### *Public comments*

65. A respondent commented that it is unnecessary to impose specific management company oversight obligations on the depository in Schedule 11 given that the management company is also regulated by the SFC.

### *The SFC's response*

66. A critical role of a depository is to perform independent oversight of the relevant CIS to ensure that it is operated in accordance with the constitutive documents and regulatory requirements. Paragraph 8 of Schedule 11 has been revised accordingly.
67. The management company and the depository each perform important functions in relation to a relevant CIS. In this regard, the existing system of checks and balances between the management company and depository ensures that the relevant CIS is operated in accordance with the constitutive documents and regulatory requirements<sup>27</sup>.

## Schedule 11 requirements regarding REITs

### *Public comments*

68. A respondent commented that the requirements in relation to subscription and redemption<sup>28</sup> should not be applicable to depositories of REITs since REITs are close-ended listed CIS.
69. The same respondent also suggested that the proposed requirements<sup>29</sup> for valuation/price/net asset value (NAV) calculation monitoring and distribution payment should be disapplied to depositories of REITs on the basis that NAV and distribution calculations are subject to an auditor's independent review; and under current requirements a REIT trustee is only required to take reasonable care to ensure that the NAV of a REIT is calculated by the valuer and published in the REIT's annual report<sup>30</sup>.
70. The respondent further suggested carving out REIT depositories from the proposed requirements relating to mark-to-market of collateral<sup>31</sup> since there will never be non-cash collateral. The respondent also requested that the proposed requirement<sup>32</sup> regarding the custody and safekeeping of property be replaced by requirements in Part II of Schedule 11. The respondent also commented that there would be practical difficulties in meeting the proposed daily cash reconciliation requirement<sup>33</sup> in view of the abundance of special purpose vehicles and large volume of cash transactions in REIT's daily property management operations.

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<sup>27</sup> See also paragraph 41 of the 2019 Consultation.

<sup>28</sup> Paragraph 10 of the draft Schedule 11 in the 2019 Consultation.

<sup>29</sup> Paragraphs 11 and 12(a) of the draft Schedule 11 in the 2019 Consultation.

<sup>30</sup> Under 4.2(m) of the REIT Code.

<sup>31</sup> Paragraph 14(g) of the draft Schedule 11 in the 2019 Consultation.

<sup>32</sup> Paragraph 15 of the draft Schedule 11 in the 2019 Consultation.

<sup>33</sup> Paragraph 15(b) of the draft Schedule 11 in the 2019 Consultation.

### *The SFC's response*

71. We disagree with the comment that the proposed requirements for subscription and redemption should not apply to REITs. Units of REITs may be issued or bought back subsequent to listing. For example, units may be issued to the manager as payment of management fees; there can be secondary offerings of new units and the issue of consideration units for asset acquisitions. In addition, the REIT Code currently requires REIT trustees to have oversight to ensure that the sale, issue, repurchase and cancellation of units effected by a scheme are carried out in accordance with the provisions of the constitutive documents<sup>34</sup>. Trustees are also currently required to take all reasonable care to ensure that unit certificates are not issued until subscription monies have been paid<sup>35</sup>.
72. The depositary of a REIT has fiduciary duties with respect to the REIT property. Although we recognise that a REIT depositary may not have the expertise to carry out certain activities — for example, real estate valuation, where it may rely on professional advisers such as the principal valuer — and that an auditor is appointed to audit the REIT as a whole, the depositary should still have effective oversight of the REIT's operations. On this basis, the requirements under paragraph 10 of Schedule 11 should generally be applicable to REIT depositaries. However, we agree that the requirements relating to pricing error in paragraph 10(d) would not typically be relevant to REITs as they are traded at the prevailing prices on the Stock Exchange of Hong Kong (SEHK). Where there is no issue of new REIT units based on the REIT's net asset value, the requirement under paragraph 10(d) will not be triggered. A new paragraph 19(a) has been added to Part II of Schedule 11 to clarify this.
73. The proposed mark-to-market collateral requirements will not be applicable if no non-cash collateral is held for the REIT so there is no need to explicitly disapply the requirement. On custody and safekeeping, paragraph 20(b) (now 19(c)) forms part of the requirement under paragraph 14 and the two should be read together. Paragraph 19(c) explains what a REIT depositary should do to comply with the requirements under paragraph 14.
74. With respect to the requirement to carry out daily cash reconciliation, we have taken into account the differences in the structures and operations of REITs as compared to other types of CIS and have revised the requirements in Schedule 11 accordingly.
75. Where appropriate, revisions have been made to Schedule 11 to address public comments as discussed above. Please see Part II and Appendix B.

### **Consequential changes to SFC codes and guidelines**

**Question 11: Do you agree with the proposed consequential amendments to the Product Codes? Are there additional amendments you believe to be appropriate? Please explain your views.**

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<sup>34</sup> 4.3(b) of the REIT Code.

<sup>35</sup> 4.2(j) of the REIT Code.

*Public comments*

76. Respondents generally had no objections to the high-level amendments to the Product Codes proposed in the 2019 Consultation.
77. A respondent sought clarification of whether a depository's responsibility to exercise reasonable care, skill and diligence in the selection and monitoring of delegates should stop at the level of immediate delegates.
78. One respondent suggested that a list of acceptable jurisdictions for overseas depositories for the purposes of section 4.2(d)<sup>36</sup> of the UT Code be issued.

*The SFC's response*

79. Given the general support received, we will proceed with the proposal. Please see Part II and Section 1 of Appendix C.
80. In terms of the responsibility over delegates, please see paragraph 54 above.
81. Given that there is no change to the position of overseas depositories under 4.2(d) of the UT Code, we do not believe it necessary to promulgate a list of acceptable jurisdictions for overseas depositories.

**Consequential amendments to subsidiary legislation**

**Question 12: Do you agree with the list of subsidiary legislation which may be subject to amendment? Would amendments be necessary to any other subsidiary legislation in order for RA 13 to be introduced? Please explain your views.**

*Public comments*

82. The following comments on specific rules were received –
- (a) Securities and Futures (Keeping of Records) Rules<sup>37</sup> (KRR) – A respondent suggested defining “records” as an RA 13 depository's oversight records so that records kept at service providers (such as a fund administrator) would not be caught.
- (b) Securities and Futures (Client Securities) Rules<sup>38</sup> (CSR) and Securities and Futures (Client Money) Rules<sup>39</sup> (CMR) – A respondent proposed that the CSR and CMR be amended to allow client securities to be deposited in safe custody in segregated accounts established and maintained in Hong Kong by an RA 13 depository and client money accounts to be established and maintained by an RA 13 depository.

<sup>36</sup> 4.2(d) of the UT Code provides that one of the eligibility requirements to act as trustee/custodian of a SFC-authorized CIS is to be an overseas prudentially regulated and supervised bank or entity in a jurisdiction that is acceptable to the SFC.

<sup>37</sup> Cap. 571O, Laws of Hong Kong.

<sup>38</sup> Cap. 571H, Laws of Hong Kong.

<sup>39</sup> Cap. 571I, Laws of Hong Kong.

83. One respondent sought clarification of how a depository which is also a trust or company service provider (TCSP) licensed with the Companies Registry<sup>40</sup> should comply with the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations) (AML/CFT Guideline). The respondent suggested that additional SFC guidance be provided on how a depository should determine the customer to whom customer due diligence (CDD) should apply<sup>41</sup>.
84. Two respondents commented that any over-the-counter derivative (OTCD) transactions would be originated by the management company, and therefore RA 13 depositaries should not be subject to the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules<sup>42</sup> (OTCD Reporting Rules) because the management company should remain the party responsible for the reporting and clearing obligations.

#### *The SFC's response*

85. Having considered the comments received and subsequent discussions with the industry, proposed amendments to subsidiary legislation are set out in Part II and Appendix A.
86. Regarding the comments on the CSR and CMR, securities held on behalf of a relevant CIS should only be deposited in accounts established and maintained with entities under section 5 of the CSR (ie, banks, LCs licensed for Type 1 RA, the Hong Kong Securities Clearing Company Limited<sup>43</sup> and the Hong Kong Monetary Authority (HKMA)<sup>44</sup>). We do not see a need to extend the scope of entities which can hold securities on behalf of a relevant CIS. Money held on behalf of a relevant CIS must be deposited in accounts established and maintained with authorised financial institutions.
87. All RA 13 LCs are required to comply with the AML/CFT Guideline<sup>45</sup>, regardless of whether the corporations are also licensed with the Companies Registry.
88. While an RA 13 depository is generally expected to carry out CDD on the relevant CIS to which the depository services are provided as the customer<sup>46</sup>, the depository may instead carry out CDD measures on the management company of the CIS if the following conditions are met:
- (a) the management company is a LC or RI;

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<sup>40</sup> Currently, a trustee of SFC-authorized CIS should obtain a TCSP licence from the Companies Registry unless it is exempted from the TCSP licensing requirement, such as an authorised institution, a licensed corporation that operates a trust or company service business in Hong Kong that is ancillary to the corporation's principal business, or an accounting or legal professional. Upon RA 13 coming into effect, such a trustee would become dually licensed by the Companies Registry and the SFC and subject to supervision by both the Companies Registry and the SFC for compliance with customer due diligence and record-keeping requirements prescribed under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap. 615, Laws of Hong Kong).

<sup>41</sup> This refers to guidance similar to the Companies Registry's guidance provided in Q6 of the Frequently Asked Questions (FAQs) for Trust Companies which explains that a TCSP licensee acting as trustee of a CIS in trust form is expected to carry out CDD on the CIS as customer, but is also allowed to carry out CDD on the CIS manager as customer in lieu of the CIS when certain prescribed conditions are met.

<sup>42</sup> Cap. 571AL, Laws of Hong Kong.

<sup>43</sup> Hong Kong Securities Clearing Company Limited is the operator of the Central Clearing and Settlement System.

<sup>44</sup> HKMA is the operator of the Central Moneymarkets Unit.

<sup>45</sup> RIs, ie, authorised institutions registered with the SFC to conduct securities intermediary activities, are required to comply with the HKMA's Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorised Institutions) and have regard to, amongst other requirements, paragraph 4.1.6 of the AML/CFT Guideline.

<sup>46</sup> Paragraph 4.1.6 of the AML/CFT Guideline.

- (b) the underlying investors of the relevant CIS have no control over the management of the scheme's property; and
  - (c) the management company has put in place measures to carry out CDD (either by itself, or through an institution appointed by the relevant CIS or the management company) on all the investors of the relevant CIS in accordance with requirements similar to those set out in Schedule 2 to the AMLO<sup>47</sup>.
89. In addition, if the relevant conditions in section 4 of Schedule 2 to the AMLO are met, the depositary may apply simplified customer due diligence (SDD) measures<sup>48</sup> to the CIS, or the management company, as the case may be.
90. The above approach is in line with the Companies Registry's guidance and AML/CFT requirements in other major jurisdictions such as Singapore<sup>49</sup>. The SFC also understands that it is not uncommon for an SFC-licensed management company to put in place arrangements to ensure that CDD is conducted on all the investors of an SFC-authorized CIS which it manages.
91. The SFC will issue FAQs to provide the guidance described above when the RA 13 regime becomes effective.
92. For the avoidance of doubt, an RA 13 depositary must conduct ongoing monitoring<sup>50</sup> of the business relationship with the relevant CIS or the management company in accordance with Chapter 5 of the AML/CFT Guideline.
93. To address the comments on the OTCD Reporting Rules, the HKMA and the SFC which jointly administer the OTC derivative reporting regime, propose to exempt certain RA 13 depositaries from the OTCD reporting requirements under specific circumstances. Proposed amendments to the OTCD Reporting Rules are set out in Part II and Appendix A.

### Proposed implementation and transitional arrangements

**Question 13: Do you agree with the proposed transitional arrangements? If not, please explain your views.**

<sup>47</sup> In ascertaining whether the condition under this paragraph (c) is met, a depositary may, for example, obtain information from the management company by way of a due diligence questionnaire, or obtain the service level agreement with the appointed institution or operational procedures to facilitate its assessment.

<sup>48</sup> Where SDD measure can be applied, the RA 13 depositary will not be required to identify and take reasonable measures to verify the identity of the beneficial owners of the customer that is the relevant CIS (including any underlying investors who own or control more than 25% interest of the CIS) or the management company.

<sup>49</sup> In Singapore, a trustee of a public CIS is allowed to treat the management company of the CIS as the customer for CDD purposes when the manager is subject to the Singapore AML/CFT regulations and responsible for conducting CDD on the investors of the CIS it manages.

<sup>50</sup> The ongoing monitoring should include (i) periodic and trigger event-driven reviews of the customer's CDD records to ensure the documents, data and information are up-to-date and relevant (including information obtained for the purposes of ascertaining whether the conditions for treating the management company as customer for CDD purposes are still met), and (ii) monitoring transactions carried out for the customer, including the handling of scheme property of the relevant CIS associated with trade settlement and the subscription and redemption of the CIS units or shares, to detect any unusual or suspicious transactions.

### *Public comments*

94. There were requests to:
- (a) extend the proposed transitional period from around 12 to 18 months (from the gazettal date) to 24 months due to the complexity of the proposed licensing regime and the additional obligations;
  - (b) extend the proposed two-month deadline for submitting licence or registration applications<sup>51</sup> to six months because of the need to become familiar with the licensing regime, assess the application needs and comply with the documentation requirements; and
  - (c) with respect to the proposed “grandfathering” arrangement<sup>52</sup> for existing staff of depositaries, remove the one-off requirement to attend a five-hour course (which was proposed as an alternative to passing related licensing examinations) when these individuals seek to be licensed or registered for RA 13 during the transitional period.

### *The SFC’s response*

95. The SFC takes the view that a transitional period of 18 months will be sufficient, given the extended discussions and continuous engagement with market participants.
96. However, the SFC will extend the application submission deadline to four months from the gazettal date<sup>53</sup>. If a depositary foresees that it may not be able to meet this general expectation due to exceptional circumstances, it should approach the SFC or the HKMA to discuss the specifics as soon as practicable.
97. The SFC considers that the proposed five-hour training course (in lieu of examination) applicable to existing practitioners under the grandfathering arrangement is essential for the licensed individuals or relevant individuals to demonstrate that they possess the required regulatory knowledge in respect of RA 13. This is part of the fit and proper requirements which they need to satisfy for licensing purposes. We will therefore maintain this arrangement as an alternative to sitting examinations during the transitional period.

### **Conclusion and way forward**

98. In view of the general support for the proposed regulatory framework of RA 13, the SFC has engaged in continuous discussions with the depositary industry to formulate the details to implement the regime. The proposals in Part II have taken these discussions into account.

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<sup>51</sup> This refers to the proposed requirement in paragraph 45 of the 2019 Consultation – prospective applicants (including firms and individuals) are expected to submit their applications to the SFC, or to the HKMA as the case may be, together with supporting documents within two months from the date of gazettal of the notice published by the Financial Secretary to amend Schedule 5 to the SFO.

<sup>52</sup> Paragraph 47 of the 2019 Consultation.

<sup>53</sup> The gazettal date refers to the date of gazettal of the notice published by the Financial Secretary to amend Schedule 5 of the SFO.

## Part II – Further consultation on proposed amendments to subsidiary legislation and SFC codes and guidelines to implement the regulatory regime for depositaries of SFC-authorized collective investment schemes

### Section 1 – Proposed approach for defining RA 13

99. In view of the comments<sup>54</sup> received, we propose RA 13 to be an activity of providing depositary services for a *relevant CIS*, ie, –

- (a) custody and safekeeping of *relevant CIS property*; and
- (b) oversight of the relevant CIS to ensure that it is operated in accordance with the provisions of its constitutive documents,

whereby the person providing these services –

- (i) in the case of a relevant CIS that is constituted in the form of a trust, is the person appointed as a trustee pursuant to the trust deed which constitutes or governs the relevant CIS; or
- (ii) in the case of a relevant CIS that is constituted in a form other than a trust, is the person appointed as the custodian (by whatever name called), the appointment of which is pursuant to a written agreement entered into by the person with or in respect of the relevant CIS,

but does not include the provision of such services by a delegate or sub-delegate of that person, whether or not such delegate or sub-delegate is appointed by the person.

100. To exclude depositaries of pure MPF products, we further propose that:

a *relevant CIS* would be a collective investment scheme which is authorised under section 104 of the SFO other than –

- (a) a registered scheme or its constituent fund as each is defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or
- (b) an approved pooled investment fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) which is offered only to:
  - (i) professional investors;
  - (ii) employers as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
  - (iii) registered schemes or their constituent funds as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

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<sup>54</sup> Paragraphs 19 to 26 of Part I.

- (iv) occupational retirement schemes as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426);
- (v) pooling agreements as defined in section 2(4) of the Occupational Retirement Schemes Ordinance (Cap. 426); or
- (vi) other approved pooled investment funds.

101. We also propose definitions for the following terms:

(a) *Relevant CIS property*—

- (i) in relation to a relevant CIS constituted in the form of a trust (other than a real estate investment trust), any property held upon or subject to trust pursuant to any trust deed which constitutes or governs the relevant CIS;
- (ii) in relation to a relevant CIS which is a real estate investment trust—
  - (A) any property held upon or subject to trust pursuant to any trust deed which constitutes or governs the relevant CIS; and
  - (B) any property owned, controlled or held by any special purpose vehicle that is owned or controlled under the relevant CIS in accordance with the Code on Real Estate Investment Trusts published by the Commission under section 399 of the Ordinance;
- (iii) in relation to a relevant CIS constituted in any other form, any property of the relevant CIS.

(b) *Constitutive documents*, in relation to a relevant CIS, means the documents that govern the formation or constitute the relevant CIS and documents pursuant to which obligations relating to the custody and safekeeping of any relevant CIS property or oversight of the operations of the relevant CIS are imposed.

<p><b>Question 1: Do you have any comments on the proposed approach for the definition of RA 13?</b></p>
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## Section 2 – Proposed amendments to subsidiary legislation

102. The following summarises proposed amendments to subsidiary legislation which will need to be amended for the implementation of RA 13.

### The Securities and Futures (Client Securities) Rules (CSR)<sup>55</sup> and the Securities and Futures (Client Money) Rules (CMR)<sup>56</sup>

103. The CSR and the CMR respectively set out requirements to ensure the proper handling of (i) client securities and securities collateral which are either listed or traded on SEHK or are interests in SFC-authorized CIS and (ii) client money, which is received or held in Hong Kong by or on behalf of an intermediary<sup>57</sup> (or its associated entity) in the course of (or in relation to) the conduct of any RA for which the intermediary is licensed or registered.
104. The manner in which a depositary holds assets, including money and securities and its obligations in relation to these assets are strictly governed by documents under which the relevant CIS is constituted, the relevant Product Codes and other regulatory requirements.
105. To better cater for the operations of an RA 13 depositary, we propose to add new parts in the CSR (Part 2A) and CMR (Part 3), as well as consequential amendments that are specifically applicable to RA 13, so that the obligations apply in respect of scheme securities<sup>58</sup> and scheme money received or held in Hong Kong by the RA 13 depositaries and their associated entities in the course of the conduct of RA 13.
106. Sections 1 and 2 of Appendix A set out indicative drafts of the proposed amendments to the CSR and CMR.

### The Securities and Futures (Keeping of Records) Rules (KRR)

107. The KRR<sup>59</sup> specify the records that intermediaries and their associated entities are required to keep in relation to the RAs and client assets.
108. Amendments to the KRR are proposed so that record keeping obligations apply to RA 13 intermediaries and their associated entities.
109. Section 3 of Appendix A sets out an indicative draft of the proposed amendments to the KRR.

### Other subsidiary legislation

110. The following consequential or non-substantive amendments are proposed:
  - (a) Securities and Futures (Financial Resources) Rules (FRR) – as proposed in the 2019 Consultation, amendments will be made to require an RA 13 LC to have a minimum paid-up share capital of HK\$10,000,000 and a minimum required liquid capital of HK\$3,000,000. In addition, where any amount of scheme money and certain other money including subscription and redemption proceeds received or held by an RA 13 LC has not been paid into a segregated

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<sup>55</sup> Made under section 148 of the SFO.

<sup>56</sup> Made under section 149 of the SFO.

<sup>57</sup> The CMR applies to licensed corporations and their associated entities.

<sup>58</sup> Securities either listed or traded on SEHK or interests in SFC-authorized CIS in Hong Kong which constitute relevant CIS property.

<sup>59</sup> Made under section 151 of the SFO.

bank account, the RA 13 LC will be required to treat that non-segregated amount of money as its ranking liabilities under a new section 37A.

- (b) Securities and Futures (Insurance) Rules<sup>60</sup> (Insurance Rules) – to specify an insured amount of “nil” for RA13 in Part 2 of Schedule 2.
- (c) Securities and Futures (Accounts and Audit) Rules<sup>61</sup> (Accounts and Audit Rules) – to make consequential amendments so that auditors of an RA 13 LC or its associated entity shall form opinions in relation to the new provisions in the CSR, CMR and KRR which are applicable to RA 13 LCs or their associated entities.
- (d) Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules<sup>62</sup> (Contract Notes Rules) – to disapply the Contract Notes Rules to RA 13 intermediaries and their associated entities. Since management companies should retain records of investment transactions executed for the relevant CIS and the movement of the relevant CIS property under their management, depositaries should not be required to provide similar information to the management companies. Therefore, we propose that RA 13 depositaries be exempted from the Contract Notes Rules. A similar approach is currently adopted for management companies.

111. Indicative drafts of the proposed amendments are set out in Section 4 of Appendix A.

#### Part IIIA of the SFO – the OTC derivative reporting and clearing regime

112. Under the current OTC derivative reporting regime, trustees are generally not subject to the mandatory reporting requirements<sup>63</sup> under the OTCD Reporting Rules which apply to, among others, LCs and authorised financial institutions (AFIs)<sup>64</sup>. Once the RA 13 regime commences, unless exempted, RA 13 depositaries would be subject to the mandatory reporting requirements which are triggered if a LC or RI is a counterparty to a specified OTC derivative transaction or has conducted the transaction in Hong Kong<sup>65</sup>.
113. To preserve the existing policy of the OTC derivative reporting regime, the HKMA and SFC propose that an RA 13 depositary which is a counterparty to an OTC derivative transaction in its capacity as a trustee of a relevant CIS will be carved out from the reporting obligation<sup>66</sup>. Transactions entered into by the RA 13 depositary in other capacities will not be exempted from the mandatory reporting requirements. Hence we

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<sup>60</sup> Cap. 571AI, Laws of Hong Kong.

<sup>61</sup> Cap. 571P, Laws of Hong Kong.

<sup>62</sup> Cap. 571Q, Laws of Hong Kong.

<sup>63</sup> Although trustees may be counterparties to OTCD transactions, they are currently not subject to the reporting obligations as most of them are not LCs. Currently, the reporting obligations only apply to those trustees which are AFIs.

<sup>64</sup> Under section 101B of the SFO, a “prescribed person” (which is defined to include an AFI or an LC) must report to the HKMA specified OTCD transactions in certain circumstances.

<sup>65</sup> The reporting obligation is triggered if circumstances under either the “counterparty” limb or the “conducted in Hong Kong” limb are met. Please refer to the Frequently Asked Questions on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (latest version dated 23 November 2021) ([https://www.sfc.hk/-/media/EN/files/SOM/OTC/FAQs\\_Phase-2-Reporting\\_20211123.pdf](https://www.sfc.hk/-/media/EN/files/SOM/OTC/FAQs_Phase-2-Reporting_20211123.pdf)) for details.

<sup>66</sup> Depositaries acting in the capacity of global custodians should not be caught under either limb of the reporting obligations in rules 10, 11 and 12 of the OTCD Reporting Rules. Therefore, they do not need to be exempted.

do not propose to provide an exemption from the reporting obligation which arises from the “conducted in Hong Kong” limb<sup>67</sup>.

114. It is further noted that, like other exempt persons under the OTCD Reporting Rules, an RA 13 depository will still be subject to the relevant record keeping requirements, including the requirement to keep records which are sufficient to demonstrate that it is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.
115. An indicative draft of the proposed amendments to the OTCD Reporting Rules is set out in Section 5 of Appendix A.
116. Separately, upon the implementation of the RA 13 regime, an RA 13 depository that is currently not a prescribed person<sup>68</sup> will also be subject to the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules<sup>69</sup> (OTCD Clearing Rules).
117. However, the clearing obligation will only be triggered in respect of a prescribed person when the specified conditions are met, including when the person’s applicable total position in relevant OTC derivative transactions reaches a prescribed threshold (Clearing Threshold), which currently stands at US\$20 billion. Based on an assessment of relevant factors, including the operations of the OTC derivative clearing regime since commencement, the HKMA and SFC propose that no change be made to the OTCD Clearing Rules pursuant to the implementation of the RA 13 regime.

**Question 2: Do you have any comments on the proposed amendments to the CMR?**

**Question 3: Do you have any comments on the proposed amendments to the CSR?**

**Question 4: Do you have any comments on the proposed amendments to the KRR?**

**Question 5: Do you have any comments on the proposed amendments to the FRR, Insurance Rules, Accounts and Audit Rules and Contract Notes Rules?**

**Question 6: Do you have any comments on the proposed amendments to the OTCD Reporting Rules?**

**Question 7: Do you think the proposed carve-out under the OTCD Reporting Rules is sufficient? If not, please give justifications and details.**

<sup>67</sup> As it is not anticipated that an RA13 depository would be conducting OTC derivative transactions in its capacity as a trustee of a relevant CIS, an exemption is considered unnecessary.

<sup>68</sup> As specified in paragraph (b) of the definition of “prescribed person” under section 101A of the SFO, in relation to the clearing obligation, a prescribed person includes an authorised institution and an approved money broker as defined under the Banking Ordinance, and a licensed corporation as defined under the SFO.

<sup>69</sup> Cap. 571AN, Laws of Hong Kong.

## Section 3 – Proposed amendments to SFC codes and guidelines

### Proposed Schedule 11 to the Code of Conduct

118. In addition to the changes summarised in Part I of this paper, amendments have also been proposed to Schedule 11 to address matters which are more appropriate to be dealt with in non-statutory regulations to ensure that all the relevant aspects of CIS operations are taken care of for better investor protection. These relate mainly to the handling of money and other property of the relevant CIS which may not fall under the proposed scope of the CSR and CMR for RA 13<sup>70</sup>.

**Question 8: Do you have any comments on the proposed amendments to the revised draft Schedule 11?**

### Product Codes and Fund Manager Code of Conduct (FMCC)

119. Consequential amendments to the UT Code, PRF Code and REIT Code are necessary to reflect the implementation of RA 13 and to address comments from the 2019 Consultation<sup>71</sup>.
120. Minor consequential amendments are also proposed to be made to the FMCC to reflect the introduction of RA 13.
121. Section 1 of Appendix C sets out the proposed amendments to the UT Code, PRF Code, REIT Code and FMCC.

**Question 9: Do you have any comments on the proposed amendments to the product codes and FMCC?**

### Guidelines on Competence

122. The Guidelines on Competence set out matters which the SFC will normally consider in assessing whether a corporation or an individual is competent to carry on any RA. The existing general principles and key elements of the competence requirements for corporations<sup>72</sup> are applicable to all intermediaries, regardless of which type(s) of RA they carry on. We therefore propose that the same requirements will also apply to corporations which carry on RA 13.
123. In considering whether individuals are competent to carry on RA 13, unless they are grandfathered under transitional arrangements (please see paragraph 97 above), they will be required to satisfy the relevant competence requirements under the Guidelines on Competence, including, among other things, passing the related licensing examinations, where applicable. The SFC is in discussions with the Hong Kong

<sup>70</sup> For example, money and property of the relevant CIS held overseas.

<sup>71</sup> No amendments are necessary to the OFC Code as custodians of public OFCs must comply with requirements in the SFC Products Handbook, including the UT Code.

<sup>72</sup> Paragraphs 3.1 and 3.2 of the Guidelines on Competence.

Securities and Investment Institute on the development of new examination papers and modification of the existing examination papers to cover industry and regulatory knowledge in relation to RA 13. We propose that the Guidelines on Competence be amended to provide for the relevant Recognised Industry Qualifications and Local Regulatory Framework Papers in relation to RA 13.

124. Section 2 of Appendix C sets out the proposed amendments to the Guidelines on Competence.

**Question 10: Do you have any comments on the proposed amendments to the Guidelines on Competence?**

### Seeking comments

125. The proposals in Part II of this paper have taken into account extensive discussions with the depositary industry.
126. The SFC welcomes comments from the public and the industry on the proposals in Part II of this paper. The feedback received will help finalise the amendments to the subsidiary legislation and SFC codes and guidelines for the introduction of RA 13. Please submit comments to the SFC in writing by no later than 30 April 2022.

## Proposed amendments to subsidiary legislation

Section 1 – Indicative draft of proposed amendments to the CSR

Section 2 – Indicative draft of proposed amendments to the CMR

Section 3 – Indicative draft of proposed amendments to the KRR

Section 4 – Indicative drafts of proposed amendments to the FRR, Insurance Rules, Accounts and Audit Rules and Contract Notes Rules

Section 5 – Indicative draft of the proposed amendments to the OTCD Reporting Rules

Please note that the proposed amendments as set out in this Appendix A do not reflect formatting issues (e.g. numbering) arising from other proposed amendments which are currently under consultation and/or legislative procedures.

## **Section 1 – Indicative draft of proposed amendments to the CSR**

Proposed amendments to sections 2, 3, 11, 12 and 13, title of Part 2 and addition of new Part 2A and section 10A:

### **Part 1 Preliminary**

#### **2. Interpretation**

In these Rules, unless the context otherwise requires—

**agreement in writing** (書面協議) means a term in a client contract that is in writing;

**approved custodian** (核准保管人) means a company or non-Hong Kong company approved by the Commission under section 11 as being suitable for the safe custody of client securities and securities collateral of an intermediary, or in relation to an intermediary licensed or registered for providing depositary services for a relevant CIS, the safe custody of scheme securities;

**asset management** (資產管理) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**client contract** (客戶合約) means any contract or arrangement between an intermediary and its client, which contains terms on which the intermediary is to provide services the provision of which constitutes a regulated activity;

**dealing in futures contracts** (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**dealing in securities** (證券交易) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**linked corporation** (相連法團), in relation to an associated entity of an intermediary, means a corporation—

- (a) of which the associated entity is a controlling entity;
- (b) which is a controlling entity of the associated entity; or
- (c) which has as its controlling entity a person which is also a controlling entity of the associated entity;

**providing depositary services for a relevant CIS** (有關集體投資計劃存管人服務) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**standing authority** (常設授權) has the meaning assigned to it by section 4(1);

**unconscionable** (不合情理), in relation to a standing authority, means unconscionable having regard to the factors specified in section 6 of the Unconscionable

Contracts Ordinance (Cap. 458), as if the standing authority in question were a contract under that Ordinance.

### 3. Application

- (1) Subject to subsections (2), ~~(3) and (4)~~, these Rules apply to client securities and securities collateral of an intermediary that are—
- (a) either—
    - (i) listed or traded on a recognized stock market; or
    - (ii) interests in a collective investment scheme authorized by the Commission under section 104 of the Ordinance; and
  - (b) received or held in Hong Kong by or on behalf of—
    - (i) the intermediary in the course of the conduct of any regulated activity for which the intermediary is licensed or registered; or
    - (ii) an associated entity of the intermediary in relation to the conduct of such regulated activity.
- (2) These Rules do not apply to client securities of an intermediary that are in an account established and maintained by a client of the intermediary, in that client's name, with a person other than the intermediary or an associated entity of the intermediary.
- ~~(3) Sections 3(2), 4, Part 2 and section 10 of these Rules do not apply to—~~
- ~~(a) an intermediary licensed or registered for providing depository services for a relevant CIS; or~~
  - ~~(b) an associated entity of the intermediary,~~
- ~~in relation to the conduct by the intermediary of providing depository services for a relevant CIS.~~
- ~~(4) Part 2A and section 10A of these Rules apply only to—~~
- ~~(a) an intermediary licensed or registered for providing depository services for a relevant CIS; or~~
  - ~~(b) an associated entity of the intermediary,~~
- ~~in relation to the conduct by the intermediary of providing depository services for a relevant CIS.~~

#### Part 2

~~**Treatment of Client Securities and Securities Collateral Received or Held by Intermediaries other than in the Conduct of Providing Depository Services for a Relevant CIS and their Associated Entities**~~

#### Part 2A

~~**Scheme Securities Received or Held by Intermediaries Providing Depository Services for a Relevant CIS and their Associated Entities**~~

## **9A. Interpretation**

In this Part, unless the context otherwise requires—

**constitutive documents** (組成文件) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**intermediary** (中介人) means a licensed corporation which is granted a licence under section 116 of the Ordinance for providing depository services for a relevant CIS or an authorized financial institution which is registered under section 119 of the Ordinance for providing depository services for a relevant CIS;

**relevant CIS** (有關集體投資計劃) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**relevant CIS property** (有關集體投資計劃財產) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**scheme securities** (計劃證券) means any securities that are—

- (a) either—
  - (i) listed or traded on a recognized stock market; or
  - (ii) interests in a collective investment scheme authorized by the Commission under section 104 of the Ordinance; and
- (b) in relation to an intermediary,
  - (i) received or held in Hong Kong by the intermediary in the course of the conduct of providing depository services for a relevant CIS; or
  - (ii) received or held in Hong Kong by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of providing depository services for a relevant CIS,  
which constitute relevant CIS property in respect of a relevant CIS.

## **9B. Requirement for deposit or registration of scheme securities**

Subject to section 9C, an intermediary or an associated entity of an intermediary which receives any scheme securities in respect of a relevant CIS shall ensure that, as soon as reasonably practicable, the scheme securities are—

- (a) deposited in safe custody in a segregated account which is designated as a trust account or client account and established and maintained in Hong Kong by the intermediary or associated entity for the purpose of holding scheme securities in respect of the relevant CIS with—
  - (i) an authorized financial institution;
  - (ii) an approved custodian; or
  - (iii) another intermediary licensed for dealing in securities; or
- (b) registered in the name of—
  - (i) the relevant CIS; or
  - (ii) the associated entity on behalf of the relevant CIS.

### **9C. Dealings with scheme securities**

- (1) An intermediary or an associated entity of an intermediary may deal with scheme securities in respect of a relevant CIS that it receives or holds in accordance with—
- (a) a written instruction to settle an order to sell scheme securities executed on behalf of the relevant CIS; or
  - (b) a written instruction to withdraw the scheme securities from an account referred to in section 9B(a) or to deal with scheme securities that have been registered in accordance with section 9B(b).
- (2) Without prejudice to subsection (1), in accordance with the constitutive documents of a relevant CIS, an intermediary may—
- (a) dispose; or
  - (b) initiate a disposal by an associated entity of the intermediary,  
of any of the scheme securities in respect of the relevant CIS in settlement of any liability incurred by or on behalf of the relevant CIS to—
    - (i) the intermediary;
    - (ii) the associated entity; or
    - (iii) a third person.
- (3) In subsection (1), a written instruction is an instruction that—
- (a) relates to specified scheme securities in respect of a relevant CIS;
  - (b) is given to the intermediary or an associated entity of the intermediary by or on behalf of the relevant CIS; and
  - (c) directs the intermediary or the associated entity to deal with the scheme securities in a particular manner,  
where the giving of the instruction and the dealing of scheme securities in the manner as specified in the instruction by the intermediary or the associated entity does not contravene any provisions of the constitutive documents of the relevant CIS.

## **Part 3**

### **Miscellaneous**

#### **10A. Limitations on the treatment of scheme securities**

- (1) An intermediary providing depository services for a relevant CIS or an associated entity of the intermediary must take reasonable steps to ensure that scheme securities in respect of a relevant CIS are not—
- (a) deposited;
  - (b) transferred;
  - (c) lent;
  - (d) pledged;
  - (e) repledged; or
  - (f) otherwise dealt with,  
except as provided in Part 2A.

(2) Subsection (1) does not require the intermediary or associated entity in question to ensure that the scheme securities in question are not—

- (a) deposited;
- (b) transferred;
- (c) lent;
- (d) pledged;
- (e) repledged; or
- (f) otherwise dealt with.

by a person to whom the intermediary or associated entity has lent or with whom the intermediary or associated entity has deposited any of the scheme securities in accordance with Part 2A.

#### 11. Approval of custodians for safe custody of client securities and securities collateral

The Commission may approve, by notice in writing and subject to such conditions as the Commission considers appropriate, any company or non-Hong Kong company as being suitable for the safe custody of client securities and securities collateral of an intermediary, and scheme securities in relation to an intermediary licensed or registered for providing depositary services for a relevant CIS.

#### 12. Reporting of non-compliance with certain provisions of the Rules

If an intermediary or an associated entity of an intermediary to which section 4(4), ~~5-or, 9B,~~ 10(1) or 10A(1) applies becomes aware that it does not comply with such section, it shall give written notice of that fact to the Commission within one business day thereafter.

#### 13. Penalties

- (1) An intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes section 4(4) or 12 commits an offence and is liable on conviction to a fine at level 3.
- (2) An intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes section 4(4) or 12 commits an offence and is liable on conviction to a fine at level 6.
- (3) An intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes section ~~5-or, 9B,~~ 10(1) or 10A(1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (4) An intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes section ~~5-or, 9B,~~ 10(1) or 10A(1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

In deciding whether or not any dealing with client securities or securities collateral under section 6(1)(c) is unconscionable, the court shall have regard to the factors specified in section 6 of the Unconscionable Contracts Ordinance (Cap. 458) as if the standing authority in question were a contract under that Ordinance.

## **Section 2 – Indicative draft of proposed amendments to the CMR**

Proposed amendments to sections 2, 3, 11 and 12, addition of titles for Part 1, Part 2 and Part 4, and addition of new Part 3:

### **Part 1** **Preliminary**

#### **2. Interpretation**

In these Rules, unless the context otherwise requires—

***linked corporation*** (相連法團), in relation to an associated entity of a licensed corporation, means a corporation—

- (a) of which the associated entity is a controlling entity;
- (b) which is a controlling entity of the associated entity; or
- (c) which has as its controlling entity a person which is also a controlling entity of the associated entity;

***providing depositary services for a relevant CIS*** (有關集體投資計劃存管人服務) **has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;**

***segregated account*** (獨立帳戶) means a segregated account established and maintained under section 4(1) and (2) **or where Part 3 of these Rules applies, section 10B(1), (2) and (3);**

***standing authority*** (常設授權) has the meaning assigned to it by section 8(1);

***unconscionable*** (不合情理), in relation to a standing authority, means unconscionable having regard to the factors specified in section 6 of the Unconscionable Contracts Ordinance (Cap. 458), as if the standing authority in question were a contract under that Ordinance;

***written direction*** (書面指示) has the meaning assigned to it by section 7;

***written instruction*** (書面指令) **has the meaning assigned to it by section 10E.**

#### **3. Application**

- (1) Subject to subsections (2), **and (3), (4) and (5).** these Rules apply to client money of a licensed corporation that is received or held by or on behalf of —
  - (a) the licensed corporation, in the course of the conduct of any regulated activity for which the licensed corporation is licensed; or
  - (b) an associated entity of the licensed corporation, in relation to such conduct of the regulated activity.
- (2) These Rules do not apply to client money of a licensed corporation that—
  - (a) is received or held outside Hong Kong by the licensed corporation or an associated entity of the licensed corporation, while that client money remains outside Hong Kong; or

- (b) has at any time been received or held in Hong Kong by the licensed corporation or an associated entity of the licensed corporation, once that client money is transferred outside Hong Kong in accordance with these Rules.
- (3) These Rules do not apply to client money of a licensed corporation that is in a bank account established and maintained by a client of the licensed corporation in that client's name.
- (4) Part 2 of these Rules and section 3(3) do not apply to—
- (a) a licensed corporation licensed for providing depository services for a relevant CIS;  
or
- (b) an associated entity of the licensed corporation,  
in relation to the conduct by the licensed corporation of providing depository services for a relevant CIS.
- (5) Part 3 of these Rules apply only to—
- (a) a licensed corporation licensed for providing depository services for a relevant CIS;  
or
- (b) an associated entity of the licensed corporation,  
in relation to the conduct by the licensed corporation of providing depository services for a relevant CIS.

## Part 2

### Client Money Received or Held by Licensed Corporations other than in the Conduct of Providing Depository Services for a Relevant CIS and their Associated Entities

## Part 3

### Scheme Money Received or Held by Licensed Corporations Providing Depository Services for a Relevant CIS and their Associated Entities

#### 10A. Interpretation

In this Part, unless the context otherwise requires—

**constitutive documents** (組成文件) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**licensed corporation** (持牌法團) means a corporation which is granted a licence under section 116 of the Ordinance for providing depository services for a relevant CIS;

**open-ended fund company** (開放式基金型公司) has the meaning assigned to it by section 112A of the Ordinance;

**relevant CIS** (有關集體投資計劃) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**relevant CIS account** (有關集體投資計劃帳戶) means an account established and maintained by the board of directors of a relevant CIS that is constituted in the form of an open-ended fund company or other corporate form in the name of the relevant CIS in accordance with section 10B(5) and (6) and in

respect of which a licensed corporation or an associated entity of the licensed corporation (as the case may be) has control;

**relevant CIS property** (有關集體投資計劃財產) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**scheme money** (計劃款項), in relation to a licensed corporation, means any money—

- (a) received or held in Hong Kong by the licensed corporation in the course of the conduct of providing depositary services for a relevant CIS; or
- (b) received or held in Hong Kong by any corporation which is in a controlling entity relationship with the licensed corporation, in relation to such conduct of providing depositary services for a relevant CIS,  
which constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions thereto whether as capital or income;

**sub-fund** (子基金)—

- (a) in relation to a relevant CIS that is constituted in the form of an open-ended fund company, refers to a sub-fund within the meaning of section 112R of the Ordinance, and which is a relevant CIS;
- (b) in relation to a relevant CIS that is constituted in the form of a trust, refers to the separate part of relevant CIS property that is subject to or established as a separate trust, and which is a relevant CIS; or
- (c) in relation to a relevant CIS constituted in any other form, refers to the separate part of relevant CIS property that is divided in accordance with the constitutive documents of the relevant CIS, and which is a relevant CIS;

#### **10B. Payment of scheme money into segregated accounts and relevant CIS accounts**

- (1) Subject to subsection 4, a licensed corporation or an associated entity of the licensed corporation that receives or holds scheme money in respect of a relevant CIS shall establish and maintain in Hong Kong one or more segregated accounts for the scheme money in accordance with subsections (2) and (3), each of which shall be designated as a trust account or client account for the relevant CIS.
- (2) Subject to subsection (3), each segregated account for scheme money referred to in subsection (1) shall be established and maintained for only one relevant CIS. Each segregated account shall be established and maintained with—
  - (a) an authorized financial institution; or
  - (b) any other person approved by the Commission for the purposes of this section, either generally or in a particular case.
- (3) For the purposes of subsection (2), where a relevant CIS consists of one or more sub-funds, a licensed corporation or an associated entity of a licensed corporation may establish and maintain one segregated account for scheme money in respect of the relevant CIS and all the sub-fund(s) under the relevant CIS or separate segregated accounts for scheme money in respect of the relevant CIS and each of its sub-fund(s).
- (4) In the case of a relevant CIS that is constituted in the form of an open-ended fund company or other corporate form, a licensed corporation or an associated entity of the licensed corporation that receives or holds scheme money in respect of the relevant CIS

in a relevant CIS account is not required to comply with subsection (1) provided that the relevant CIS account is established and maintained in accordance with subsections (5) and (6).

- (5) Each relevant CIS account for scheme money referred to in subsection (4) shall be established and maintained with—
- (a) an authorized financial institution; or
  - (b) any other person approved by the Commission for the purposes of this section, either generally or in a particular case.
- (6) Each relevant CIS account for scheme money shall be established and maintained for only one relevant CIS, unless a relevant CIS consists of one or more sub-fund, in which case one relevant CIS account for scheme money may be established and maintained in respect of the relevant CIS and all of its sub-fund(s) under the relevant CIS or separate relevant CIS accounts for scheme money may be established and maintained in respect of the relevant CIS and each of its sub-fund(s).
- (7) All amounts of scheme money in respect of a relevant CIS that are received or held by a licensed corporation or an associated entity of the licensed corporation shall be dealt with in accordance with subsection (8), except—
- (a) proper charges that may be deducted by the licensed corporation in connection with providing depository services for the relevant CIS;
  - (b) those amounts that the licensed corporation is required to pay within the following business day to meet settlement or margin requirements or redemption requests on behalf of the relevant CIS; and
  - (c) those amounts that are reimbursements to the licensed corporation of money which the licensed corporation has paid at any time before the day of receipt in order to meet settlement or margin requirements on behalf of the relevant CIS,
- in each case in accordance with the constitutive documents of the relevant CIS.
- (8) Within three business days after a licensed corporation or an associated entity of the licensed corporation receives any amount of scheme money in respect of a relevant CIS as referred to in subsection (7), the licensed corporation or associated entity shall—
- (a) where subsection (1) applies, pay it into a segregated account for scheme money in respect of the relevant CIS;
  - (b) where subsection (4) applies, pay it into a relevant CIS account in respect of the relevant CIS; or
  - (c) subject to subsection (9), pay it in accordance with a written instruction.
- (9) Neither a licensed corporation nor an associated entity of a licensed corporation may pay, or permit to be paid, any amount of scheme money in respect of a relevant CIS to—
- (a) any of its officers or employees; or
  - (b) any officer or employee of any corporation with which the licensed corporation is in a controlling entity relationship or in relation to which the associated entity is a linked corporation,
- unless the scheme money is paid to that officer or employee in accordance with the constitutive documents of the relevant CIS.

### **10C. Payment of scheme money out of segregated accounts and relevant CIS accounts**

- (1) A licensed corporation or an associated entity of the licensed corporation that holds any amount of scheme money in respect of a relevant CIS in a segregated account or a relevant CIS account shall not pay scheme money out of the account unless it is—
- (a) paid by the licensed corporation in accordance with the scheme documents of the relevant CIS to—
    - (i) meet payment, distribution, redemption, settlement or margin requirements on behalf of the relevant CIS;
    - (ii) settle any proper charges due to any person who has provided a service in respect of the relevant CIS; or
    - (iii) settle any other liabilities incurred by or on behalf of the relevant CIS; or
  - (b) subject to subsection (2), paid in accordance with a written instruction.
- (2) Neither a licensed corporation nor an associated entity of a licensed corporation may pay, or permit to be paid, any amount of scheme money in respect of a relevant CIS to—
- (a) any of its officers or employees; or
  - (b) any officer or employee of any corporation with which the licensed corporation is in a controlling entity relationship or in relation to which the associated entity is a linked corporation,
- unless the scheme money is paid to that officer or employee in accordance with the constitutive documents of the relevant CIS.

### **10D. Treatment of interest on scheme money held in segregated accounts and relevant CIS accounts**

A licensed corporation or an associated entity of the licensed corporation that holds scheme money in respect of a relevant CIS shall deal with amounts of interest derived from the holding of the scheme money in a segregated account or a relevant CIS account in accordance with section 10C(1).

### **10E. Requirements in respect of a written instruction**

For the purposes of section 10B(8)(c) or 10C(1)(b), a written instruction is a written notice that—

- (a) relates to an amount of scheme money in respect of a relevant CIS referred to in that section;
- (b) is given to the licensed corporation or an associated entity of the licensed corporation by or on behalf of the relevant CIS; and
- (c) directs the licensed corporation or the associated entity to deal with the scheme money in a particular manner,

where the giving of the instruction and the dealing of scheme money in the manner as specified in the instruction by the licensed corporation or the associated entity does not contravene any provisions of the constitutive documents of the relevant CIS.

## **10F. Receipt of cheques for scheme money**

For the purposes of sections 10B(1) and (7), a licensed corporation or an associated entity of the licensed corporation that receives a cheque for an amount of scheme money is regarded as having received such amount only upon receipt by it of the proceeds of that cheque.

### **Part 4**

### **Miscellaneous**

## **11. Reporting of non-compliance with certain provisions of these Rules**

If a licensed corporation or an associated entity of a licensed corporation to which section 4(1) or (4), ~~or 5(1)~~, 10B(1) or (8) or 10C(1) applies becomes aware that it does not comply with such section, it shall, within one business day thereafter, give written notice of that fact to the Commission.

## **12. Penalties**

- (1) A licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes section 4, ~~or 5~~, 10B or 10C commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (2) A licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes section 4, ~~or 5~~, 10B or 10C commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.
- (3) A licensed corporation, or an associated entity of a licensed corporation, which, without reasonable excuse, contravenes section 6, 8(4), 10, 10D or 11 commits an offence and is liable on conviction to a fine at level 3.
- (4) A licensed corporation, or an associated entity of a licensed corporation, which, with intent to defraud, contravenes section 6, 8(4), 10, 10D or 11 commits an offence and is liable on conviction to a fine at level 6.
- (5) In deciding whether or not a payment of client money under section 4(5)(a) or 5(2)(a) would be unconscionable, the court shall have regard to the factors specified in section 6 of the Unconscionable Contracts Ordinance (Cap. 458), as if the standing authority in question were a contract under that Ordinance.

### **Section 3 – Indicative draft of proposed amendments to the KRR**

Proposed amendments to sections 2, 3, 4, 10 and 12, renumbering of the Schedule and addition of new sections 3A and 4A and Schedule 1A:

#### **Part 1 Preliminary**

#### **2. Interpretation**

In these Rules, unless the context otherwise requires—

***asset management*** (資產管理) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

***marginated transaction*** (保證金交易) means a contract entered into in Hong Kong by an intermediary with or on behalf of a client of the intermediary in the conduct by the intermediary of any of the businesses which constitute—

(a) any regulated activity for which the intermediary is licensed or registered, that is a contract for—

(i) a dealing in securities (except a market contract); or

(ii) a dealing in futures contracts (except a market contract); or

(b) the regulated activity of leveraged foreign exchange trading for which the intermediary is licensed, that is a leveraged foreign exchange contract,

which requires the client to—

(c) pay a margin to the intermediary; or

(d) provide security to the intermediary to meet the client's obligations, other than under an arrangement where financial accommodation is provided to the client by the intermediary;

***margin value*** (保證金價值), in relation to each description of securities collateral deposited with an intermediary, means the maximum amount of money which the client by whom and on whose behalf the securities collateral is deposited is permitted to borrow, or otherwise secure other forms of financial accommodation, from the intermediary against that particular description of securities collateral;

***providing depositary services for a relevant CIS*** (有關集體投資計劃存管人服務) **has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;**

***record*** (紀錄) has the same meaning as in section 1 of Part 1 of Schedule 1 to the Ordinance except that it does not include any tape or other sound recording of any telephone conversation;

***relevant CIS*** (有關集體投資計劃) **has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;**

***relevant CIS property*** (有關集體投資計劃財產) **has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;**

***scheme assets*** means (a) scheme money; and (b) scheme securities;

**scheme money** (計劃款項), in relation to an intermediary, means any money that is—

(a) received or held in Hong Kong or overseas by the intermediary in the course of the conduct of providing depository services for a relevant CIS; or

(b) received or held in Hong Kong or overseas by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of providing depository services for a relevant CIS,

which constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions thereto whether as capital or income;

**scheme securities** (計劃證券), in relation to an intermediary, means any securities that are—

(a) received or held in Hong Kong or overseas by the intermediary in the course of the conduct of providing depository services for a relevant CIS; or

(b) received or held in Hong Kong or overseas by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of providing depository services for a relevant CIS,

which constitutes relevant CIS property in respect of a relevant CIS;

**systems of control** (監控系統),—

(a) in relation to an intermediary or an associated entity of an intermediary (except for an intermediary or an associated entity of the intermediary in relation to the conduct by the intermediary of providing depository services for a relevant CIS), means any internal controls and trading, accounting, settlement and stock holding systems it has implemented to ensure its compliance with—

(i) sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and

(ii) sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); or

(b) in relation to an intermediary or an associated entity of the intermediary in relation to the conduct by the intermediary of providing depository services for a relevant CIS, means any internal controls and accounting, settlement and holding systems for scheme securities it has implemented to ensure its compliance with—

(i) sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and

(ii) sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H).

**Part 2**  
**Keeping of Records**  
**Division 1 – General Rules**

**3. General record keeping requirements for intermediaries**

- (1) An intermediary shall, in relation to the businesses which constitute any regulated activities for which it is licensed or registered (except for the regulated activity of providing depositary services for a relevant CIS)—
- (a) keep, where applicable, such accounting, trading and other records as are sufficient to—
- (i) explain, and reflect the financial position and operation of, such businesses;
  - (ii) enable profit and loss accounts and balance sheets that give a true and fair view of its financial affairs to be prepared from time to time;
  - (iii) account for all client assets that it receives or holds;
  - (iv) enable all movements of such client assets to be traced through its accounting systems and, where applicable, stock holding systems;
  - (v) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
    - (A) its associated entities;
    - (B) recognized exchange companies;
    - (C) clearing houses;
    - (D) other intermediaries;
    - (E) custodians; and
    - (F) banks,and show how such differences were resolved;
  - (vi) demonstrate—
    - (A) compliance by it with sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
    - (B) compliance by it with sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
    - (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in sub-subparagraphs (A) and (B); and
  - (vii) enable it readily to establish whether it has complied with the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N);
- (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and

- (c) make entries in those records in accordance with generally accepted accounting principles.
- (2) Without limiting the generality of subsection (1)(a), the records referred to in that subsection shall, where applicable, include—
  - (a) the records specified in ~~the~~ Schedule 1; and
  - (b) the records specified in section 5, 6, 7(2) or 8.

**3A. Record keeping requirements for intermediaries licensed or registered for providing depositary services for a relevant CIS**

- (1) This section applies to an intermediary licensed or registered for providing depositary services for a relevant CIS.
- (2) An intermediary shall, in relation to the businesses which constitutes the regulated activity of providing depositary services for a relevant CIS for which it is licensed or registered—
  - (a) keep, where applicable, such accounting, custody and other records as are sufficient to—
    - (i) explain, and reflect the financial position and operation of, such businesses;
    - (ii) enable profit and loss accounts and balance sheets that give a true and fair view of its financial affairs to be prepared from time to time;
    - (iii) account for all relevant CIS property in respect of each relevant CIS for which it provides depositary services;
    - (iv) enable all movements of such relevant CIS property to be traced through its accounting systems and, where applicable, holding systems for the relevant CIS property;
    - (v) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
      - (A) its associated entities;
      - (B) recognized exchange companies;
      - (C) clearing houses;
      - (D) other intermediaries;
      - (E) custodians; and
      - (F) banks,and show how such differences were resolved;
    - (vi) demonstrate—
      - (A) compliance by it with sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
      - (B) compliance by it with sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
      - (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in sub-subparagraphs (A) and

(B):

- (vii) enable it readily to establish whether it has complied with the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N); and
  - (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
  - (c) make entries in those records in accordance with generally accepted accounting principles.
- (3) Without limiting the generality of subsection (2)(a), the records referred to in that subsection shall, where applicable, include the records specified in Schedule 1A.

#### 4. Record keeping requirements for associated entities

- (1) An associated entity of an intermediary (except for an associated entity of an intermediary in relation to the conduct by the intermediary of providing depository services for a relevant CIS) shall, in respect of client assets of the intermediary that it receives or holds—
- (a) keep, where applicable, such accounting and other records as are sufficient to—
    - (i) account for the client assets;
    - (ii) enable all movements of the client assets to be traced through its accounting systems and, where applicable, stock holding systems;
    - (iii) show separately and account for all receipts, payments, deliveries and other uses or applications of the client assets effected by it, or on its behalf, and on whose behalf such receipts, payments, deliveries or other uses or applications of the client assets have been effected;
    - (iv) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
      - (A) the intermediary of which it is an associated entity;
      - (B) recognized exchange companies;
      - (C) clearing houses;
      - (D) other intermediaries;
      - (E) custodians; and
      - (F) banks,and show how such differences were resolved; and
  - (v) demonstrate—
    - (A) compliance by it with sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
    - (B) compliance by it with sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
    - (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in sub-subparagraphs (A) and (B);

- (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
  - (c) make entries in those records in accordance with generally accepted accounting principles.
- (2) Without limiting the generality of subsection (1)(a), the records referred to in that subsection shall, where applicable, include—
- (a) contracts entered into by it;
  - (b) where the client in question is a professional investor—
    - (i) records showing particulars sufficient to establish that the client is a professional investor; and
    - (ii) any notice given by it to the client or agreement by the client with it referred to in section 3(2) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q);
  - (c) records evidencing any authority given to it by the client in question, including any standing authority referred to in section 4 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 8 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) and any renewal of such authority; and
  - (d) records evidencing any direction given to it by the client in question as referred to in section 6 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 7 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).

**4A. Record keeping requirements for associated entities of intermediaries providing depositary services for a relevant CIS**

- (1) An associated entity of an intermediary in relation to the conduct by the intermediary of providing depositary services for a relevant CIS shall, in respect of all scheme assets of the intermediary that it receives or holds—
- (a) keep, where applicable, such accounting and other records as are sufficient to—
    - (i) account for the scheme assets;
    - (ii) enable all movements of the scheme assets to be traced through its accounting systems and, where applicable, holding systems for scheme securities;
    - (iii) show separately and account for all receipts, payments, deliveries and other uses or applications of the scheme assets effected by it, or on its behalf, and on whose behalf such receipts, payments, deliveries or other uses or applications of the scheme assets have been effected;
    - (iv) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
      - (A) the intermediary of which it is an associated entity;
      - (B) recognized exchange companies;
      - (C) clearing houses;
      - (D) other intermediaries;

- (E) custodians; and
- (F) banks,
- and show how such differences were resolved; and
- (v) demonstrate—
  - (A) compliance by it with sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
  - (B) compliance by it with sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
  - (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in sub-subparagraphs (A) and (B);
- (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
- (c) make entries in those records in accordance with generally accepted accounting principles.
- (2) Without limiting the generality of subsection (1)(a), the records referred to in that subsection shall, where applicable, include—
  - (a) contracts entered into by it; and
  - (b) records evidencing any written instruction given to it as referred to in section 9C of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 10E of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).

### Part 3

#### Miscellaneous

#### 10. Record retention period

Except as otherwise provided in the Ordinance (including any subsidiary legislation made under it), an intermediary, or an associated entity of an intermediary, shall retain—

- (a) subject to paragraph (b), the records that it is required to keep under these Rules, for a period of not less than 7 years; and
- (b) in the case of records showing particulars of any of the orders and instructions referred to in section 1(d) of ~~the~~ Schedule 1, for a period of not less than 2 years.

#### 12. Penalties

- (1) An intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes section 3, 3B, 4, 4A, 9, 10 or 11, commits an offence and is liable on conviction to a fine at level 4.

- (2) An intermediary, or an associated entity of an intermediary, which, with intent to defraud, contravenes section 3, 3B, 4, 4A, 9, 10 or 11, commits an offence and is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

### Schedule 1

#### Records to be Kept by Intermediaries under Section 3(2)(a)

1. Records showing particulars of—
- (a) all money—
    - (i) received by it, whether or not such money—
      - (A) belongs to it; or
      - (B) is paid into accounts maintained by it or on its behalf; and
    - (ii) disbursed by it;
  - (b) all income received by it, whether such income relates to charges made by it for the provision of services, commissions, brokerage, remuneration, interest or otherwise;
  - (c) all expenses, commissions and interest incurred or paid by it;
  - (d) all orders or instructions concerning securities, futures contracts or leveraged foreign exchange contracts that it receives or initiates, including particulars—
    - (i) of each transaction entered into by it or on its behalf to implement any such order or instruction;
    - (ii) identifying with whom or for whose account it has entered into such transaction; and
    - (iii) that enable such transaction to be traced through its accounting, trading, settlement and stock holding systems;
  - (e) all disposals of client securities or client collateral initiated by it, showing in the case of each disposal—
    - (i) the name of the client;
    - (ii) the date on which the disposal was effected;
    - (iii) the name of the intermediary which effected the disposal;
    - (iv) the charges incurred for effecting the disposal; and
    - (v) the proceeds of the disposal and how such proceeds were dealt with;
  - (f) its assets and liabilities, including financial commitments and contingent liabilities;
  - (g) all securities belonging to it, identifying—
    - (i) with whom such securities are deposited;
    - (ii) the date on which they became so deposited; and

- (iii) whether they are held as security for loans or advances or for any other purpose;
  - (h) all securities held by it but not belonging to it, identifying—
    - (i) for whom such securities are held and with whom they are deposited;
    - (ii) the date on which they became so deposited;
    - (iii) securities which are deposited with another person for safe custody; and
    - (iv) securities which are deposited with another person as security for loans or advances made to it or for any other purpose;
  - (i) all bank accounts held by it, including segregated accounts maintained in accordance with section 4(1) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
  - (j) all other accounts held by it; and
  - (k) all off-balance sheet transactions or positions.
- 2. Records of all contracts (including written agreements with clients) entered into by it.
- 3. Records evidencing—
  - (a) any authority given to it by a client, including any standing authority referred to in section 4 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H), or section 8 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) and any renewal of such authority; and
  - (b) any direction given to it by a client as referred to in section 6 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 7 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).
- 4. In respect of a client who is a professional investor—
  - (a) records showing particulars sufficient to establish that the client is a professional investor; and
  - (b) any notice given by it to the client or agreement by the client with it referred to in section 3(2) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Cap. 571 sub. leg. Q).

### **Schedule 1A**

#### **Records to be kept by Intermediaries providing depository services for a relevant CIS under Section 3A(2)(a)**

##### **1. Records showing particulars of—**

###### **(a) all money—**

###### **(i) received by it, whether or not such money—**

**(A) belongs to it; or**

**(B) is paid into accounts maintained by it or on its behalf; and**

###### **(ii) disbursed by it;**

###### **(b) all income received by it, whether such income relates to fees and charges made by it for the provision of services, interest or otherwise;**

- (c) all expenses and interest incurred or paid by it;
  - (d) all instructions concerning relevant CIS property that it receives, including particulars—
    - (i) of each transaction entered into by it or on its behalf to implement any such instruction;
    - (ii) identifying with whom or for whose account it has entered into such transaction; and
    - (iii) that enable such transaction to be traced through its accounting, settlement and holding systems for the relevant CIS property;
  - (e) all disposals of relevant CIS property in respect of each relevant CIS, showing in the case of each disposal—
    - (i) the name of the counterparty;
    - (ii) the date on which the disposal was effected;
    - (iii) the name of the intermediary which effected the disposal;
    - (iv) the charges incurred for effecting the disposal; and
    - (v) the proceeds of the disposal and how such proceeds were dealt with;
  - (f) all relevant CIS property belonging to it, identifying—
    - (i) with whom such relevant CIS property is held or deposited;
    - (ii) the date on which it became so held or deposited; and
    - (iii) whether it is held or deposited as security for loans or advances or for any other purpose;
  - (g) all relevant CIS property, including scheme securities, held by it but not belonging to it, identifying—
    - (i) for whom such relevant CIS property is held or deposited and the date on which it became so held or deposited;
    - (ii) with whom such relevant CIS property is held or deposited and the date on which it became so held or deposited;
    - (iii) securities which are deposited with another person for safe custody; and
    - (iv) securities which are deposited with another person for any other purpose;
  - (h) all bank accounts held by it, including segregated accounts maintained in accordance with section 10B(1) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
    - (i) all other accounts held by it; and
    - (i) all off-balance sheet transactions or positions.
2. Records of all contracts entered into by it.
3. Records evidencing any written instruction given to it as referred to in section 9C of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 10E of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).

**Section 4 – Indicative drafts of proposed amendments to the FRR, Insurance Rules, Accounts and Audit Rules and Contract Notes Rules**

**Proposed amendments to sections 2, 37 and 56, addition of section 37A and addition of Type 13 to Tables 1 and 2 of Schedule 1 to the FRR:**

**2 Interpretation**

(1) In these Rules, unless the context otherwise requires—

***adjusted liabilities*** (經調整負債), for the purpose of calculating the variable required liquid capital in relation to a licensed corporation, means the sum of its on-balance sheet liabilities including provisions made for liabilities already incurred or for contingent liabilities, but excluding—

- (a) amounts payable to clients in respect of—
  - (i) client money held by it in a segregated account in accordance with the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. 1);
  - (ii) to the extent not covered in subparagraph (i), client money held by it in a segregated account with an authorized financial institution;
  - (iii) client money held by it in a segregated account with an approved bank incorporated outside Hong Kong;
  - (iv) client money held by it in a segregated account with a futures or options clearing house; or
  - (v) client money held by it with—
    - (A) a clearing house other than a futures or options clearing house;
    - (B) a clearing participant;
    - (C) a futures dealer; or
    - (D) a securities dealer,as margin in respect of outstanding futures contracts and outstanding unlisted options contracts held by it on behalf of its clients;
- (b) an approved subordinated loan provided to it; and
- (c) any amount of its on-balance sheet liabilities which—
  - (i) arises from a tenancy agreement entered into by it in respect of any premises which it uses in carrying on the regulated activity for which it is licensed; and
  - (ii) is equal to the total value of its assets arising from the tenancy agreement which are not included in its liquid assets under any provision in Division 3 of Part 4;

***aggregate gross foreign currency position*** (合計外幣總持倉量) means the aggregate of all the gross foreign currency positions held by a licensed corporation licensed for Type 3 regulated activity, excluding positions held with a recognized counterparty;

***amount of margin required to be deposited*** (按規定須存放的保證金數額) means the amount of money required to be deposited as margin (whether the

requirement is met by depositing the amount of money or by the provision of security instead of making such deposit)—

- (a) upon opening a position; or
- (b) for maintaining an existing position,  
in a futures contract or an unlisted options contract, calculated as the highest of the prevailing margin amounts set by—
- (c) the exchange on which the futures contract or unlisted options contract is traded;
- (d) the clearing house who registers such trade;
- (e) the agent who executes such trade for the licensed corporation;
- (f) the counterparty who executes such trade with the licensed corporation; and
- (g) the licensed corporation itself;

**approved bank incorporated outside Hong Kong** (核准的在香港以外成立為法團的銀行) means—

- (a) a bank incorporated under the law or other authority of a prescribed country, and includes any of its branches or wholly owned subsidiaries which is a bank; or
- (b) any other bank approved as such under section 58(1)(a), and includes any of its branches or wholly owned subsidiaries which is a bank;

**approved credit rating agency** (核准信貸評級機構) means a person approved as such under section 58(1)(b);

**approved introducing agent** (核准介紹代理人) means a licensed corporation approved as such under section 58(4);

**approved redeemable shares** (核准可贖回股份) means redeemable shares in the share capital of a licensed corporation approved as such under section 58(5)(a);

**approved securities borrowing and lending counterparty** (核准證券借貸對手方) means—

- (a) a recognized clearing house; or
- (b) a person approved as such under section 58(1)(c);

**approved standby subordinated loan facility** (核准備用後償貸款融通) means a standby subordinated loan facility obtained by a licensed corporation licensed for Type 1, Type 2, Type 3 or Type 8 regulated activity, which is approved as such under section 58(5)(c);

**approved subordinated loan** (核准後償貸款) means a subordinated loan obtained by a licensed corporation approved as such under section 58(5)(b);

**authorized financial institution** (認可財務機構) means—

- (a) a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and includes any of its branches;
- (b) any wholly owned subsidiary of a bank referred to in paragraph (a) which is a bank; or

- (c) the principal place of business in Hong Kong, and any local branch, of a restricted licence bank or a deposit-taking company, in each case within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

**authorized fund** (認可基金) means a unit trust or mutual fund that is authorized by the Commission under section 104 of the Ordinance;

**basic amount** (基本數額), in relation to a licensed corporation, means 5% of the aggregate of—

- (a) its adjusted liabilities;
- (b) the aggregate of the initial margin requirements in respect of outstanding futures contracts and outstanding unlisted options contracts held by it on behalf of its clients; and
- (c) the aggregate of the amounts of margin required to be deposited in respect of outstanding futures contracts and outstanding unlisted options contracts held by it on behalf of its clients, to the extent that such contracts are not subject to payment of initial margin requirements;

**clearing house** (結算所) means a person—

- (a) whose activities or objects include the provision of services for the clearing and settlement of transactions in, or the day-to-day adjustment of the financial position of, futures contracts or unlisted options contracts effected on an exchange;
- (b) whose activities or objects include the provision of services for the clearing and settlement of transactions in securities effected on an exchange; or
- (c) who guarantees the settlement of any such transactions as are referred to in paragraph (a) or (b),

but does not include a corporation operated by or on behalf of the Government;

**clearing participant** (結算所參與者)—

- (a) in relation to a recognized clearing house, means a clearing participant within the meaning of section 1 of Part 1 of Schedule 1 to the Ordinance; or
- (b) in relation to a clearing house other than a recognized clearing house, means a person who, in accordance with the rules of the clearing house, may participate in one or more of the services provided by the clearing house in its capacity as a clearing house, and whose name is entered in a list, roll or register kept by the clearing house as a person who may participate in one or more of the services provided by the clearing house;

**collateral** (抵押品), in relation to a licensed corporation, means—

- (a) any listed shares;
- (b) any specified securities;
- (c) any qualifying debt securities; or
- (d) any special debt securities,

which—

- (e) are deposited as security by the licensed corporation with another person; or
- (f) are deposited as security with the licensed corporation by another person, and—

- (i) are unencumbered in its possession and readily realizable by it;
- (ii) are encumbered only by virtue of being lent, deposited or pledged by it in accordance with the requirements of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); or
- (iii) to which the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) do not apply, are encumbered only by virtue of being deposited or pledged by it with or to—
  - (A) an authorized financial institution or an approved bank incorporated outside Hong Kong;
  - (B) a person who is licensed, registered or authorized by an authority or regulatory organization outside Hong Kong, for an activity which, if carried on in Hong Kong, would constitute Type 1, Type 2, Type 3 or Type 8 regulated activity; or
  - (C) a clearing house of a specified exchange or any of its clearing participants to secure its obligation to meet its clearing obligations or liabilities;

**collateralized warrants** (有抵押權證) means derivative warrants listed on a recognized stock market in respect of which the issuer owns all of the underlying securities or other assets to which the warrants relate and grants a charge over those securities or assets in favour of an independent trustee who acts for the benefit of the warrant holders;

**common client** (共同客戶) means a client of a securities dealer who is also a client of a licensed corporation licensed for Type 8 regulated activity and whose dealings in securities by the securities dealer are settled on his behalf by the licensed corporation;

**controlled asset** (受管制資產) means an asset—

- (a) that is an amount of a currency which, because a relevant prohibition applies to the currency, cannot (or cannot without approval from an authority or regulatory organization)—
  - (i) be remitted to Hong Kong; or
  - (ii) be exchanged into another currency which can be remitted to Hong Kong; or
- (b) the proceeds of which on realization cannot (or cannot without approval from an authority or regulatory organization) be remitted to Hong Kong, because a relevant prohibition applies to the proceeds;

**coupon payment** (票息付款), in relation to any securities or instrument, means a payment of interest (or other periodic return of a similar nature) to the holder of the securities or instrument during the tenor of securities or instrument, that is calculated by reference to the principal value in accordance with the terms and conditions of the securities or instrument;

**derivative contract** (衍生工具合約) means an agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to the value or price of property of any description or an index or other factor designated for that purpose in the agreement, and includes a futures contract or an options contract;

**equities** (股本) means shares issued by a corporation (including shares in a mutual fund) and units in a unit trust;

**equity-linked instruments** (股票掛鈎票據) means securities within the description of such instruments under rules made under section 23 or 36 of the Ordinance governing the listing of securities and which are listed on a recognized stock market;

**exchange participant** (交易所參與者)—

- (a) in relation to a recognized exchange company, means an exchange participant within the meaning of section 1 of Part 1 of Schedule 1 to the Ordinance; or
- (b) in relation to an exchange outside Hong Kong, means a person who, in accordance with the rules of the exchange, may trade through that exchange, and whose name is entered in a list, roll or register kept by the exchange as a person who may trade through that exchange;

**excluded liabilities** (豁除負債), in relation to the on-balance sheet liabilities of a licensed corporation, means amounts payable to clients in respect of—

- (a) client money held by it in a segregated account in accordance with the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. 1);
- (b) client money held by it in a segregated account with an approved bank incorporated outside Hong Kong and, to the extent not covered in paragraph (a), in a segregated account with an authorized financial institution; and
- (c) client money held by it in a segregated account with a recognized clearing house;

**floating losses** (浮動虧損) means unrealized losses calculated by marking to market an open position in—

- (a) a futures contract;
- (b) any securities;
- (c) an options contract;
- (d) a derivative contract;
- (e) a leveraged foreign exchange contract;
- (f) a foreign exchange agreement;
- (g) an interest rate swap agreement;
- (h) a specified investment;
- (i) an illiquid investment; or
- (j) a miscellaneous investment;

**floating profits** (浮動利潤) means unrealized profits calculated by marking to market an open position in—

- (a) a futures contract;
- (b) any securities;
- (c) an options contract;
- (d) a derivative contract;
- (e) a leveraged foreign exchange contract;
- (f) a foreign exchange agreement;

- (g) an interest rate swap agreement;
- (h) a specified investment;
- (i) an illiquid investment; or
- (j) a miscellaneous investment;

**foreign currency** (外幣), in relation to a licensed corporation, means any currency other than—

- (a) its reporting currency; and
- (b) any currency which has an exchange rate which is linked to the reporting currency;

**foreign exchange agreement** (外匯協議) means an agreement other than a futures contract and an options contract, whereby the parties to the agreement agree to exchange different currencies at a future time;

**free delivery basis** (信用交付形式) means the basis on which a sale or purchase of securities is effected, under which—

- (a) delivery of the securities by the seller takes place irrespective of whether the seller has received payment in settlement of a liability arising from the sale of the securities; or
- (b) payment is made by the purchaser of the securities in settlement of a liability arising from the purchase of the securities, irrespective of whether the securities have been delivered;

**futures contract** (期貨合約) has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance save that it does not include an options contract;

**futures dealer** (期貨交易商) means—

- (a) a licensed corporation licensed for Type 2 regulated activity; or
- (b) a person licensed, registered or authorized by an authority or regulatory organization outside Hong Kong for an activity which, if carried on in Hong Kong, would constitute Type 2 regulated activity;

**futures non-clearing dealer** (期貨非結算交易商) means a licensed corporation licensed for Type 2 regulated activity which is an exchange participant of a recognized futures market, but is not a clearing participant of a recognized clearing house;

**futures or options clearing house** (期貨或期權結算所) means—

- (a) a recognized clearing house other than a recognized clearing house whose activities or objects include the provision of services for the clearing and settlement of transactions in securities (other than unlisted options contracts); or
- (b) a person—
  - (i) whose activities or objects include the provision of services for—
    - (A) the clearing and settlement of transactions in futures contracts or unlisted options contracts; or
    - (B) the day-to-day adjustment of the financial position of futures contracts or unlisted options contracts,

effected on a specified exchange, or subject to the rules of a specified exchange; or

- (ii) who guarantees the settlement of any such transactions as are referred to in subparagraph (i),

but does not include a corporation operated by or on behalf of the Government;

**general clearing participant of HKSCC** (香港結算公司全面結算所參與者) means a clearing participant of HKSCC that is authorized in accordance with the rules of HKSCC to provide general clearing services to exchange participants of the Stock Exchange Company;

**gross foreign currency position** (外幣總持倉量)—see section 2A;

**haircut amount** (扣減數額)—see section 2B;

**haircut percentage** (扣減百分率)—see section 2C;

**HKSCC** (香港結算公司) means the recognized clearing house known as Hong Kong Securities Clearing Company Limited;

**Hong Kong Exchange Fund** (香港外匯基金) means the Exchange Fund established under the Exchange Fund Ordinance (Cap. 66);

**illiquid investment** (低流通性投資項目) means—

- (a) shares that are not listed, except shares in a mutual fund that do not fall within paragraph (b);
- (b) units in a unit trust or shares in a mutual fund, where the unit trust or mutual fund—
  - (i) is not an authorized fund, a recognized jurisdiction fund or a specified exchange traded fund; or
  - (ii) is an authorized fund or a recognized jurisdiction fund, but—
    - (A) is not a specified exchange traded fund; and
    - (B) the units or shares are not redeemable within 30 days;
- (c) debt securities that are not marketable debt securities;
- (d) listed securities that have been suspended from trading for at least 3 trading days or ceased trading on any exchange on which the securities were listed, except where the securities can continue to be traded on any other exchange on which the securities are listed; or
- (e) a commodity that is not a tradable commodity;

**initial margin requirement** (規定開倉保證金) means the amount of money required to be deposited (whether the requirement is met by depositing the amount of money or by the provision of security instead of making such deposit) upon opening a position in a futures contract or an unlisted options contract, calculated as the highest of the prevailing margin amounts set by—

- (a) the exchange on which the futures contract or unlisted options contract is traded;
- (b) the clearing house who registers such trade;
- (c) the agent who executes such trade for the licensed corporation;

- (d) the counterparty who executes such trade with the licensed corporation; and
- (e) the licensed corporation itself;

**interest rate swap agreement** (掉期息率協議) means an agreement whereby the parties to the agreement agree to exchange a series of interest payments over time;

**in-the-money amount** (價內值) means the amount calculated according to the following applicable formula—

- (a) in relation to a call options contract,  $N \times (M - S)$ ;
- (b) in relation to a put options contract,  $N \times (S - M)$ ; or
- (c) in relation to a call warrant on listed shares,  $N \times (M - S)$ ,

where—

“N” represents—

- (i) if the asset underlying the options contract or warrant is shares—the number of such shares;
- (ii) if the asset underlying the options contract is an asset other than shares—the number of units of such asset; or
- (iii) if an index underlies the options contract—the contract multiplier;

“M” represents—

- (i) if the asset underlying the options contract or warrant is shares—the market value of one such share;
- (ii) if the asset underlying the options contract is an asset other than shares—the market value of one unit of such asset; or
- (iii) if an index underlies the options contract—the current level of the index; and

“S” represents the strike price of the options contract or the exercise price of the warrant—

- (i) if the asset underlying the options contract or warrant is shares—for one such share;
- (ii) if the asset underlying the options contract is an asset other than shares—for one unit of such asset; or
- (iii) if an index underlies the options contract—for the index;

**liquid assets** (速動資產), in relation to a licensed corporation, means the aggregate of the amounts required to be included in its liquid assets under the provisions of Division 3 of Part 4;

**liquid capital** (速動資金), in relation to a licensed corporation, means the amount by which its liquid assets exceeds its ranking liabilities;

**listed** (上市)—see section 2D;

**margin client** (保證金客戶)—

- (a) in relation to a licensed corporation licensed for Type 1 regulated activity, means a client to whom the licensed corporation provides securities margin financing; or

- (b) in relation to a licensed corporation licensed for Type 8 regulated activity, means any of its clients;

**marketable debt securities** (有價債務證券) means—

- (a) certificates of deposit issued by an authorized financial institution or an approved bank incorporated outside Hong Kong; or
- (b) debt securities (other than certificates of deposit referred to in paragraph (a)) in respect of which—
  - (i) there are genuine offers to buy and sell so that a price reasonably related to the last sales price or current bid and offer quotations can be determined within 1 business day, and transactions can be settled at that determined price promptly in accordance with trading conventions; or
  - (ii) quotations are available within 1 business day from any combination of 2 or more of the following persons who customarily deal in the debt securities—
    - (A) market makers;
    - (B) banks;
    - (C) securities dealers outside Hong Kong;
    - (D) licensed corporations;

**marking to market** (按照市值計算差額) means the method or procedure of adjusting the valuation of an open position in—

- (a) a futures contract;
  - (b) any securities;
  - (c) an options contract;
  - (d) a derivative contract;
  - (e) a leveraged foreign exchange contract;
  - (f) a foreign exchange agreement;
  - (g) an interest rate swap agreement;
  - (h) a specified investment;
  - (i) an illiquid investment; or
  - (j) a miscellaneous investment,
- to reflect its current market value;

**miscellaneous investment** (雜項投資項目)—see section 2E;

**mutual fund** (互惠基金) means any arrangement made for the purpose, or having the effect, of providing facilities for investment in shares in a corporation which is or holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities or any other property whatsoever and which is offering for sale or has outstanding any redeemable shares of which it is the issuer;

**no sponsor work licensing condition** (不任保薦人發牌條件), in relation to a licensed corporation licensed for Type 6 regulated activity, means a licensing condition

that the licensed corporation must not act as a sponsor in respect of an application for the listing on a recognized stock market of any securities;

**non-collateralized warrants** (非抵押權證) means derivative warrants listed on a recognized stock market other than collateralized warrants;

**note issuance and revolving underwriting facility** (票據的發行及循環式包銷融通) means an arrangement under which a borrower may draw down funds up to an agreed limit over an agreed period of time (the term to maturity of the facility) by making repeated note issues to the market, and where, should an issue prove unable to be placed in the market, the unplaced amount is to be taken up or funds made available by the underwriter of the facility;

**off-exchange traded derivative contracts** (場外買賣衍生工具合約) means derivative contracts which are traded other than on an exchange;

**omnibus account** (客戶匯集綜合帳戶) means an account opened with a licensed corporation by a client of the licensed corporation, and the client has notified it that the account is to be operated by him as agent for the benefit of 2 or more other persons;

**options contract** (期權合約) means a contract which gives the holder of the contract the option or right, exercisable at or before a time specified in the contract to—

- (a) buy or sell—
  - (i) at an agreed consideration an agreed quantity of a specified futures contract, share or other property; or
  - (ii) an agreed value of a specified futures contract, share or other property; or
- (b) be paid an amount of money calculated by reference to the value of such futures contract, share or other property or by reference to the level of an index, as may be specified in the contract;

**out-of-the-money amount** (價外值) means the amount calculated according to the following applicable formula—

- (a) in relation to a call options contract,  $N \times (S - M)$ ;
- (b) in relation to a put options contract,  $N \times (M - S)$ ; or
- (c) in relation to a call warrant on listed shares,  $N \times (S - M)$ ,

where—

“N” represents—

- (i) where the asset underlying the options contract or warrant is shares, the number of such shares; or
- (ii) where the asset underlying the options contract is an asset other than shares, the number of units of such asset;

“M” represents the market value of—

- (i) where the asset underlying the options contract or warrant is shares, one such share; or
- (ii) where the asset underlying the options contract is an asset other than shares, one unit of such asset; and

“S” represents the strike price of the options contract or the exercise price of the warrant—

- (i) where the asset underlying the options contract or warrant is shares, for one such share; or
- (ii) where the asset underlying the options contract is an asset other than shares, for one unit of such asset;

**prescribed country** (訂明國家) means—

- (a) a country belonging to the Organization for Economic Co-operation and Development; or
- (b) Singapore;

**principal value** (本金額), in relation to any securities or instrument, means the nominal, face, par or similar value of the securities or instrument;

**qualifying debt securities** (合資格債務證券) means—

- (a) debenture stock, loan stock, debentures, bonds, notes and any securities or other instruments acknowledging, evidencing or creating indebtedness—
  - (i) which are issued or guaranteed by—
    - (A) the Central People’s Government of the People’s Republic of China or the People’s Bank of China;
    - (B) the Government; or
    - (C) the Hong Kong Exchange Fund;
  - (ii) which are issued by the Hong Kong Mortgage Corporation;
  - (iii) (*Repealed L.N. 196 of 2018*)
  - (iv) the issuer of which has at least one issue currently rated by—
    - (A) Moody’s Investors Service at either Baa or Prime-3 or above;
    - (B) Standard & Poor’s Corporation at either BBB or A-3 or above;
    - (BA) Fitch Ratings at either BBB or F3 or above; or
    - (C) an approved credit rating agency at or above a grade specified by the Commission under section 58(2)(b); or
  - (v) the guarantor of which has at least one issue currently rated by—
    - (A) Moody’s Investors Service at either A or Prime-2 or above;
    - (B) Standard & Poor’s Corporation at either A or A-2 or above;
    - (BA) Fitch Ratings at either A or F2 or above; or
    - (C) an approved credit rating agency at or above a grade specified by the Commission under section 58(2)(b),

but does not include—

- (vi) any special debt securities;
- (vii) any I-owe-you;
- (viii) any securities or any instrument acknowledging, evidencing or creating a subordinated loan or a debt due from a corporation within a group of companies of which the holder of the securities or instrument is a member;

- (ix) any structured product other than a bond—
  - (A) that has a coupon rate which has an inverse relationship to a money market or interbank reference interest rate that is widely quoted; or
  - (B) under which the principal value or coupon payments are linked to an inflation rate;
- (x) any securities or instrument the terms and conditions of which provide that, on the occurrence of one or more events specified in the terms and conditions, one or both of the following must apply in relation to the principal value—
  - (A) the principal value is to be fully or partially converted into or exchanged for shares of the issuer or a related corporation of the issuer;
  - (B) the principal value is to be fully or partially written down;
- (xi) an illiquid investment; or
- (b) certificates of deposit issued by an authorized financial institution or an approved bank incorporated outside Hong Kong;

**ranking liabilities** (認可負債), in relation to a licensed corporation, means the aggregate of the amounts required to be included in its ranking liabilities under the provisions of Division 4 of Part 4;

**recognized jurisdiction fund** (認可司法管轄區基金) means a unit trust or mutual fund that—

- (a) is regulated in a jurisdiction outside Hong Kong, regardless of whether it is also an authorized fund; and
- (b) falls within all of the criteria (including, as to the jurisdiction outside Hong Kong in which it is regulated, the applicable laws of that jurisdiction and the type of scheme that it constitutes under those laws) published on the Commission's website for the purposes of the provisions of UT Code relating to recognition of certain overseas collective investment schemes;

**redeemable shares** (可贖回股份) means shares in the share capital of a corporation which are redeemable at the option of the holder of the shares or the corporation;

**relevant CIS** (有關集體投資計劃) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**relevant CIS property** (有關集體投資計劃財產) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**relevant prohibition** (相關禁制), in relation to a controlled asset or the proceeds of a controlled asset, means a prohibition imposed under the laws of, or by an authority or regulatory organization in, a jurisdiction, and includes a prohibition that does not apply to a person in relation to the controlled asset or proceeds only if the person obtains approval from a particular authority or regulatory organization in the jurisdiction;

**repledge** (再質押), in relation to a licensed corporation, means an act by which the licensed corporation or an associated entity of such licensed corporation deposits securities collateral of the licensed corporation as collateral for financial accommodation provided to the licensed corporation;

**reporting currency** (申報貨幣), in relation to a licensed corporation, means the currency in which its financial statements, required under section 156 of the Ordinance to be submitted to the Commission, are denominated, or intended to be denominated;

**repurchase transaction** (回購交易) means a transaction under which there is a sale of securities and a further arrangement obliging the seller of the securities to repurchase from the purchaser, or obliging the purchaser to resell to the seller, securities of the same description as the securities first sold, at a pre-determined consideration and date;

**required liquid capital** (規定速動資金), in relation to a licensed corporation, means an amount equal to the higher of—

- (a) where it is—
  - (i) licensed for only one regulated activity specified in column 1 of Table 2 in Schedule 1, the amount specified in column 2 of the Table opposite the regulated activity or, where any further description is set out for the regulated activity in column 1 of the Table, opposite the applicable description; or
  - (ii) licensed for 2 or more regulated activities specified in column 1 of the Table, the amount which is the higher or highest upon comparing each amount specified in column 2 of the Table opposite any of such regulated activities or, where any further description is set out for any of such activities in column 1 of the Table, opposite any of such activities or any of the applicable descriptions; and
- (b) its variable required liquid capital;

**required liquid capital deficit** (規定速動資金短欠數額), in relation to a licensed corporation, means the amount by which its required liquid capital exceeds its liquid capital;

**rules** (規章)—

- (a) in relation to an exchange other than a recognized exchange company, includes its constitution and any rules, regulations, guidelines or directions, by whatever name they may be called and wherever contained, governing—
  - (i) its exchange participants;
  - (ii) the persons who may participate in any of the services it provides or trade on it;
  - (iii) the setting and levying of fees;
  - (iv) the listing of securities;
  - (v) the trading of securities, futures contracts, options contracts or leveraged foreign exchange contracts through or on it;
  - (vi) the provision of other services; or
  - (vii) generally, its management, operations or procedures; or
- (b) in relation to a clearing house other than a recognized clearing house, includes its constitution and any rules, regulations, guidelines or directions, by whatever name they may be called and wherever contained, governing—
  - (i) its clearing participants;

- (ii) the persons who may participate in any of the services it provides;
- (iii) the setting and levying of fees;
- (iv) the clearing and settlement of transactions, whether or not executed on an exchange, of which it is the clearing house;
- (v) the imposition of margin requirements and matters pertaining to the deposit or collection of margin;
- (vi) the manner of making and receiving payment of monies in respect of the provision by it of any service, including the setting-off of such amounts receivable and amounts payable to it;
- (vii) the provision of other services; or
- (viii) generally, its management, operations or procedures;

**scheme money** (計劃款項), in relation to a licensed corporation licensed for Type 13 regulated activity, means any money—

- (a) received or held in Hong Kong or overseas by the licensed corporation in the course of the conduct of providing depositary services for a relevant CIS;  
or
- (b) received or held in Hong Kong or overseas by any corporation which is in a controlling entity relationship with the licensed corporation, in relation to such conduct of providing depositary services for a relevant CIS,

which constitutes relevant CIS property in respect of a relevant CIS and includes any accretions thereto whether as capital or income;

**securities dealer** (證券交易商) means—

- (a) a licensed corporation licensed for Type 1 regulated activity; or
- (b) a person licensed, registered or authorized by an authority or regulatory organization outside Hong Kong for an activity which, if carried on in Hong Kong, would constitute Type 1 regulated activity;

**securities margin financing** (證券保證金融資) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance, save that notwithstanding paragraph (iii) of that definition, it includes the provision of financial accommodation by a licensed corporation licensed for Type 1 regulated activity to a client of the licensed corporation to facilitate—

- (a) the acquisition of securities listed on any stock market, whether a recognized stock market or any other stock market outside Hong Kong; or
- (b) (where applicable) the continued holding of those securities;

**segregated account** (獨立帳戶), in relation to a licensed corporation, means an account established and maintained by it, which—

- (a) is a segregated account within the meaning of section 2 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); or
- (b) is an account for holding client money, or in the case of a licensed corporation licensed for Type 13 regulated activity, scheme money in respect of a relevant CIS, which in either case is separate from its own account;

**settlement date** (交收日期), in relation to any dealing in securities, means—

- (a) in the case of a transaction effected on an exchange, the date on which payment for the securities is first due in accordance with the rules or conventions of the exchange on which the securities are traded; or
- (b) in any other case, the date on which payment for the securities is first due as agreed between the parties to the transaction,

but in either case, the date not exceeding 20 business days after the trade date;

**short selling** (賣空) means a sale of securities where at the time of the sale—

- (a) the seller does not have a presently exercisable and unconditional right to vest the securities in the purchaser of them; or
- (b) the seller has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having entered into a securities borrowing and lending agreement;

**special debt securities** (特別債務證券) means structured notes, specified convertible debt securities, specified bonds and non-interest bearing debt securities—

- (a) which are issued or guaranteed by—
  - (i) the Central People's Government of the People's Republic of China or the People's Bank of China;
  - (ii) the Government; or
  - (iii) the Hong Kong Exchange Fund;
- (b) which are issued by the Hong Kong Mortgage Corporation;
- (c) (*Repealed L.N. 196 of 2018*)
- (d) the issuer of which has at least one issue currently rated by—
  - (i) Moody's Investors Service at either Baa or Prime-3 or above;
  - (ii) Standard & Poor's Corporation at either BBB or A-3 or above;
  - (ia) Fitch Ratings at either BBB or F3 or above; or
  - (iii) an approved credit rating agency at or above a grade specified by the Commission under section 58(2)(b); or
- (e) the guarantor of which has at least one issue currently rated by—
  - (i) Moody's Investors Service at either A or Prime-2 or above;
  - (ii) Standard & Poor's Corporation at either A or A-2 or above;
  - (ia) Fitch Ratings at either A or F2 or above; or
  - (iii) an approved credit rating agency at or above a grade specified by the Commission under section 58(2)(b),

but does not include—

- (f) any I-owe-you;
- (g) any securities or any instrument acknowledging, evidencing or creating a subordinated loan or a debt due from a corporation within a group of companies of which the holder of the securities or instrument is a member;
- (h) any securities or instrument the terms and conditions of which provide that, on the occurrence of one or more events specified in the terms and

conditions, one or both of the following must apply in relation to the principal value—

- (i) the principal value is to be fully or partially converted into or exchanged for shares of the issuer or a related corporation of the issuer;
  - (ii) the principal value is to be fully or partially written down; or
- (i) an illiquid investment;

**specified bond** (指明債券) means a bond with non-detachable warrants under which the holder of the bond has the right (but not the obligation) to buy a specified number of shares in the issuer (or a related corporation of the issuer) of the bond;

**specified convertible debt securities** (指明可轉換債務證券) means convertible debt securities under which the holder of the securities has the right (but not the obligation) to buy a specified number of shares in the issuer (or a related corporation of the issuer) of the securities;

**specified exchange** (指明交易所) means an exchange specified in Schedule 3;

**specified exchange traded fund** (指明交易所買賣基金) means a unit trust or mutual fund the units or shares of which are listed on a specified exchange;

**specified investment** (指明投資項目) means an investment specified in column 2 of Table 8 in Schedule 2, but does not include an illiquid investment;

**specified licensing condition** (指明發牌條件), in relation to a licensed corporation licensed for Type 4, Type 5, Type 6, Type 9 or Type 10 regulated activity, means a licensing condition that the licensed corporation must not hold client assets;

**specified securities** (指明證券) means the securities specified in column 2 of Table 7 in Schedule 2, but does not include an illiquid investment;

**standby subordinated loan facility** (備用後償貸款融通) means a loan facility provided to a licensed corporation licensed for Type 1, Type 2, Type 3 or Type 8 regulated activity under which the lender's claim in respect of any drawdown by the licensed corporation is subordinated to the prior payment, or provision for payment, in full of all claims of all other present and future creditors of the licensed corporation;

**stock futures contract** (股票期貨合約) means a contract traded on a specified exchange, the effect of which is that—

- (a) one party to the contract agrees to deliver to the other party to the contract at an agreed future time an agreed quantity of a specific listed share at an agreed consideration; or
- (b) the parties to the contract will make an adjustment between themselves at an agreed future time according to whether at that time an agreed quantity of a specific listed share is worth more or less than a value agreed at the time the contract is made;

**stock options contract** (股票期權合約) means an unlisted options contract traded on a specified exchange, the effect of which is that one party to the contract agrees to provide to the other party to the contract the right to sell or purchase at an agreed consideration an agreed quantity of a specific listed share at or before an agreed future time;

**structured note** (結構性票據)—see section 2F;

**subordinated loan** (後償貸款) means a loan provided to a person under which the lender's claim in respect of the loan is subordinated to the prior payment, or provision for payment, in full of all claims of all other present and future creditors of the person;

**tradable commodity** (流通商品) means a physical commodity of a quantity, quality and condition suitable for delivery under a tradable contract;

**tradable contract** (流通合約) means a futures contract or an unlisted options contract that is traded on a specified exchange;

**trade date** (交易日期), in relation to a transaction in—

- (a) a futures contract;
- (b) any securities;
- (c) an options contract;
- (d) a derivative contract;
- (e) a leveraged foreign exchange contract;
- (f) a foreign exchange agreement;
- (g) an interest rate swap agreement;
- (h) a specified investment;
- (ha) an illiquid investment; or
- (hb) a miscellaneous investment,

means—

- (i) in the case of a transaction on any exchange, the date on which the transaction is executed; or
- (j) in any other case, the date on which the agreement between the parties is made;

**trader** (買賣商) means a licensed corporation licensed for Type 1 or Type 2 regulated activity which does not hold client assets or handle clients' orders and, in carrying on the regulated activity for which it is licensed, conducts no business other than effecting, or offering to effect, dealings in securities, futures contracts or options contracts for its own account;

**trading day** (交易日), in relation to listed securities, means a day on which the exchange on which the securities are listed is open for trading;

**unit trust** (單位信託) means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

**unlisted options contract** (非上市期權合約) means an options contract that is not listed securities;

**UT Code** (《單位信託守則》) means the Code on Unit Trusts and Mutual Funds published by the Commission under section 399 of the Ordinance;

**variable required liquid capital** (可變動規定速動資金)—

- (a) in relation to a licensed corporation licensed for Type 3 regulated activity (whether or not it is also licensed for any other regulated activity), means the

sum of the basic amount and 1.5% of its aggregate gross foreign currency position; or

- (b) in relation to a licensed corporation licensed for any regulated activity other than Type 3 regulated activity, means the basic amount.

(2) (*Repealed L.N. 196 of 2018*)

### 37. Amounts payable to clients, etc.

A licensed corporation must include in its ranking liabilities any amount payable to any of its clients or any counterparty or clearing house which arises from the carrying on of any regulated activity for which it is licensed, other than—

- (a) an amount payable to any of its clients in respect of client money held by it—
- (i) in a segregated account with an authorized financial institution, an approved bank incorporated outside Hong Kong or a recognized clearing house (except money included in its liquid assets under section 20(d)); ~~or~~
  - (ii) in a segregated account—
    - (A) that is referred to in paragraph (a) of the definition of **segregated account** in section 2(1); and
    - (B) with a person approved by the Commission under section 4(2) or section 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules; ~~and or~~
  - (iii) in a relevant CIS account within the meaning of section 10A of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
- (b) an amount payable to any of its clients which is set-off against an amount receivable from the client under section 21(3); and
- (c) an amount payable to any of its clients or any counterparty which arises from the carrying on of the regulated activity of providing depository services for a relevant CIS in relation to any obligation incurred solely on behalf of the relevant CIS without recourse to the assets of the licensed corporation.

### 37A. Scheme money and other proceeds related to a relevant CIS

To the extent not included in its ranking liabilities under section 37, a licensed corporation licensed for Type 13 regulated activity must include in its ranking liabilities:

- (a) any amount of scheme money in respect of a relevant CIS held by the licensed corporation other than an amount of scheme money held by it—
- (i) in a segregated account with an authorized financial institution or a bank incorporated outside Hong Kong;
  - (ii) in a segregated account—
    - (A) that is referred to in paragraph (a) of the definition of **segregated account** in section 2(1); and
    - (B) with a person approved by the Commission under section 4(2) or section 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules;

- (iii) in a relevant CIS account within the meaning of section 10A of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. 1); or
- (iv) in an account maintained with an authorized financial institution or a bank incorporated outside Hong Kong and is separate from the own account of the licensed corporation; and
- (b) any amount held by the licensed corporation:
  - (i) on behalf of subscribers or scheme participants of a relevant CIS constituting subscription proceeds in respect of the relevant CIS;
  - (ii) on behalf of unitholders, shareholders or scheme participants of a relevant CIS constituting redemption proceeds in respect of the relevant CIS; or
  - (iii) on behalf of unitholders, shareholders or scheme participants of a relevant CIS constituting distribution proceeds in respect of the relevant CIS,  
other than an amount of these proceeds held by the licensed corporation in an account which is separate from its own account and designated for holding such proceeds established and maintained by the licensed corporation with an authorized financial institution or an approved bank incorporated outside Hong Kong.

## 56. Licensed corporations to submit returns to Commission

- (1) Subject to subsection (4), a licensed corporation licensed for one or more of the following—
  - (a) Type 1 regulated activity;
  - (b) Type 2 regulated activity;
  - (c) Type 3 regulated activity;
  - (d) Type 4 regulated activity, and it is not subject to the specified licensing condition;
  - (e) Type 5 regulated activity, and it is not subject to the specified licensing condition;
  - (f) Type 6 regulated activity, and it is not subject to the specified licensing condition;
  - (g) Type 7 regulated activity;
  - (h) Type 8 regulated activity;
  - (i) Type 9 regulated activity, and it is not subject to the specified licensing condition;
  - (ia) Type 10 regulated activity, and it is not subject to the specified licensing condition;
  - (ib) Type 13 regulated activity,

must, in respect of each month at the end of which it remains licensed, submit to the Commission, in the manner specified in subsection (5) and no later than 3 weeks after the end of the month concerned, a return which is in the form specified by the Commission under section 402 of the Ordinance and signed in the manner specified in subsection (6), and includes—

- (j) its liquid capital computation, as at the end of the month;
  - (k) its required liquid capital computation, as at the end of the month;
  - (l) a summary of bank loans, advances, credit facilities and other financial accommodation available to it, as at the end of the month;
  - (m) an analysis of its margin clients, as at the end of the month;
  - (n) an analysis of collateral received from its margin clients, as at the end of the month;
  - (o) an analysis of its rolling balance cash clients, as at the end of the month;
  - (p) an analysis of its profit and loss account;
  - (q) an analysis of its client assets, as at the end of the month; ~~and~~
  - (r) where it is licensed for Type 3 regulated activity, an analysis of its foreign currency positions, as at the end of the month; ~~and~~
  - (s) where it is licensed for Type 13 regulated activity, an analysis of relevant CIS property received or held by it for any relevant CIS arising from carrying on Type 13 regulated activity, as at the end of the month.
- (2) Subject to subsection (4), a licensed corporation to which subsection (1) applies must, in respect of each period of 3 months at the end of which it remains licensed, being such period in a year ending at the end of the month of March, June, September or December, respectively, submit to the Commission, in the manner specified in subsection (5) and no later than 3 weeks after the end of the period concerned, a return which is in the form specified by the Commission under section 402 of the Ordinance and signed in the manner specified in subsection (6), and includes—
- (a) an analysis of its clientele, as at the end of the 3 month period;
  - (b) an analysis of its proprietary derivative positions, as at the end of the 3 month period;
  - (c) where it is licensed for Type 3 regulated activity, an analysis of its recognized counterparties, as at the end of the 3 month period; and
  - (d) where it is licensed for Type 9 regulated activity, an analysis of the assets under its management, as at the end of the 3 month period.
- (3) Subject to subsection (4), a licensed corporation which is licensed solely for one or more of the following—
- (a) Type 4 regulated activity;
  - (b) Type 5 regulated activity;
  - (c) Type 6 regulated activity;
  - (d) Type 9 regulated activity;
  - (da) Type 10 regulated activity; ~~and~~

and subject to the specified licensing condition, must, in respect of each period of 6 months at the end of which it remains licensed, being such period in a year ending at the end of the month of June or December, respectively, submit to the Commission, in the manner specified in subsection (5) and no later than 3 weeks after the end of the period concerned, a return which is in the form specified by the Commission under section 402 of the Ordinance and signed in the manner specified in subsection (6), and includes—

- (e) its liquid capital computation, as at the end of the 6 month period;
  - (f) its required liquid capital computation, as at the end of the 6 month period;
  - (g) an analysis of its profit and loss account;
  - (h) an analysis of its clientele, as at the end of the 6 month period; and
  - (i) where it is licensed for Type 9 regulated activity, an analysis of the assets under its management, as at the end of the 6 month period.
- (4) A licensed corporation may elect to submit the return required under—
- (a) subsection (1), in respect of periods of not less than 28 days but not more than 35 days, each ending not more than 7 days before or after the end of a month;
  - (b) subsection (2), in respect of periods of 3 months each ending not more than 7 days before or after the end of March, June, September or December in a year;
  - (c) subsection (3), in respect of periods of 6 months each ending not more than 7 days before or after the end of June or December in a year,
- determined by it on a basis according to which the ending date of each period so determined is predictable, and where it so elects and submits the return concerned, it is deemed to have submitted the return concerned in respect of the period required under subsection (1), (2) or (3) (as the case may be).
- (5) For the purposes of this section, a licensed corporation must submit a return referred to in this section to the Commission electronically by means of an online communication system approved by the Commission under section 58(7) for the purposes of this subsection.
- (6) For the purposes of this section—
- (a) a return referred to in this section must be signed on behalf of the licensed corporation concerned by a responsible officer of the licensed corporation or another officer of the licensed corporation approved by the Commission under section 58(5)(e) for the purposes of this section, by way of attachment to the return of the digital signature or electronic signature of the responsible officer or other officer; and
  - (b) the signature referred to in paragraph (a) must—
    - (i) in the case of a digital signature, be supported by a recognized certificate, generated within the validity of that certificate and used in accordance with the terms of that certificate; or
    - (ii) in the case of an electronic signature, be authenticated in accordance with such directions and instructions for the use of the online communication system concerned as are published by the Commission under section 58(8).
- (6A) For the purposes of subsection (6)(b)(i), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap. 553).
- (7) In this section—
- digital signature** (數碼簽署) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

**electronic signature** (電子簽署) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

**recognized certificate** (認可證書) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

**rolling balance cash client** (滾存結餘現金客戶) means a client of a licensed corporation in respect of whom the amounts receivable from, and amounts payable to, him by the licensed corporation arising from the purchase and sale of securities on a cash-against-delivery basis by the licensed corporation for him may be set-off by the licensed corporation under section 21(3);

**within the validity of that certificate** (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap. 553).

## Schedule 1 Financial Resources Requirements

**Table 1  
Paid-up Share Capital**

To insert paid-up share capital requirement for Type 13:

Regulated activity	Minimum amount of paid-up share capital
<u>Type 13</u>	<u>\$10,000,000</u>

**Table 2  
Required Liquid Capital**

To insert liquid capital requirement for Type 13:

Regulated activity	Minimum amount of required liquid capital
<u>Type 13</u>	<u>\$3,000,000</u>



**Proposed amendments to the Insurance Rules – to insert item 10 to Part 2 of Schedule 2 to the Insurance Rules after item 9 as follows:**

PART 2  
INSURED AMOUNT

Regulated activity		Insured amount (\$)
<u>10.</u>	<u>Providing depositary services for a relevant CIS</u>	<u>Nil</u>

## Proposed amendments to sections 4 and 5 of the Accounts and Audit Rules:

### 4. Auditor's report

- (1) For the purposes of section 156(1)(b) or (2)(b) of the Ordinance, an auditor's report required to be submitted by a licensed corporation or an associated entity of an intermediary shall contain a statement by the auditor as to whether, in the auditor's opinion—
  - (a) the profit and loss account and the balance sheet are in accordance with the records kept by the licensed corporation or the associated entity (as the case may be) under the Securities and Futures (Keeping of Records) Rules (Cap. 571 sub. leg. O) and satisfy the requirements of these Rules;
  - (b) the balance sheet gives a true and fair view of the state of affairs of the licensed corporation or the associated entity (as the case may be) as at the end of the financial year to which it relates;
  - (c) the profit and loss account gives a true and fair view of the profit or loss of the licensed corporation or the associated entity (as the case may be) for the financial year to which it relates;
  - (d) in the case of a licensed corporation, each of the returns as referred to in section 3(1)(b) or (2)(b) (as the case may be) is correctly compiled from the records of the licensed corporation or, if not correctly compiled, the nature and extent of the incorrectness;
  - (e) in so far as applicable, during the financial year in question, the licensed corporation or the associated entity (as the case may be) had systems of control in place that were adequate to ensure compliance with—
    - (i) sections 4, 5, 6, 8(4), 10, 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and
    - (ii) sections 4(4), 5, 9B, 10(1), 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H);
  - (f) in so far as applicable, during the financial year in question, the licensed corporation or the associated entity (as the case may be) has complied with—
    - (i) sections 3, 3A, ~~and 4~~ and 4A of the Securities and Futures (Keeping of Records) Rules (Cap. 571 sub. leg. O);
    - (ii) sections 4, 5, 6, 8(4), 10, 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and
    - (iii) sections 4(4), 5, 9B, 10(1), 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
  - (g) in the case of a licensed corporation, there appears to have been any contravention of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N) by the licensed corporation during the financial year in question.
- (2) A licensed corporation or an associated entity of an intermediary (as the case may be) may submit 2 separate auditor's reports in respect of a financial year, one containing a statement by the auditor concerning the matters referred to in subsection (1)(a), (b) and (c) and the other containing a statement by the auditor concerning the matters referred to in subsection (1)(d), (e), (f) and (g).

## 5. Matters reportable by auditors under section 157 of the Ordinance

The following provisions are prescribed requirements for the purposes of the definition of ***prescribed requirement*** in section 157(3) of the Ordinance—

- (a) sections 3, 3A, ~~and 4~~ and 4A of the Securities and Futures (Keeping of Records) Rules (Cap. 571 sub. leg. O);
- (b) sections 4, 5, 6, 8(4), 10, 10B, 10C, 10D, and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
- (c) sections 4(4), 5, 9B, 10(1), 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H).

## Proposed amendments to sections 2 and 3 of the Contract Notes Rules:

### 2. Interpretation

In these Rules, unless the context otherwise requires—

**asset management** (資產管理) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**balance** (結餘) includes, where applicable, money ledger balance;

**floating loss** (浮動虧損) means unrealized losses calculated by marking to market open positions;

**floating profit** (浮動利潤) means unrealized profits calculated by marking to market open positions;

**foreign intermediary** (外地中介人) means—

- (a) a person who carries on a business of providing financial or investment services and is regulated in respect of that business in a specified jurisdiction; or
- (b) a bank that is regulated under the law of a specified jurisdiction;

**margin ratio** (保證金比率), in relation to each description of securities collateral, means the percentage of the value of such collateral up to which a client of an intermediary is permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

**margin value** (保證金價值), in relation to each description of securities collateral, means the maximum amount of money which a client of an intermediary is permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

**margin transaction** (保證金交易) means a relevant contract which requires a client with whom or on whose behalf an intermediary has entered into the relevant contract to—

- (a) pay a margin to the intermediary; or
- (b) provide security to the intermediary to meet the client's obligations, other than under an arrangement where financial accommodation is provided to the client by the intermediary;

**marking to market** (按照市值計算差額) means the method or procedure of adjusting the valuation of open positions to reflect their current market value;

**net equity** (權益淨額), in relation to a client of an intermediary, means the balance in the client's account at any given time—

- (a) plus any floating profit;
- (b) less any floating loss; and
- (c) after adjusting for any income credited to and charges levied against that account;

providing depositary services for a relevant CIS (有關集體投資計劃存管人服務) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**relevant contract** (有關合約) means a contract entered into in Hong Kong by an intermediary with or on behalf of a client of the intermediary in the conduct by the intermediary of any of the businesses which constitute—

- (a) any regulated activity for which the intermediary is licensed or registered, that is a contract—
  - (i) for a dealing in securities (except a market contract); or
  - (ii) for a dealing in futures contracts (except a market contract); or
- (b) the regulated activity of leveraged foreign exchange trading for which the intermediary is licensed, that is a leveraged foreign exchange contract;

**specified jurisdiction** (指明司法管轄區) means a jurisdiction specified in Schedule 1.

### 3. Application

- (1) These Rules, other than sections 11(4) and (5) and 13, do not apply to—
  - (a) an intermediary licensed or registered for asset management; or
  - (b) an associated entity of such an intermediary, in relation to the conduct by the intermediary of asset management.

(1A) These Rules do not apply to—

(a) an intermediary licensed or registered for providing depositary services for a relevant CIS; or

(b) an associated entity of such an intermediary,

in relation to the conduct by the intermediary of providing depositary services for a relevant CIS.

- (2) Where a client of an intermediary is a professional investor within the meaning of—
  - (a) any of paragraphs (a) to (i) of the definition of **professional investor** in section 1 of Part 1 of Schedule 1 to the Ordinance, and—
    - (i) the intermediary has notified the client in writing that unless the client objects, the intermediary will not provide to the client any contract notes, statements of account or receipts (as the case may be) in accordance with these Rules and the intermediary has not received any objection from the client; or
    - (ii) an associated entity of the intermediary has notified the client in writing that unless the client objects, the associated entity will not provide to the client any receipts in accordance with these Rules and the associated entity has not received any objection from the client; or
  - (b) paragraph (j) of the definition of **professional investor** in section 1 of Part 1 of Schedule 1 to the Ordinance and has agreed in writing with—
    - (i) the intermediary not to receive from the intermediary any contract notes, statements of account or receipts (as the case may be) in accordance



with these Rules; or

- (ii) an associated entity not to receive from the associated entity any receipts in accordance with these Rules,

then section 5, 8, 9, 11 or 13 (as the case may be) does not apply to the intermediary or the associated entity in relation to the client.

- (3) For the avoidance of doubt, nothing in these Rules affects section 19 of the Stamp Duty Ordinance (Cap. 117).

## **Section 5 – Indicative draft of the proposed amendments to the OTCD Reporting Rules**

Proposed amendments to sections 2, 10, 11, 12 and 29:

### **2. Interpretation**

In these Rules—

**affiliate** (聯屬公司), in relation to a prescribed person that is a licensed corporation, an authorized financial institution or an approved money broker, means a corporation that is in the same group of companies as the person, except a corporation that is a collective investment scheme;

**ATS-CCP** (自動化交易服務中央對手方) means a person authorized under section 95(2) of the Ordinance to provide automated trading services, but only when the person is—

- (a) providing services that it is authorized to provide; and
- (b) acting in its capacity as a central counterparty;

**electronic reporting system** (電子匯報系統) means the electronic system operated by or on behalf of the Monetary Authority for submitting and receiving reports on specified OTC derivative transactions for the purposes of these Rules and section 101B of the Ordinance;

**excluded currency contract** (豁除貨幣合約) means an OTC derivative product that is a forward contract for the sale or purchase of a currency which—

- (a) is entered into for the purpose of settling a sale or purchase of securities denominated in that currency; and
- (b) is intended to be settled by the actual delivery of that currency, by the earlier of the following days—
  - (i) the last day of the customary settlement period for the securities referred to in paragraph (a);
  - (ii) the seventh business day after the day on which the forward contract is executed;

**exempt person** (獲豁免人士) has the meaning given by rule 3;

**grace period** (寬限期), in relation to a prescribed person, means the period of 3 months beginning on the starting day;

**local branch** (本地分行), in relation to a prescribed person that is an authorized financial institution incorporated outside Hong Kong, has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155) except that it includes its principal place of business in Hong Kong;

**outstanding** (未完結), in relation to an OTC derivative transaction on a particular day, means the transaction has not, as at that day, matured or been terminated;

**previous Rules** (先前的規則) means the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules as in force immediately before the specification day;

**providing depositary services for a relevant CIS** (有關集體投資計劃存管人服務) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**RCH** (認可結算所) means a person that is a recognized clearing house, but only when the person is acting in its capacity as a central counterparty;

**relevant CIS** (有關集體投資計劃) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

**specification day** (指明日期) means 1 July 2017;

**specified OTC derivative transaction** (指明場外衍生工具交易) has the meaning given by section 101A of the Ordinance;

**starting day** (開始日期), in relation to a prescribed person, means the later of—

- (a) the specification day;
- (b) the day on which the person becomes a prescribed person; and
- (c) if applicable, the day on which the person ceases to be regarded as an exempt person;

**subsequent event** (其後事件), in relation to a specified OTC derivative transaction, means an event that occurs after the transaction was entered into, and which affects the terms and conditions on which the transaction was entered into or the persons involved in entering into the transaction;

**terminated** (被終止), in relation to an OTC derivative transaction, means the transaction is terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction, before the transaction matures;

**transaction information** (交易資料), in relation to a specified OTC derivative transaction, has the meaning given by rule 2A;

**Type 13 intermediary** (第 13 類中介人), in relation to a prescribed person, means a licensed corporation or an authorized financial institution that is licensed or registered for providing depositary services for a relevant CIS;

**valuation transaction information** (交易估值資料), in relation to a specified OTC derivative transaction, means the information and particulars which are within the category of information and particulars specified in item 11 of Schedule 1, and which satisfy the requirement referred to in paragraph (b)(ii) of the definition of **transaction information** in rule 2A(1).

## Part 2

### Reporting Obligation

#### Division 1 - Reporting by Prescribed Persons

#### 10. Reporting by licensed corporations

- (1) A prescribed person that is a licensed corporation must report a specified OTC derivative transaction to the Monetary Authority if the person—
  - (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).

- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—
  - (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
  - (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).
- (3) Subrule (1)(a) does not apply to a prescribed person that is—
  - (a) an exempt person; or
  - (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.

#### 11. Reporting by authorized financial institutions incorporated in Hong Kong

- (1) A prescribed person that is an authorized financial institution incorporated in Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—
  - (a) subject to subrule (3), is a counterparty to the transaction; or
  - (b) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—
  - (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
  - (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).
- (3) Subrule (1)(a) does not apply to a prescribed person that is—
  - (a) an exempt person; or
  - (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.

#### 12. Reporting by authorized financial institutions incorporated outside Hong Kong

- (1) A prescribed person that is an authorized financial institution incorporated outside Hong Kong must report a specified OTC derivative transaction to the Monetary Authority if the person—

- (a) subject to subrule (3), is a counterparty to the transaction and the transaction is recorded in the form of an entry in the books of a local branch of the person;
  - (b) is a counterparty to the transaction and—
    - (i) the transaction is recorded in the form of an entry in the books of—
      - (A) the principal place of business outside Hong Kong of the person; or
      - (B) a branch (other than a local branch) of the person; and
    - (ii) one of the individuals who made the decision for the person to enter into the transaction—
      - (A) acted in his or her capacity as a trader; and
      - (B) was employed or engaged by the person to perform his or her duties predominantly in Hong Kong; or
  - (c) conducted the transaction in Hong Kong on behalf of an affiliate of the person within the meaning of rule 4(1).
- (2) The transaction referred to in subrule (1)(a) includes a transaction that is still outstanding on the starting day.
- (2A) The transaction referred to in subrule (1)(b) or (c) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—
- (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
  - (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).
- (3) Subrule (1)(a) does not apply to a prescribed person that is—
- (a) an exempt person; or
  - (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.

### Part 3

#### Record Keeping Obligation

##### 29. Records to be kept by prescribed persons

- (1) The records that a prescribed person must keep in relation to a specified OTC derivative transaction are—
  - (a) records sufficient to demonstrate that the person has complied with rule 9;
  - (b) without limiting paragraph (a)—
    - (i) the records specified in Schedule 2 relating to the transaction; and

- (ii) if the person engaged an agent to report the transaction to the Monetary Authority on its behalf—
    - (A) records relating to the agreement between the person and the agent; and
    - (B) records sufficient to demonstrate that the person monitored the reporting by the agent;
  - (c) if rule 10, 11, 12 or 13 (as applicable) does not apply to the person in relation to the transaction because the person is an exempt person—
    - (i) the records specified in Schedule 2 relating to the transaction; and
    - (ii) records sufficient to demonstrate that the person satisfied the requirements in rule 3(2) at the time the person would, but for rule 3, have been required to report the transaction to the Monetary Authority, including records of any calculation performed for the purpose of ascertaining whether the person satisfied the requirement in rule 3(2)(a);
  - (ca) if rule 10, 11 or 12 (as applicable) does not apply to the person in relation to the transaction by virtue of rule 10(3)(b), 11(3)(b) or 12(3)(b)—
    - (i) the records specified in Schedule 2 relating to the transaction; and
    - (ii) records sufficient to demonstrate that the person is a counterparty to the transaction in the person's capacity as a trustee of a relevant CIS;
  - (d) if rule 17 or 18 applies to the person in relation to the transaction (the affiliate of the person has reported the entering into of the transaction or the subsequent event to the Monetary Authority), the confirmation received from the affiliate; and
  - (e) if rule 23(5) applies to the person in relation to the transaction (the transaction has matured or been terminated before the end of the grace period), the records specified in Schedule 2 relating to the transaction.
- (2) *(Repealed L.N. 30 of 2016)*



## Appendix B

Revised draft of Schedule 11 to the Code of Conduct for Persons  
Licensed by or Registered with the Securities and Futures Commission

## Schedule 11 Additional requirements for licensed or registered persons conducting Type 13 regulated activity

### Introduction

1. This Schedule sets out additional requirements (“Additional Requirements”) that apply to a person licensed or registered for Type 13 regulated activity, namely ~~acting as a providing~~ depository of services for a relevant CIS (a “Depository”).
2. A Depository should establish and implement ~~written~~ internal control policies and procedures to meet the Additional Requirements. ~~Where a requirement is an oversight function of a Depository, the Depository should perform ex post controls and assessment of processes and procedures that are under the responsibility of (i) the management company; (ii) the relevant CIS; or (iii) a delegate or an appointed third party. In the case where an activity or matter which is required to be under the oversight of a Depository pursuant to any applicable laws and regulations is in fact carried out by the Depository in practice, it should assume primary obligation for such activity or matter.~~
3. The internal controls and ~~procedures systems~~ designed to meet the Additional Requirements may vary from firm to firm taking into account the size of the operation of the firm, the nature and volume of transactions undertaken, ~~the dealing arrangements~~ and the nature ~~of the assets~~ of the relevant CIS property. In the case where an operation of the relevant CIS that is subject to the oversight of a Depository is in fact carried out by the Depository, it would be held primarily responsible for such activity or matter.

Note: For a relevant CIS that is a PRF, subject to the provisions under the PRF Code, where no management company is appointed for the PRF or any investment portfolio thereunder, in respect of such PRF and/or the investment portfolio(s), as the case may be, the Depository will be primarily responsible for the obligations set out under this Schedule 11 (in particular, paragraphs 9 (Subscriptions and redemptions); 10 (Valuation/price/net asset value calculation monitoring); 11 (Distribution payments); 12 (Cash flow monitoring); and 13 (Investment monitoring)).

#### 43. In this Schedule:

- (a) a “relevant CIS” ~~means a collective investment scheme which has been authorized by the Commission under section 104 of~~ has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO and pursuant to the relevant Product Code(s), other than any collective investment scheme authorized by the Commission solely pursuant to the SFC Code on MPF Products;
- (b) “relevant CIS property” has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO;
- ~~(b)(c)~~ (c) a “Product Code” means any of the following codes administered by the Commission, as may be amended and updated from time to time:
  - (i) the Code on Unit Trusts and Mutual Funds (“UT Code”);

- (ii) the Code on Open-Ended Fund Companies (“OFC Code”)<sup>1</sup>;
- (iii) the Code on Real Estate Investment Trusts (“REIT Code”); and
- (iv) the Code on Pooled Retirement Funds (“PRF Code”);

~~[General note: The PRF Code is currently being reviewed under a separate exercise and therefore all provisions relating to PRFs in this draft Schedule may be further revised to align with the discussion and proposal under the PRF Code review exercise which will be subject to a public consultation.]~~

~~(e)~~(d) “REIT” means a real estate investment trust which is authorized by the Commission under section 104 of the SFO and pursuant to the REIT Code;

~~(d)~~(e) a “PRF” means a pooled retirement fund (which may comprise various investment portfolio(s)) which is authorized by the Commission under section 104 of the SFO and pursuant to the PRF Code; and

~~(e)~~ references to “management company” in the case of a PRF are to the management company that is appointed for that PRF and/or any of the management companies appointed for any of the investment portfolio(s) under such PRF (as the case may be) in accordance with the PRF Code; whereas in the case of all other relevant CIS, references to “management company” are to the management company appointed for that relevant CIS and/or any sub-fund thereunder in accordance with the relevant Product Code; and

(f) references to “relevant operator(s)” are to other parties involved in the operation of a relevant CIS, which may include a management company, the board of directors of a relevant CIS, a transfer agent, administrator and, registrar and, in the case of a PRF, a product provider.

54. Unless otherwise stated, terms used in this Schedule shall have the same meaning as defined or used in the relevant Product Code(s).

## Part I

### Depository of a relevant CIS authorized under the UT Code or the PRF Code

#### Management and supervision

65. Communication with the management company of a relevant CIS

A Depository should communicate with the management company in an effective and timely manner in the course of discharging its function(s) and obligation(s) with respect to a relevant CIS. A Depository should:

- (a) promptly report to the management company (i) actual material breaches of applicable legal and regulatory requirements which may ~~have impact on~~

<sup>1</sup> Open-ended fund companies offered to the public in Hong Kong (public OFCs) (i.e. those which are registered and authorized under section 104 of the SFO) are authorized pursuant to both the UT Code and the OFC Code. Also, pursuant to the OFC Code, public OFCs and their key operators (including the custodians) are required to comply with all applicable requirements under the UT Code as well as Section I of the OFC Code.

the Depository's carrying on of its regulated activities; (ii) issues that may lead to material breaches of applicable legal and regulatory requirements which may ~~have an~~ impact ~~on~~ the Depository's carrying on of its regulated activities and (iii) matters that may affect its ability to discharge its functions or obligations under the constitutive documents with respect to the relevant CIS. The Depository should implement rectification and remedial actions, involve and coordinate with the management company in respect of such breaches or matters reported (and ensure that such breaches or matters are reported to the Commission in accordance with the relevant Product Code(s));

*Note: Where a delegate or third party is engaged to carry out the operations and functions of the Depository, the Depository is expected to have an effective arrangement in place with the delegate or third party to enable the Depository to comply with this requirement.*

- (b) notify the management company of material exceptions to its business continuity plan ~~which are~~ identified during regular tests which may have a material adverse impact on the operation of the relevant CIS or the discharge of the Depository's obligations; and
- (c) upon the activation of its business continuity plan, promptly communicate with the management company the extent of services to be provided to the relevant CIS.

*Note: For the purpose of paragraph 5, where the relevant CIS is a PRF, references to "management company" shall be replaced by "product provider".*

#### 76. Delegation Appointment and oversight of delegates or third parties

- (a) Where ~~the operations and functions of a Depository are performed by a delegates or third parties (such as a custodian, sub-custodian, administrator, transfer agent and registrar) is appointed or engaged to carry out any activity that is relevant to the Depository,~~ the Depository should have established internal control policies and procedures to enable it to have proper oversight over ~~such the~~ delegate or third party ~~to enable so that~~ the Depository ~~can to be~~ reasonably satisfied that the delegate or third party is ~~suitably qualified and competent to provide carry out~~ the relevant ~~service activity~~. ~~The Depository should have written Such~~ internal control policies and procedures ~~for include~~ those relating to:
  - (i) the selection of a delegate or third party ~~to perform any function or operation of the Depository,~~ including an assessment of their competence, regulatory and financial status, capabilities and internal controls and systems in ~~discharging their delegated functions or operations carrying out the relevant activity~~;
  - (ii) the ongoing monitoring (including a regular review) of ~~such the~~ delegates or third party ~~ies to be so that the Depository is~~ satisfied that:

- (1) ~~the delegated functions or operations are the relevant activity is~~ performed in compliance with the relevant legal and regulatory requirements and the constitutive documents of the relevant CIS; and
  - (2) effective internal controls and systems have been established and maintained by the delegates or third parties in carrying out the ~~delegated functions or operations relevant activity~~; and
  - (iii) addressing actual or potential conflicts of interests ~~arising that may arise~~ from the appointment and oversight of delegates or third parties.
- (b) ~~The A~~ Depository should establish an appropriate contingency plan in relation to the engagement of delegates or third parties, including actions and measures to be taken ~~on in the event of~~ breaches and solvency matters as well as other material issues related to them.
- (c) Although a delegate ~~or third party~~ may be engaged ~~to assume for~~ the ~~operations custody~~ and ~~functions of a Depository safekeeping of relevant CIS property~~, the responsibilities and obligations of a Depository in respect of such activity shall remain with the Depository.

*Note 1: For the purposes of paragraph 6, delegates or third parties include those appointed or engaged by the Depository, the management company, the board of directors of a relevant CIS (or in the case where the relevant CIS is a PRF, the product provider) and any delegates of these persons.*

*Note 2: For the purposes of paragraph 6, activities that are relevant to a Depository refer to activities that a Depository is primarily responsible for (e.g. custody and safekeeping of relevant CIS property), and operation of the relevant CIS for which the Depository has an oversight obligation over, in each case in accordance with the provisions under the relevant Product Code(s).*

## Operational controls and compliance

### 87. Record keeping

A Depository should ensure that its record keeping policies ~~are in compliance comply~~ with applicable legal and regulatory requirements as well as requirements under the constitutive documents of the relevant CIS and that it complies with all such record keeping requirements on an ongoing basis.

### 98. Oversight of the ~~management company relevant CIS~~

A Depository should have oversight of the ~~management company relevant CIS~~ to ensure that it ~~has is operated (or in all material respects managed~~ the case of a relevant CIS that is a PRF, administered) in accordance with the provisions of the constitutive documents of the relevant CIS.

*Note: ~~In the case of a PRF, where a management company is appointed for the PRF and/or any investment portfolio thereunder, a Depository should have oversight of the relevant management company to ensure that it has in all material respects managed the PRF and/or the relevant investment portfolio in-~~*

~~accordance with the provisions of the constitutive documents of the relevant CIS and the PRF Code.~~

409. Subscription and redemption

In respect of each relevant CIS, A-a Depository should have oversight of the relevant operator(s) to ensure that:

~~(a) — have oversight of the relevant operator(s) to ensure that:~~

~~(i)(a)~~ subscription and redemption transactions are processed on a timely basis;

~~(ii)(b)~~ subscription and redemption orders are carried out in accordance with the provisions of the constitutive documents of the relevant CIS; ~~and~~

~~(c)~~ where subscription proceeds are received by the Depository or a relevant operator but the subscription orders relating to these proceeds have not yet been accepted (or, in the case of PRFs, placed), these proceeds are deposited on a timely basis into segregated or omnibus bank account(s) designated for holding such proceeds;

~~(d)~~ when subscription orders are accepted (or in the case of PRFs, placed), the subscription proceeds relating to such orders are deposited on a timely basis into a segregated bank account designated as a trust account or client account for holding money which constitutes relevant CIS property;

~~(e)~~ redemption proceeds are transferred on a timely basis into segregated or omnibus bank account(s) designated for holding such proceeds for payment to the respective unit/shareholders, or in the case of a PRF, scheme participants, and held therein until such proceeds are paid out from such account in accordance with the constitutive documents of the relevant CIS;

~~(iii)(f)~~ unit or share certificates (where appropriate) are issued and cancelled in a timely manner;

~~(b)(g)~~ ~~have oversight of the relevant operator(s) to ensure that~~ reconciliation of subscription and redemption is performed (e.g. subscription or redemption orders are reconciled with the proceeds received or paid and the number of units issued or cancelled);

~~(c)(h)~~ ~~have oversight of the relevant operator(s) to ensure that~~ the frequency of reconciliation conducted is consistent with ~~the flow that~~ of subscriptions and redemptions; and

~~(d)(i)~~ ~~have oversight of the relevant operator(s) to ensure~~ it has maintained proper documentation and records of the reasons for (i) suspension of dealing of units or shares of the relevant CIS and (ii) any suspension of calculation of valuation, price or net asset value of the relevant CIS, including the consultation process and the communication between the Depository and the management company.

*Note: ~~For a PRF, where no management company is appointed for the PRF or any investment portfolio thereunder, the Depository should assume primary obligation (as opposed to performing an oversight function) in respect of such PRF and/or investment portfolio, as the case may be, for the obligations set out under paragraph 10 above in accordance with the PRF Code. If the segregated or omnibus bank account(s) designated for holding subscription proceeds is established and maintained by a Type 13 licensed corporation, the licensed corporation shall hold the proceeds in relation to a relevant CIS on trust for the subscribers or scheme participants until such proceeds are paid into the relevant CIS' segregated bank account designated as a trust account or client account for holding scheme money, or in the case where the proceeds are rejected or withdrawn, returned to the potential investors. Similarly, if the segregated or omnibus bank account(s) designated for holding redemption proceeds is established and maintained by a Type 13 licensed corporation, the licensed corporation shall hold the redemption proceeds in relation to a relevant CIS on trust for the respective unit/shareholders, or in the case of a PRF, scheme participants, until the proceeds are paid out from such account in accordance with the constitutive documents of the relevant CIS.~~*

**4.10.** Valuation/price/net asset value calculation monitoring

A Depository should:

- (a) have oversight of the relevant operator(s) to ensure that the methodology adopted to calculate the net asset value per unit or share for each type of investments held by the relevant CIS (including illiquid assets) is in accordance with the provisions of the constitutive documents of the relevant CIS;
- (b) have oversight of the relevant operator(s) to ensure that the calculation of the net asset value of the relevant CIS, including interest income, dividend income and fee expenses, is accurate;
- (c) have oversight of the relevant operator(s) to ensure that the use of the fair value adjustments for valuing different types of assets-properties of the relevant CIS, including the circumstances which trigger the use of fair value adjustments is in accordance with the provisions of the constitutive documents of the relevant CIS, and that the governance structure and the review process for the fair value adjustments established by the management company (in consultation with the Depository) are appropriate;
- (d) establish a clear and comprehensive escalation mechanism for any error or exception in the pricing of the units or shares of the relevant CIS, ~~including informing the management company of any pricing error or exception which has come to the attention of the Depository and reporting such error or exception to the Commission in a timely manner in accordance with the relevant Product Codes, or ensuring that such error or exception is so reported to the Commission by the management company. The Depository should also work together with the management company to ensure that~~

~~any pricing error or exception is dealt with, including ensuring that there are appropriate compensation arrangements to the relevant CIS and/or relevant unit or share holders; and. Where there are pricing errors or exceptions, it should:~~

- ~~(i) inform the management company of the pricing errors or exceptions which have come to the attention of the Depositary;~~
- ~~(ii) report, or ensure the relevant operator(s) has reported, the pricing errors or exception to the Commission in a timely manner, in accordance with the relevant Product Code(s); and~~
- ~~(iii) work with the management company to ensure that the pricing errors or exceptions are dealt with in accordance with the relevant Product Code(s), including ensuring that there are appropriate compensation arrangements for the relevant CIS and/or relevant unit/shareholders or where the relevant CIS is a PRF, scheme participants; and~~

~~*Note: For the purpose of paragraph 10(d), where the relevant CIS is a PRF, the reference to “management company” shall be replaced by “management company and/or product provider”.*~~

- (e) have oversight of the relevant operator(s) to ensure that it ~~has maintained~~ proper recording of interest income, dividend income and other corporate actions in relation to each relevant CIS.

~~*Note: For a PRF, where no management company is appointed for the PRF or any investment portfolio thereunder, the Depositary should assume primary obligation (as opposed to performing an oversight function) in respect of such PRF and/or investment portfolio, as the case may be, for the obligations set out under paragraph 11 above in accordance with the PRF Code.*~~

#### 1211. Distribution payments ~~monitoring~~

- (a) A Depositary should have oversight of the relevant operator(s) to ensure that:
  - ~~(a)(i)~~ distribution calculations are carried out in accordance with the provisions of the constitutive documents of the relevant CIS; and
  - ~~(b)(ii)~~ distribution payments are timely, complete and accurate.
- ~~(b) In respect of each relevant CIS, a Depositary should ensure that distribution proceeds are transferred on a timely basis upon instruction from the relevant operator into segregated or omnibus bank account(s) designated for holding such distribution proceeds for payment to the respective unit/shareholders, or in the case of a PRF, scheme participants, and held there until the proceeds are paid out from the account in accordance with the constitutive documents of the relevant CIS.~~

~~*Note: If the segregated or omnibus bank account(s) designated for holding distribution proceeds is established and maintained by a Type 13*~~

licensed corporation, the licensed corporation shall hold the distribution proceeds in relation to a relevant CIS on trust for the respective unit/shareholders, or in the case of a PRF, scheme participants, until the proceeds are paid out from the account in accordance with the constitutive documents of the relevant CIS.

4312. Cash flow monitoring

A Depositary should:

- (a) implement proper procedures and controls in opening and maintaining any bank account for the relevant CIS; and where any bank account for the relevant CIS is opened by the management company in the name of the relevant CIS or the management company itself, the Depositary should have oversight to ensure that the relevant CIS/management company has implemented proper procedures and controls in opening any such bank account; and
- ~~(b) ensure that prior written consent has been granted by the Depositary and kept in the case where cash is placed with the management company, investment delegates, directors of a relevant CIS, which is in mutual fund structure, or any of their connected person(s) in accordance with the provisions of the constitutive documents of the relevant CIS;~~
- ~~(c) have oversight of the relevant operator(s) to ensure that controls to address conflicts of interests have been adopted, including oversight on the relevant cash management policy of the management company, where cash is placed with the entities mentioned in the relevant Product Code(s);~~
- ~~(d) have oversight of relevant operator(s) to ensure that the receipt of subscription proceeds and payment of redemption proceeds are properly deposited into or withdrawn from the bank account of the relevant CIS; and~~
- (e)(b) identify cash flows which are inconsistent with the operations of the relevant CIS.

~~Note: For a PRF, where no management company is appointed for the PRF or any investment portfolio thereunder, the Depositary should assume primary obligation (as opposed to performing an oversight function) in respect of such PRF and/or investment portfolio, as the case may be, for the obligations set out under paragraph 13 above in accordance with the PRF Code.~~

4413. Investment monitoring

A Depositary should:

- (a) carry out the instructions of the management company of the relevant CIS with post-trade verifications in relation to investment limitations and restrictions to ensure compliance with the provisions of the offering and constitutive documents of the relevant CIS and the relevant Product Code(s);

- (b) have oversight of the relevant operator(s) to ensure that it has complied with the investment and borrowing limits set out in the offering and constitutive documents of the relevant CIS and the conditions under which the CIS was authorized;
- (c) ~~review the accuracy of the management company's investment records; on a regular basis, provide or make available copies of the Depository's reconciled records relating to relevant CIS property and transactions executed on behalf of the relevant CIS, to the management company or its delegate(s) for the management company to ensure that there are no discrepancies between the records maintained by the Depository and the management company, respectively, and where any exceptions are identified, they are followed up in a timely manner;~~
- (d) have oversight of the relevant operator(s) to ensure that transactions are settled, and ensure that exceptions are detected and followed up, all in a timely manner;
- (e) have oversight of the relevant operator(s) to ensure that the counterparties of ~~the all~~ transactions (e.g. brokers or financial institutions of a transaction) are on the authorized list of the relevant CIS;
- (f) have oversight of the relevant operator(s) to ensure that the margin requirement for different types of investment are complied with; and
- (g) ~~verify~~ have oversight of the relevant operator(s) to ensure that daily mark-to-market value on collateral and ~~conduct~~ reconciliation of reports provided by counterparties with regard to the collateral are prepared and/or reviewed by the relevant operator(s) appropriately.

**1514.** Custody and ~~safeguarding of assets~~ safekeeping of relevant CIS property

In respect of each relevant CIS, a Depository should:

- (a) assess and manage custody risk with adequate organisational arrangements to minimise the risks of loss ~~of the assets~~ of the relevant CIS property;
- (b) unless the ~~assets of a~~ relevant CIS property are held in ~~an~~ omnibus or individual account(s) designated as a trust account or client account, with adequate safeguards in line with international standards and best practices to ensure that ~~the assets of~~ the relevant CIS property are properly recorded with frequent reconciliations, segregate the ~~assets~~ relevant CIS property of each relevant CIS from the ~~assets~~ property of:
  - (i) the management company, investment delegate and their respective connected persons;
  - (ii) the Depository and any nominees, agents or delegates throughout the custody chain; and
  - (iii) other relevant CIS and clients of the Depository and its or their nominees, agents or delegates throughout the custody chain;

- (c) properly register the ~~assets of the~~ relevant CIS property in the name of or to the order of the Depository, unless prohibited by any relevant laws or regulations;
- (d) properly ~~safeguard the assets of~~ safekeep the relevant CIS property;
- (e) establish and maintain proper segregated bank account(s) designated as a trust account or client account for holding money which constitutes relevant CIS property whether in Hong Kong or overseas, unless prohibited by any relevant laws or regulations;
- ~~(e)(f)~~ obtain sufficient and reliable information and conduct verification of ownership of ~~assets of the~~ relevant CIS property;
- ~~(f)(g)~~ maintain comprehensive, up-to-date and accurate records of ~~assets of the~~ relevant CIS property, including cash and assets that cannot be held in custody;
- ~~(g)(h)~~ ensure ~~cash~~-reconciliation is carried out on a daily basis for cash and on a regular basis for other relevant CIS property; ~~and~~
- (i) ensure any part of the relevant CIS property that is subject to any security interest to secure payment or repayment of financial accommodation under which credit is or is to be provided in respect of the relevant CIS (“scheme collateral”) is held in safe custody in segregated account(s) solely for the purpose of holding such scheme collateral or otherwise dealt with in accordance with provisions of the constitutive documents of the relevant CIS; and
- ~~(h)(j)~~ ensure payments and asset transfers or other dealings of any relevant CIS property on behalf of the relevant CIS are properly authorized in accordance with the constitutive documents of the relevant CIS.

*Note: Where the relevant payments or asset transfers or other dealings of relevant CIS property need not be authorized by the Depository under the constitutive documents of the relevant CIS, the Depository should have proper oversight of the management company to ensure that ~~it~~the management company has properly authorized or has obtained the relevant authorization.*

**4615.** Connected party transactions entered into by or on behalf of the relevant CIS

Any reference to “connected party transactions” in Part I of this ~~s~~Schedule refers to “~~tr~~ansactions with connected persons” in the relevant provisions under the UT Code and the PRF Code, respectively.

A Depository should:

- (a) ensure that there are proper controls adopted by the relevant CIS and or have oversight of the relevant operator(s) to ensure that it has adopted proper controls in respect of connected party transactions of the relevant CIS; ~~and~~
- (b) ensure that the relevant operator(s) has effective controls in place for

~~obtaining the Depository's~~ prior written consent ~~has been granted by the Depository for any for~~ transaction(s) between the relevant CIS and the entities mentioned in the relevant Product Code(s), ~~such transactions~~ are executed at ~~the~~ arm's length and in the best interests of the relevant CIS, and that the consent is supported by proper documentation of the justifications for the approval of the transaction-; ~~and~~

~~(c) where cash forming part of the relevant CIS property is deposited with any of the management company, investment delegates, directors of the relevant CIS or any of their connected persons, have oversight of the relevant operator(s) to ensure that controls are in place to address any conflicts of interests including (i) oversight of the relevant cash management policy of the management company; and (ii) the relevant operator(s) has effective controls in place for obtaining all necessary prior written consent from the Depository for depositing the cash with these parties, in each case ensuring that the deposit is maintained in a manner that is in the best interests of the unit/shareholders (or in the case of a PRF, scheme participants) and in accordance with the provisions of the relevant Product Code(s) and constitutive documents of the relevant CIS.~~

#### ~~4716.~~ Handling different classes of investors fairly

A Depository should have oversight of the relevant operator(s) to ensure that ~~where a relevant CIS has multiple classes of units/shares, investors of~~ different classes of ~~investors units/shares~~ are treated fairly ~~under the control framework of the management company~~, such as the putting in place by the management company of control procedures to ensure accuracy in the calculation of the net asset value of a relevant CIS with multiple classes of ~~units/shares~~ in accordance with the constitutive documents ~~of the relevant CIS~~ and the valuation and procedures established by the management company.

#### ~~4817.~~ Professional indemnity insurance

A Depository should maintain adequate professional indemnity insurance cover commensurate with its business.

## Part II

### Depository of a relevant CIS authorized under the REIT Code

#### Introduction

~~4918.~~ ~~Where applicable, a~~ A Depository of a ~~relevant CIS authorized under the REIT Code~~ should generally observe the requirements set out under Part I of this Schedule with ~~the~~ modifications ~~as~~ set out in paragraph 19 below. It should also ensure compliance with all requirements applicable to a REIT's trustee under the REIT Code.

*Note: An SFC-authorized REIT is a closed-ended fund which invests primarily in real estate. ~~In~~ A Depository of a REIT has a fiduciary duty to hold the assets of the REIT on trust for the benefit of the unitholders of the REIT, and to oversee the activities of the management company for compliance with the relevant constitutive documents of, and regulatory requirements applicable to, the REIT. In line with the obligations of a REIT trustee as set out in the REIT Code, the*

requirements set out under Part I of this Schedule should generally be applicable to a Depository of a REIT. However, in view of ~~its the~~ particular nature ~~and the specific requirements set out in the REIT Code, product structures and features of REITs~~, some of the requirements ~~set out in Part I of this Schedule are modified in paragraph 19 below for a may not be applicable to the~~ Depository of a REIT.

## **Requirements in Modifications to Part I of this Schedule for a which apply to the Depository of a REIT with modifications**

2019. The following requirements in Part I of this Schedule apply to the Depository of a REIT ~~where applicable~~ with modifications set out below:

### (a) Pricing errors

As REITs are normally traded at prevailing trading prices on The Stock Exchange of Hong Kong Limited, the requirements relating to pricing errors in paragraph 10(d) would not typically be relevant in the context of REITs. Where there is no issue of new REIT units based on the net asset value of the relevant REIT, the requirements under paragraph 10(d) will not be triggered.

### (a)(b) Cash flow monitoring and cash reconciliation

Under the REIT Code, the management company has the obligation to manage the cash flows of a REIT. In place of the specific requirements under paragraphs ~~1312~~ and ~~1514~~(h) of Part I of this Schedule, the Depository of a REIT should ~~oversee the ensure that the management company has put in place proper~~ cash flow management ~~activities policy and controls and should have oversight on and regular monitoring of the management company for implementation of such policy and controls to ensure~~ compliance with all applicable legal and regulatory requirements as well as requirements under the constitutive documents of the REIT.

### (b)(c) Custody and ~~safeguarding of assets safekeeping of relevant CIS property~~

~~As part of its duty under paragraph 15 of Part I of this Schedule, the~~ Depository of a REIT should ensure ~~the safe custody of all title documents of the real estate owned by that all the assets of the REIT as part of the are~~ properly segregated and held for the benefit of the unitholders in accordance with the REIT Code and the provisions of the constitutive document of the REIT.

Where in the reasonable opinion of the Depository of a REIT it is in the interests of the REIT that certain assets of the REIT, ~~including safeguard of the~~(e.g. title documents of real estate and bank accounts) have to be held, maintained and/or operated by its management company in the name of the REIT or any special purpose vehicle (“SPV”), the Depository should ensure that the management company has put in place proper safeguards and controls (i) to ensure the relevant assets are properly segregated and held in safe custody in accordance with all applicable legal and regulatory requirements as well as requirements under the constitutive documents of the REIT and (ii) to enable the Depository to monitor and have an effective oversight and control on the relevant assets on an on-going basis, ~~maintenance of an accurate and~~

~~complete record of all title documents and monitoring of custody arrangement to minimise the risk of loss of title documents.~~

~~(e)(d)~~ Connected party transactions

~~Any reference to “connected party transactions” in this Schedule refers to “connected party transactions” as defined under the REIT Code.~~

The requirements under paragraph ~~16(b)15~~ of Part I of this Schedule do not apply to a Depository of a REIT. ~~Under the REIT Code, there are specific requirements applicable to connected party transactions, including the circumstances under which an opinion by the Depository of a REIT would be required.~~ The Depository of a REIT should ensure compliance with all of its obligations in respect of connected party transactions under the REIT Code and the constitutive documents of the REIT.



## Appendix C

### Proposed amendments to SFC codes and guidelines

Section 1 – Proposed amendments to the UT Code, PRF Code, REIT Code and FMCC

Section 2 – Proposed amendments to the Guidelines on Competence

## Section 1 – Proposed consequential amendments to the Code on Unit Trusts and Mutual Funds

### Chapter 4: Trustee/Custodian

#### Appointment of trustee/custodian

- 4.1 Every collective investment scheme for which authorization is requested must appoint a trustee (in the case of a unit trust) or a custodian (in the case of a mutual fund corporation) that is acceptable to the Commission and shall comply with this Chapter on an ongoing basis.

*Notes: (1) Schemes established under trust must have a trustee and mutual fund corporations must have a custodian. In this context, this chapter lists the general obligations applicable equally to both trustee and custodian, whichever is appointed. The constitutive documents [see Appendix D] of the scheme must conform in substance to the intended operative effect of the provisions in this Chapter 4. Trustees are expected to fulfill the duties imposed on them by the general law of trusts. In the case of a mutual fund corporation, the responsibilities of a custodian under Chapter 4 may be reflected in the custodian agreement and/or the management agreement instead of the articles of association, where appropriate.*

- (2) An acceptable trustee/custodian should be subject to prudential regulation and supervision on an ongoing basis. ~~Trustee/custodian shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this UT Code [see Appendix G] and should file such report with the Commission, unless such trustee/custodian is prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission.~~*

- 4.2 A trustee/custodian must be:

- (a) ~~[deleted]a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of Laws of Hong Kong); or~~
- (b) ~~[deleted]a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 4.2(d); or~~

*~~Note:—In determining the acceptability of a subsidiary of a banking institution falling under 4.2(d), the Commission will take into account factors including the level of oversight and supervision from such banking institution.~~*

- (c) ~~[deleted]a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of Laws of Hong Kong); or~~

(d) a banking institution incorporated outside Hong Kong which is subject to prudential regulation and supervision on an ongoing basis, or an entity which is authorized to act as trustee/custodian of a scheme and prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission; or

(e) a depository licensed or registered to carry on Type 13 regulated activity under Part V of the SFO.

4.3 A trustee/custodian must be independently audited ~~and have minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency to ensure that the applicable statutory and regulatory requirements on financial resources are complied with.~~

4.4 A trustee/custodian must have minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency. Notwithstanding ~~4.3~~this, the trustee/custodian's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee/custodian is a wholly-owned subsidiary of a substantial financial institution (the holding company); and

- (a) the holding company issues a standing commitment to subscribe sufficient additional capital up to the required amount, if so required by the Commission; or
- (b) the holding company undertakes that it would not let its wholly-owned subsidiary default and would not, without prior approval of the Commission, voluntarily dispose of, or permit the disposal or issue of any share capital of the trustee/custodian such that it ceases to be a wholly-owned subsidiary of the holding company.

Note: 4.4 is not applicable to a trustee/custodian that is licensed or registered to carry on Type 13 regulated activity under Part V of the SFO, which shall comply with the applicable statutory requirements on financial resources.

### **General obligations of trustee/custodian**

4.5 The trustee/custodian must:

- (a) (i) take into its custody or under its control all the property of the scheme and hold it in trust for the holders (in the case of a unit trust) or the scheme (in the case of a mutual fund corporation) in accordance with the provisions of the constitutive documents;

*Note: With respect to property of the scheme which by nature cannot be held in custody, the trustee/custodian shall maintain a proper record of such property in its books under the name of the scheme.*

- (ii) register cash and registrable assets in the name of or to the order of the trustee/custodian;

- (iii) be liable for the acts and omissions of nominees, agents and delegates in relation to assets forming part of the property of the scheme;

*Note: Nominees, agents and delegates that are appointed for the custody and/or safekeeping of the property of the scheme shall be subject to prudential regulation and supervision, unless otherwise accepted by the Commission. The Commission must be satisfied with the overall custodial/safekeeping arrangement put in place to provide proper and adequate safeguards for the property of the scheme, having taken into account, among others, applicable local legal and regulatory requirements.*

- (iv) segregate the property of the scheme from the property of:
  - (1) the management company, investment delegates and their respective connected persons;
  - (2) the trustee/custodian and any nominees, agents or delegates throughout the custody chain; and
  - (3) other clients of the trustee/custodian and nominees, agents or delegates throughout the custody chain, unless held in an omnibus account with adequate safeguards in line with international standards and best practices to ensure that the property of the scheme is properly recorded with frequent and appropriate reconciliations being performed; and
- (v) put in place appropriate measures to verify ownership of the property of the scheme;
- (b) take reasonable care to ensure that the sale, issue, repurchase, redemption and cancellation of units/shares effected by a scheme are carried out in accordance with the provisions of the constitutive documents;
- (c) take reasonable care to ensure that the methods adopted by the management company in calculating the value of units/shares are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of the constitutive documents;
- (d) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the offering or constitutive documents or this UT Code;
- (e) take reasonable care to ensure that the investment and borrowing limitations set out in the constitutive documents and the conditions under which the scheme was authorized are complied with;
- (f) issue a report to the holders to be included in the annual report on whether in the trustee/custodian's opinion, the management company has in all material respects managed the scheme in accordance with the provisions of the constitutive documents; if the management company has not done

so, the respects in which it has not done so and the steps which the trustee/custodian has taken in respect thereof;

- (g) where applicable, take reasonable care to ensure that unit/share certificates are not issued until subscription moneys have been paid;
- (h) take reasonable care to ensure that the cash flows of the scheme are properly monitored;
- (i) exercise reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of nominees, agents and delegates which are appointed for the custody and/or safekeeping of scheme's property [see 4.5(a)(iii)]; and be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent on an ongoing basis to provide the relevant services;
- (j) fulfil such other duties and requirements imposed on it as set out in this UT Code; and exercise due skill, care and diligence in discharging its obligations and duties appropriate to the nature, scale and complexity of the scheme; and

~~Note:—In discharging its obligations, trustee/custodian shall make reference to the minimum requirements on the terms of reference for the review of internal controls and systems of trustee/custodian as set out in Appendix G.~~

- (k) establish clear and comprehensive escalation mechanisms to deal with potential breaches detected in the course of discharging its obligations and report material breaches to the Commission in a timely manner.

*Note: The trustee/custodian is expected to (i) update the management company and report to the Commission (either directly or via the management company) any material issues or changes that may impact its eligibility/capacity to act as trustee/custodian of a scheme and (ii) inform the Commission promptly of any material breach of this UT Code and applicable provisions of the Handbook with respect to the scheme that has come to its knowledge, which has not been otherwise reported to the Commission by the management company.*

### **Retirement of trustee/custodian**

- 4.6 The trustee/custodian may not retire except upon the appointment of a new trustee/custodian and subject to the prior approval of the Commission [see 11.1]. The retirement of the trustee/custodian should take effect at the same time as the new trustee/custodian takes up office.

### **Independence of trustee/custodian and the management company**

- 4.7 The trustee/custodian and the management company must be persons who are independent of each other.
- 4.8 Notwithstanding 4.7, if the trustee/custodian and the management company are

both bodies corporate having the same ultimate holding company, whether incorporated in Hong Kong or outside Hong Kong, the trustee/custodian and the management company are deemed to be independent of each other if:

- (a) (i) [deleted]
- (ii) neither the trustee/custodian nor the management company is a subsidiary of the other;
- (iii) no person is a director of both the trustee/custodian and the management company; and
- (iv) both the trustee/custodian and the management company sign an undertaking that they will act independently of each other in their dealings with the scheme.

*Note: Among other things, there should be systems and controls in place to ensure that persons fulfilling the custodial function / safekeeping of the scheme's assets are functionally independent from persons fulfilling the scheme's management functions, for example, with an independent board, separate governance structure / lines of reporting to the management of the trustee/custodian and separate operational teams within the same corporate group.*

- (b) [deleted]

## **Chapter 5: Management company and auditor**

### **General obligations of a management company**

5.10 A management company must:

- (a) manage the scheme in accordance with the scheme's constitutive documents and in the best interests of the holders. It is also expected to fulfill the duties imposed on it by the general law;
- (b) maintain or cause to be maintained the books and records of the scheme and prepare the scheme's financial reports. These reports must be prepared and made available to all registered holders and filed with the Commission in a manner in accordance with 11.6, 11.6A and 11.8;
- (c) ensure that the constitutive documents are made available for inspection by the public in Hong Kong, free of charge at all times during normal office hours at its place of business or that of its Hong Kong Representative and make copies of such documents available upon the payment of a reasonable fee;
- (d) take reasonable care to ensure that the trustee/custodian is properly qualified for the performance of its duties and functions and discharging its obligations in respect of custody of a scheme's property, having regard to the requirements as set out in Chapter 4;

*Note: For the avoidance of doubt, the management company should:*

- (1) *comply with all applicable legal and regulatory requirements in respect of custody of the scheme's property; and*
- (2) *provide relevant information to the trustee/custodian to discharge its regulatory obligations, including those obligations pursuant to 4.5.*

(deleted)

## **Guidelines for review of internal controls and systems of trustees/custodians**

### **Introduction**

~~1. Pursuant to 4.1 of this UT Code, a trustee/custodian of a collective investment scheme is required to appoint an independent auditor to periodically review its internal controls and systems (“internal control review”) on terms of reference in compliance with this Appendix, unless the trustee/custodian is prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission. A report of the internal control review (“review report”) must be filed with the Commission. Trustees/custodians should ensure that adequate policies and procedures of the internal controls and systems are maintained to ensure compliance with the requirements of Chapter 4 of this UT Code.~~

~~*Note: Where third parties are engaged to carry out functions or operations that are relevant in discharging the responsibilities and obligations of the trustee/custodian, the trustee/custodian should ensure its accountability to the scheme and investors is not diminished and its obligations as set out in 4.5 of this UT Code are duly discharged. Although a third party may be engaged to assume the operations and functions of a trustee/custodian, the responsibilities and obligations of the trustee/custodian may not be delegated and shall remain with the trustee/custodian.*~~

~~2. [deleted]~~

### **Purpose of the guidelines**

~~3. This Appendix provides further guidance to trustees/custodians of schemes on the periodic internal control review requirement. This Appendix sets out the minimum scope of an internal control review which will be acceptable to the SFC. A variety of internal controls and systems can be adopted to achieve the same internal control objectives. Trustees/custodians should exercise professional judgement in deciding the appropriate policies and procedures of their internal controls and systems.~~

~~4. For the purposes of this Appendix, the term “auditor” refers to the independent professional accountant who is engaged to conduct the internal control review and issue the required auditor’s report (included in the review report) provided herein.~~

### **Scope of review**

~~5. The objective of the internal control review is to assess whether the internal controls and systems of a trustee/custodian are adequate and sufficient to comply with 4.5 of this UT Code. The internal control review should involve all material procedural and control elements that are necessary to discharge the responsibilities and obligations of trustees/custodians in relation to schemes.~~

~~Notes: (1) In determining whether the control objectives as set out under paragraph 8A of this Appendix have been achieved, the scope of internal control review should cover the internal controls and systems of the trustee/custodian in monitoring the performance of any third party (such as sub-custodian, administrator, transfer agent and registrar) who is appointed/engaged to carry out certain functions and operations that are relevant for the trustee/custodian in discharging its responsibilities and obligations. In this case, the relevant third party is expected to establish policies and procedures in its internal controls and systems in support of the trustee/custodian to discharge its responsibilities and obligations.~~

~~(2) For the purposes of Note(1) to paragraph 5 of this Appendix, the trustee/custodian should establish policies and procedures in its internal controls and systems to ensure the related functions and operations are properly carried out, implemented and monitored irrespective of the parties designated to perform or handle these functions and operations [see Note to paragraph 1 of this Appendix].~~

~~5A. In selecting samples for the internal control review, the auditor should include, where available, different types of scheme(s) authorized by the SFC of which the entity concerned is acting as trustee/custodian. As part of the internal control review, the auditor should also review whether different classes of investors of a scheme are treated fairly under the control framework of the trustee/custodian.~~

~~5B. The internal control review should be conducted to provide reasonable assurance in accordance with internationally acceptable standards.~~

~~6. The engagement letter between the trustee/custodian and the auditor should incorporate or refer to the terms of reference (“Terms of Reference”) under paragraph 8 of this Appendix which sets out the scope of review for compliance with the requirements of this UT Code. The trustee/custodian may engage the auditor to expand the scope of the internal control review; it is important that this is agreed with the auditor before the commencement of the internal control review.~~

~~7. [deleted]~~

## **Terms of Reference**

~~8. The precise terms of the internal control review engagement will be as agreed between the trustee/custodian and the auditor in each particular case. The review report should include the following Terms of Reference:~~

### **A. Report by the management of the trustee/custodian**

~~The management of the trustee/custodian must issue a report (“trustee/custodian’s report”) to describe the control environment and the policies and procedures of its internal controls and systems that are designed to ensure compliance with the requirements of 4.5 of this UT Code and the control objectives set out in this Appendix. The policies and procedures are expected to cover the control objectives (“Control Objective(s)”) and the key control attributes (“Key Control Attributes”) under each of the areas (namely, (a) maintenance of a control environment, (b) compliance with applicable legal and regulatory requirements, (c) compliance with control policies and procedures, (d)~~

safekeeping of assets against loss, (e) handling of different classes of investors fairly and (f) sound information technology control processes) described in this paragraph 8A below.

*Note:—In the case where the trustee/custodian is required to take reasonable care in discharging its obligations provided under 4.5 of this UT Code, the trustee/custodian should ensure its obligations (e.g. oversight functions) as set out in this UT Code are duly discharged notwithstanding that third parties may be engaged to carry out the relevant functions or operations.—*

## Control Objective

### (a) Maintenance of a control environment

#### Key Control Attributes

##### (1) General

- (i) Possession of relevant knowledge, skills, qualifications, experiences, resources and operational capabilities commensurate with the nature, scale and complexity of the scheme.
- (ii) Devise and tailor appropriate and specific procedures (subject to regular and frequent review and update) for acting as the trustee/custodian of the scheme concerned, including ongoing monitoring on third parties engaged.
- (iii) Establish clear and comprehensive escalation mechanism to deal with potential breaches detected in the course of discharging its obligations and report to the SFC on material breaches in a timely manner.

##### (2) Corporate governance

- (i) Establishment of a corporate governance framework for the business and operation as trustee/custodian.
- (ii) Timely reporting and involvement of senior management of the trustee/custodian and the management company on matters and issues that may lead to breach of relevant laws and regulations or applicable legal and regulatory requirements.
- (iii) Escalation of issues identified to senior management of the trustee/custodian and the management company and ongoing assessment, monitoring of the progress and development.

##### (3) Risk management framework

- (i) Establishment of a risk management framework.
- (ii) Identification, monitoring and controlling of relevant risks for acting as the trustee/custodian of a scheme, including but not limited to,

~~operational risks and regulatory risks.~~

~~(iii) Supervision from senior management of the trustee/custodian and ongoing communication with the management company.~~

~~(4) Business continuity plan~~

~~(i) Establishment of a business continuity plan.~~

~~(ii) Regular testing on the effectiveness of the business continuity plan which is subject to review and revision on an ongoing basis.~~

~~(iii) Timely reporting on material exceptions to senior management of the trustee/custodian and the management company.~~

#### ~~Control Objective~~

~~(b) Compliance with applicable legal and regulatory requirements~~

#### ~~Key Control Attributes~~

~~(5) Compliance function and review (including but not limited to capital adequacy and independence requirements)~~

~~(i) Formation and documentation of a compliance programme approved by the management of the trustee/custodian for the obligations under 4.5 of this UT Code as well as addressing any compliance/breach issues.~~

~~(ii) Development and maintenance of a compliance policy to provide specific guidance (e.g. ongoing communication, training, etc.) to its staff and third parties engaged in discharging its obligations as trustee/custodian.~~

~~(iii) Sufficient and adequate compliance resources, including human resources, for monitoring and supervision of the compliance programme.~~

~~(iv) Possession of relevant knowledge, skills, qualifications and experience for staff to effectively execute their duties.~~

~~(v) Periodic review on the monitoring and reporting procedures of third parties engaged.~~

~~(vi) Compliance of regulatory reporting requirements.~~

~~(vii) Regular reporting to senior management of the trustee/custodian and communication with the management company.~~

~~(viii) Establishment of procedures for dealing with complaints.~~

~~(6) Breach reporting [see 4.5(k) of this UT Code]~~

- ~~(i) Establishment of procedures and mechanisms to identify breaches in the course of discharging the obligations of the trustee/custodian.~~
- ~~(ii) Formation and monitoring of rectification plans and remedial actions, including relevant involvement and coordination with the management company.~~
- ~~(iii) Reporting to senior management of the trustee/custodian and the management company and recording of breaches.~~
- ~~(iv) Notification mechanism to relevant regulatory bodies (including the SFC) on material breaches in accordance with 4.5(k) of this UT Code.~~

#### ~~Control Objective~~

#### ~~(c) Compliance with control policies and procedures~~

##### ~~Key Control Attributes~~

- ~~(7) Oversight of management company in managing the scheme in accordance with the provisions of the constitutive documents~~
  - ~~(i) Verification of instructions given by the management company with appropriate reconciliation procedures (such as ex post controls and verification of processes and procedures).~~
  - ~~(ii) Escalation and communication with the management company on breaches identified in the course of discharging the obligations of the trustee/custodian.~~
- ~~(8) Appointment of and oversight on third parties that are relevant for the trustee/custodian in discharging its obligations as set out in 4.5 of this UT Code~~
  - ~~(i) Selection and due diligence of third parties engaged, including an assessment on their competency, regulatory and financial status, and capabilities in discharging their delegated function(s)/operation(s) and their internal controls and systems, covering the respective Control Objectives and Key Control Attributes provided in this Appendix with respect to the relevant delegated function(s)/operations(s) by the trustee/custodian.~~
  - ~~(ii) Ongoing monitoring and review of third parties engaged to ensure the delegated function(s)/operation(s) are performed in compliance with relevant legal and regulatory requirements.~~
  - ~~(iii) Oversight on third parties engaged that all the necessary internal controls and systems are established and maintained effectively, in carrying out the delegated function(s)/operation(s).~~
  - ~~(iv) Documented procedures in respect of matters in (8)(i) to (8)(iii) above.~~

- ~~(v) Contingency plan on third parties engaged, including actions and measures to be taken on breaches and solvency matters/issues relating to the third parties engaged.~~
- ~~(vi) Policies and measures to address conflicts of interests.~~
- ~~(9) Subscription and redemption monitoring [see 4.5(b) of this UT Code]~~
  - ~~(i) Subscription and redemption orders are carried out in accordance with the provisions of the constitutive documents.~~
  - ~~(ii) Transactions controls and recording systems are in place.~~
  - ~~(iii) Timely issuance and cancellation of units/share certificate.~~
  - ~~(iv) Reconciliation and verification on subscription and redemption on a regular basis, such as reconciling the subscription/redemption orders with the proceeds received/paid and the number of units issues/cancelled.~~
  - ~~(v) Frequency of reconciliation and verification consistent with the flow of subscriptions and redemptions.~~
  - ~~(vi) Timely settlement of the subscription and redemption transactions and follow-up actions on exceptions, including communication with senior management of the trustee/custodian and the management company on the exceptions identified.~~
  - ~~(vii) Proper documentation and records of the considerations taken with respect to suspension of dealing of units/shares of the scheme, including the consultation process and communication between the trustee/custodian and the management company.~~
- ~~(10) Valuation/price/net asset value calculation monitoring [see 4.5(c) of this UT Code]~~
  - ~~(i) Methodology adopted in calculating net asset value per unit/share is in accordance with the provisions of the constitutive documents.~~
  - ~~(ii) Accuracy of net asset value calculation, including interest income, dividend and fee calculation.~~
  - ~~(iii) Establishment of policies and procedures in monitoring the valuation methodology adopted by the scheme/management company for each type of investments held by the scheme, including illiquid or hard-to-value assets.~~
  - ~~(iv) Establishment of policies and procedures in monitoring the use of the fair value adjustments considered by the management company for valuing different types of assets of a scheme, including the circumstances that trigger the use of fair value adjustments, and the governance structure and review process for fair value adjustments and consultation with the trustee/custodian where appropriate.~~

- ~~(v) Periodic review of valuation monitoring policies and procedures, including effectiveness, appropriateness and consistency of their application.~~
- ~~(vi) Proper documentation and records on the considerations taken with respect to the suspension of calculation of valuation/price/net asset value of the scheme, including the consultation process and communication between the trustee/custodian and the management company.~~
- ~~(vii) Establish clear and comprehensive escalation mechanism to deal with errors or exceptions in the pricing of the units/shares of the scheme that has come to the attention of the trustee/custodian in the course of discharging its obligations, including proper documentation of the mechanism, compensation arrangements to the scheme and/or holders, communication between the trustee/custodian and the management company and timely reporting to the SFC on the pricing errors in accordance with 10.2A of this UT Code.~~
- ~~(viii) Proper recording of interest income, dividend income and other corporate actions.~~

~~(11) Distribution payment monitoring~~

- ~~(i) Calculation of distribution is carried out in accordance with the provisions of the constitutive documents.~~
- ~~(ii) Ensure completeness and accuracy of distribution payment.~~
- ~~(iii) Establish clear and comprehensive escalation mechanism to deal with exceptions detected in the course of discharging the obligations of the trustee/custodian; including proper documentation of the mechanism, communication between the trustee/custodian and the management company and reporting to the SFC on material exceptions in a timely manner.~~

~~(12) Cash flow monitoring [see 4.5(h) of this UT Code]~~

- ~~(i) Oversight of the safeguards and measures adopted by the scheme/management company to ensure proper cash account opening; proper prior written consent has been obtained from the trustee/custodian in the case where cash is placed with the management company, investment delegates, directors of the scheme or any of their connected persons.~~
- ~~(ii) Oversight of the safeguards and measures adopted by the management company in addressing conflicts of interests where cash is placed with the entities under 10.10 of this UT Code, including oversight on the relevant cash management policy of the management company.~~
- ~~(iii) Ensure proper and effective monitoring on the receipt of subscription proceeds and payment of redemption proceeds.~~

- ~~(iv) Identification of significant cash flow and cash flows which could be inconsistent with the operations of the scheme.~~
- ~~(v) Periodic review of cash flow monitoring policy of the trustee/custodian.~~
- ~~(vi) Escalation procedures with senior management of the trustee/custodian and the management company when material exception is detected in the course of carrying out its duties and the follow-up actions taken.~~

~~(13) Investment monitoring [see 4.5(e) of this UT Code]~~

- ~~(i) Carry out instructions of the management company with ex-post verifications in relation to investment limitations and restrictions to ensure compliance with the provisions of the offering and constitutive documents and this UT Code.~~
- ~~(ii) Monitoring investment and borrowing limits.~~
- ~~(iii) Accuracy of investment record and investment reconciliation against third party.~~
- ~~(iv) Transactions controls and recording systems are in place.~~
- ~~(v) Timely settlement of transactions and exceptions detection and follow-up actions taken.~~
- ~~(vi) Establishment of system of recording and reporting pertaining to securities financing transactions.~~
- ~~(vii) Possession of relevant knowledge for staff who are responsible for monitoring and recording securities financing transactions.~~
- ~~(viii) Proper monitoring of the authorized list of eligible counterparties.~~
- ~~(ix) Proper monitoring on the margin requirement for different types of investment.~~
- ~~(x) Verification of daily mark to market value on collateral and reconciliation of reports provided by counterparties.~~

~~(14) Accounting system and record keeping~~

- ~~(i) Establishment of proper and appropriate accounting recording systems and record keeping requirements for each scheme.~~
- ~~(ii) Adoption of consistent accounting treatment in accordance with the constitutive documents and relevant accounting standards.~~
- ~~(iii) Timely issuance and distribution of financial reports.~~

~~(15) Connected party transactions~~

- ~~(i) Oversight of the safeguards and measures adopted by the scheme/the management company.~~
- ~~(ii) To ensure proper prior written consent has been obtained from the trustee/custodian on transactions between the scheme and the entities under 10.11 of this UT Code and proper documentation on justifications in approval of these transactions.~~

#### ~~Control Objective~~

- ~~(d) Safekeeping of assets against loss~~

#### ~~Key Control Attributes~~

#### ~~(16) Custody and safeguarding of assets~~

- ~~(i) Segregation of assets of the scheme from the assets of:
  - ~~(I) the management company, investment delegate and their respective connected persons;~~
  - ~~(II) the trustee/custodian and any nominees, agents or delegates throughout the custody chain; and~~
  - ~~(III) other clients of the trustee/custodian and nominees, agents or delegates throughout the custody chain, unless held in an omnibus account with adequate safeguards in line with international standards and best practices to ensure that the assets of the scheme is properly recorded with frequent reconciliations.~~~~
- ~~(ii) Segregation of duties in trustee/custodian's operations.~~
- ~~(iii) Safeguard of physical assets of the scheme.~~
- ~~(iv) Payment and asset transfer on behalf of the scheme.~~
- ~~(v) Reconciliation of assets against third party records on a regular basis.~~
- ~~(vi) Obtain sufficient and reliable information to conduct regular verification of ownership (including reconciliation between records of the trustee/custodian and the management company) and maintenance of comprehensive, up-to-date and accurate records for assets of the scheme that cannot be held in custody.~~
- ~~(vii) Proper registration of the scheme's assets.~~
- ~~(viii) Assess and monitor custody risk with adequate organizational arrangement to minimize risk of loss.~~
- ~~(ix) Escalation and rectification procedures on issues and exceptions identified.~~

~~(x) All cash of the scheme has been booked in the cash accounts of the scheme.~~

~~(xi) Accuracy of cash record and cash reconciliation against third party, such as reconciliation of its own records with records of the management company on a daily basis.~~

#### ~~Control Objective~~

~~(e) Handling of different classes of investors fairly~~

#### ~~Key Control Attributes~~

~~(17) Whether different classes of investors are treated fairly under the trustee/custodians' control framework, such as control procedures in ensuring accuracy in the calculation of net asset value of a scheme with multiple classes.~~

#### ~~Control Objective~~

~~(f) Sound information technology (IT) control processes~~

#### ~~Key Control Attributes~~

~~(18) IT controls on the IT systems involved in the trustee/custodian's business and operations relating to schemes authorized by the SFC, including logical and physical access controls; system application controls; system change management controls and testing; IT operations; system resilience and disaster recovery planning; incident management; and technology service providers management.~~

~~(19) Risk assessment performed by the trustee/custodian on the IT-related risks of the trustee/custodians' businesses/operations relating to schemes authorized by the SFC and adequacy of the IT controls to address the IT-related risks identified in the risk assessment.~~

~~Please note that the above Control Objectives are not meant to be exhaustive.~~

~~The controls designed to meet the above Control Objectives may vary from firm to firm. The SFC does not mandate specific controls to meet the Control Objectives. It is the responsibility of the management of the trustee/custodian to design suitable controls and ensure that these are adequate, effective and properly implemented for the purpose of achieving the Control Objectives so identified.~~

## **~~B. Objective of the review engagement~~**

~~The objective of the engagement is to review the control objectives and procedures as described in the trustee/custodian's report and to report on the findings of the review to the management of the trustee/custodian.~~

~~(1) Auditor's work should be planned and conducted so as to obtain reasonable assurance that:~~

- ~~(i) the control procedures as described by the trustee/custodian's management are suitably designed and adequate to meet the stated control objectives and compliance with 4.5 of this UT Code during the period under review;~~
  - ~~(ii) the trustee/custodian's report in paragraph 8A of this Appendix describes fairly the control procedures in place during the period under review;~~
  - ~~(iii) the specific control procedures tested (with details described) operated effectively, in all material respects, during the period under review; and~~
  - ~~(iv) material internal control weakness or failure in the internal controls or systems (whether by design or implementation) during the period under review are identified and recommendations for improvement are made.~~
- ~~(2) In assessing whether a control is suitably designed and adequate, the auditor should:~~
- ~~(i) assess whether the control individually or in combination with other controls would, when complied satisfactorily, provide reasonable assurance that the control objectives stated in the description of its internal controls and systems by the management of the trustee/custodian are achieved; and~~
  - ~~(ii) take into account the nature of business and size of the operation of the trustee/custodian.~~

### **~~C. Report by the auditor~~**

~~The auditor should issue a report ("auditor's report"), addressed to the management of the trustee/custodian, detailing the scope of the review work carried out relating to the report by management and the conclusions reached. The auditor's report should state:~~

- ~~(i) a summary of the terms of engagement containing the Terms of Reference (or attach a copy of the letter of engagement);~~
- ~~(ii) the respective responsibilities of the management of the trustee/custodian and the auditor;~~
- ~~(iii) the basis of the auditor's opinion (detailing the scope of work);~~
- ~~(iv) the auditor's opinion (see Part D of this Appendix); and~~
- ~~(v) where applicable, a description of material weakness and/or failure in the internal controls and systems identified and recommendations made to management of the trustee/custodian (or attach a copy of the letter or memorandum) (see Part E of this Appendix).~~

### **~~D. Auditor's opinion~~**

~~The auditor's opinion should state whether:~~

- ~~(i) the control procedures as described by the trustee/custodian's management were suitably designed and adequate to meet the stated control objectives and compliance with 4.5 of this UT Code during the period under review;~~
- ~~(ii) the control procedures in the trustee/custodian's report fairly described the control procedures in place during the period under review; and~~
- ~~(iii) the controls tested, which were those necessary to provide reasonable assurance that the control objectives stated in the trustee/custodian's description of its control objectives and procedures were achieved, operated effectively during the period under review.~~

~~Where applicable, the auditor should state the limitations to the tests performed and whether such limitations have any material impact on the auditor's opinion.~~

#### **~~E. Recommendation for internal controls and systems~~**

~~Upon identifying any material control weakness or failure in the internal controls and systems or areas for improvement, the auditor's report should contain:~~

- ~~(a) if any material weakness in internal controls or failure in internal controls and systems has been identified during the auditor's review, a letter/memorandum issued by the auditor to management of the trustee/custodian, and provide a copy of such letter/memorandum to the SFC. The letter/memorandum should include (i) a description of the material internal control weakness or failure in the internal controls and systems together with (ii) auditor's recommendation for improvement and response from the management of trustee/custodian; or~~
- ~~(b) in cases where no material internal control weakness or failure in internal controls and systems has been identified, if the auditor has made certain recommendations for improvement to trustee/custodian's internal controls and systems, a letter/memorandum issued by the auditor to management of the trustee/custodian setting out the relevant recommendations for improvement, and provide a copy of the letter/memorandum to the SFC.~~

#### **Period under review**

- ~~9. The period under review should be for a period of at least twelve months and should coincide with the financial year of the trustee/custodian unless otherwise agreed with the SFC.~~

~~Notes: For a trustee/custodian which is not currently acting as trustee/custodian for schemes authorized by the SFC ("new trustee/custodian"):-~~

- ~~(i) where the review represents the first internal control review of the new trustee/custodian which is conducted in accordance with this Appendix, the SFC may consider accepting a shorter review period (e.g. covering a period of six months) which may not coincide with the financial year end of the new trustee/custodian. In any event, the auditor should issue the auditor's report on the internal control review of the trustee/custodian within six months from the end of the review period and submit the~~

~~review report to the SFC at the time of submission of the application of the relevant scheme seeking SFC's authorization or the scheme change application in relation to 11.1(b) of this UT Code in support of such application(s); and~~

- ~~(ii) in the case where the new trustee/custodian has yet to come into operations, the SFC may consider on a case-by-case basis to accept separate review reports which opine on the design suitability and operating effectiveness of its internal controls and systems respectively. The review report which opine on the operating effectiveness may not need to be submitted at the time of application. However, the new trustee/custodian should consult and agree with the SFC in advance regarding the timeframe for submission of such report.~~

### **~~Filing of reports with the SFC~~**

- ~~10. The management of the trustee/custodian should file the review report, which comprises of a copy of the auditor's report and the trustee/custodian's report (as described in paragraph 8) with the SFC within six months from the end of the period under review. Where applicable, management response to the auditor's report should also be attached.~~

### **~~Frequency of review~~**

- ~~11. The review of internal controls and systems of trustees/custodians should be conducted on an annual basis. The SFC may require more frequent reviews of a trustee/custodian should this be considered necessary.~~

## Section 1 – Proposed consequential amendments to the Code on Pooled Retirement Funds

### Chapter 6: Trustee

#### Appointment of Trustee

- 6.1 Every PRF and investment portfolio must be governed by a trust with a trustee that is acceptable to the Commission and shall comply with this Chapter on an ongoing basis, unless the PRF or investment portfolio is the subject of or regulated by an insurance arrangement.

*Note: An acceptable trustee should be subject to prudential regulation and supervision on an ongoing basis. ~~Trustee shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this Code (see Appendix E to this Code) and should file such report with the Commission, unless such trustee is also currently submitting an internal control review report under Appendix G to the UT Code as a trustee/custodian of SFC-authorized fund(s) and confirms to the Commission that the applicable internal control measures in respect of such SFC-authorized fund(s) also apply to the PRF and investment portfolio(s) under its trusteeship.~~*

- 6.2 A trustee must be one of the following:

- (a) ~~[Deleted]4.2(a) of the UT Code applies;~~
- (b) ~~[Deleted]a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 6.2(d) or of an insurance company authorized in Hong Kong;~~

*Note: ~~In determining the acceptability of a subsidiary of a banking institution falling under 6.2(d), the Commission will take into account factors including the level of oversight and supervision from such banking institution.~~*

- (c) ~~[Deleted]4.2(c) of the UT Code applies; or~~
- (d) 4.2(d) of the UT Code applies; or
- (e) 4.2(e) of the UT Code applies.

- 6.3 4.3 of the UT Code applies.

- 6.4 A trustee must have minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency. Notwithstanding ~~this 6.3~~, the trustee's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee is a wholly-owned subsidiary of a bank or an insurance company (the holding company); and

- (a) 4.4(a) of the UT Code applies; or

- (b) 4.4(b) of the UT Code applies.

Note: 6.4 is not applicable to a trustee that is licensed or registered to carry on Type 13 regulated activity under Part V of the SFO, which shall comply with the applicable statutory requirements on financial resources.

## General Obligations of Trustee

6.4A The trustee must comply with the following:

- (a) 4.5(a) of the UT Code applies;  
(b) 4.5(b) of the UT Code applies;  
(c) 4.5(c) of the UT Code applies;

*Note: References therein to “prices” shall be replaced by “prices and number of units (where applicable)”.*

- (d) 4.5(d) of the UT Code applies;

*Note: References therein to “this UT Code” shall be replaced by “this Code”.*

- (e) 4.5(e) of the UT Code applies;  
(f) confirm annually to the Commission and in the annual statement to scheme participants that, in its opinion, each management company has in all material respects managed the PRF and/or investment portfolio(s) in accordance with the provisions of the constitutive documents and this Code; if a management company has not done so, the respects in which it has not done so and the steps which the trustee has taken in respect thereof;

- (g) 4.5(g) of the UT Code applies;  
(h) 4.5(h) of the UT Code applies;  
(i) 4.5(i) of the UT Code applies;

*Note: References therein to “4.5(a)(iii)” shall be replaced by “6.4A(a) of this Code”.*

- (j) 4.5(j) of the UT Code applies; and

*Note: References therein to:*  
~~(i) “this UT Code” shall be replaced by “this Code”;~~ ~~and~~  
~~(ii) “Appendix G” shall be replaced by “Appendix E to this Code”.~~

- (k) 4.5(k) of the UT Code applies.

*Note: References therein to:*  
(i) “management company” shall be replaced by “Product Provider”;

- and*
- (ii) *“this UT Code and applicable provisions of the Handbook” shall be replaced by “this Code”.*

*Note: Where no management company is appointed for the PRF or investment portfolio(s),*

- (i) *6.4A(d) and 6.4A(f) of this Code shall not be applicable;*
- (ii) *references to “take reasonable care to ensure” in 4.5(b), (e), (g) and (h) of the UT Code shall be replaced by “ensure”; and*
- (iii) *references to “take reasonable care to ensure that the methods adopted by the management company in calculating the value of units/shares are adequate to ensure” in 4.5(c) of the UT Code shall be replaced by “ensure that the methods adopted in calculating the value of units are adequate to ensure”.*

- 6.4B Where no management company is appointed for the PRF or investment portfolio(s), the trustee must assume the obligations of a management company under 5.6A(a), (b), (c) and (d) of this Code.

*Note: References therein to “manage” in 5.6A(a) shall be replaced by “administer”.*

### **Retirement of Trustee**

- 6.4C 4.6 of the UT Code applies.

*Note: References therein to “11.1” shall be replaced by “10.1 of this Code”.*

### **Independence of Trustee and Management Company**

- 6.5 4.7 of the UT Code applies.

- 6.6 4.8 of the UT Code applies.

*Note: References therein to “4.7” shall be replaced by “6.5 of this Code”.*

- 6.7 The trustee must satisfy the Commission:

- (a) that its chief executive and directors are persons of good reputation and character and, in particular, have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty; and
- (b) that the chief executive and a majority of its directors have the skill, knowledge, experience and qualifications that are, in the opinion of the Commission, necessary for the successful operation of the PRF and/or investment portfolio(s).

(deleted)

## ~~Guidelines for Review of Internal Controls and Systems of Trustees~~

~~Pursuant to 6.1 of this Code, trustee shall appoint an independent auditor to periodically review its internal controls and systems (“internal control review”) on terms of reference in compliance with this Appendix and should file such report with the Commission, unless such trustee is also currently submitting an internal control review report under Appendix G to the UT Code as a trustee/custodian of SFC-authorized fund(s) and confirms to the Commission that the applicable internal control measures in respect of SFC-authorized fund(s) also apply to the scheme under its trusteeship. Trustees should ensure that adequate policies and procedures of the internal controls and systems are maintained to ensure compliance with the requirements of Chapter 6 of this Code.~~

~~The internal control review should comply with the provisions of Appendix G to the UT Code where references therein to:~~

~~(i) “this UT Code” shall be replaced by “this Code”;~~

~~(ii) “4.5” shall be replaced by “6.4A”;~~

~~(iii) “10.2A” shall be replaced by “11.2A”;~~

~~(iv) “10.10” shall be replaced by “11.6”;~~

~~(v) “10.11” shall be replaced by “11.6”;~~

~~(vi) “11.1(b)” shall be replaced by “10.1(b)”;~~

~~(vii) “net asset value per unit/share” shall be replaced by “net asset value per unit and the number of units”; and~~

~~(viii) item (14)(iii) in paragraph 8(A) regarding timely issuance and distribution of financial reports shall not be applicable.~~

## **Section 1 – Proposed consequential amendments to the Code on Real Estate Investment Trusts**

### **Chapter 4: Trustee**

#### **Appointment of Trustee**

- 4.1 Every scheme for which authorisation is requested shall appoint a trustee acceptable to the Commission.

*Note: This chapter lists the general obligations of the trustees. Trustees also have to fulfill the duties imposed on them by the general law of trusts.*

#### **General Obligations of Trustee**

- 4.1A The trustee has the fiduciary duty to hold the assets of a scheme in trust for the benefit of the holders, and to oversee the activities of the management company for compliance with the relevant constitutive documents of, and regulatory requirements applicable to, the scheme. This includes ensuring that all investment activities carried out by the management company are in line with the investment objective and policy of a scheme and its constitutive documents, and are in the interests of the holders.

- 4.2 The trustee shall:

- (a) (i) exercise all due diligence and vigilance in carrying out its functions and duties and in protecting the rights and interests of the holders;

*Note: The trustee may seek the opinion or advice of an independent professional adviser concerning matters in the administration of the scheme if it deems appropriate.*

- (ii) ensure that all the assets of the scheme are properly segregated and held for the benefit of the holders in accordance with the provisions of the constitutive documents; and
- (iii) be liable for the acts and omissions of its nominees and agents in relation to assets forming part of the property of the scheme;
- (b) take all reasonable care to ensure that the sale, issue, repurchase and cancellation of units effected by a scheme are carried out in accordance with the provisions of the constitutive documents;
- (c) appoint from time to time a Principal Valuer or another qualified valuer to value the real estate of the scheme and to produce valuation reports with respect to the real estate of the scheme in accordance with Chapter 6;
- (d) cause a valuation of any of the real estate of the scheme to be carried out if it, or the management company, reasonably believes that such valuation is appropriate;

- (e) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the offering or constitutive documents or this Code or under general law;
- (f) take all reasonable care to ensure that the investment and borrowing limitations set out in the constitutive documents and the conditions under which the scheme was authorised are complied with;
- (g) take all reasonable care to ensure that no real estate is acquired or disposed of by or on behalf of the trustee until the trustee has obtained a recent valuation report of a property valuer appointed and instructed in writing by the trustee;

*Note: The effective date as at which the real estate is valued shall not be more than three months before the date on which the relevant circular is issued (if the transaction requires holders' approval) or the date of the sale and purchase agreement (if the transaction does not require holders' approval).*

- (h) take all reasonable care to ensure that all transactions carried out by or on behalf of a scheme are conducted at arm's length and that connected party transactions are carried out in accordance with Chapter 8;

*Note: Where the trustee is in doubt as to whether a transaction is a connected party transaction, it shall require such transaction to be subject to the provisions of Chapter 8.*

- (i) issue a report to the holders, to be included in the annual report, on whether in the trustee's opinion, the management company has in all material respects managed the scheme in accordance with the provisions of the constitutive documents; if the management company has not done so, the report shall specify respects in which it has not done so and the steps which the trustee has taken in respect thereof;
- (j) take all reasonable care to ensure that unit certificates are not issued until subscription monies have been paid;
- (k) take all reasonable care to ensure that a scheme has proper legal title to the real estate owned by the scheme, as well as to the contracts (such as property contracts, rental agreements, joint venture or joint arrangement agreements, and any other agreements) entered into on behalf of the scheme with respect to its assets and that each such contract is legal, valid and binding and enforceable by or on behalf of the scheme in accordance with its terms;

*Note: The real estate shall have good marketable title.*

- (l) take all reasonable care to ensure that the management company arranges adequate property insurance and public insurance coverage in relation to the real estate of a scheme;
- (m) take all reasonable care to ensure that the net asset value per unit of a

scheme is calculated as and when an annual valuation report is issued by the valuer for the relevant period, and that such net asset value shall be published in the annual report;

- (n) require that the management company report to the trustee as soon as reasonably practicable any breaches of the provisions in this Code and the trustee shall inform the Commission of such breaches, where appropriate, upon notification by the management company; and
- (o) be responsible for the appointment of the directors of all special purpose vehicles and joint venture entities to be appointed by the scheme.

### Criteria for Acceptability of a Trustee

4.3 A trustee shall be:

- (a) ~~[deleted] a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of Laws of Hong Kong); or~~
- (b) ~~[deleted] a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of the Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 4.3(c) below; or~~

~~*Note: In determining the acceptability of a subsidiary of a banking institution falling under 4.3(c), the Commission will take into account factors including the level of oversight and supervision from such banking institution.*~~

- (c) a banking institution incorporated outside Hong Kong which is subject to prudential regulation and supervision on an ongoing basis, or an entity which is authorized to act as trustee/custodian of a scheme and prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission; or

(d) a depository licensed or registered to carry on Type 13 regulated activity under Part V of the SFO.

4.4 A trustee shall be independently audited ~~and shall have minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency to ensure that the applicable statutory and regulatory requirements on financial resources are complied with.~~

4.5 A trustee shall have minimum issued and paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency.

Notwithstanding ~~4.4 above this~~, the trustee's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee is a wholly-owned subsidiary of a substantial financial institution (the "holding company") acceptable to the Commission; and

- (a) the holding company issues a standing commitment to subscribe sufficient additional capital in the trustee up to the required amount, if so required by the Commission; or

- (b) the holding company undertakes that it will not let its wholly-owned subsidiary default and will not, without prior approval of the Commission, voluntarily dispose of, or permit the disposal or issue of any share capital of the trustee such that the trustee ceases to be a wholly-owned subsidiary of the holding company.

*Note: 4.5 is not applicable to a trustee that is licensed or registered to carry on Type 13 regulated activity under Part V of the SFO, which shall comply with the applicable statutory requirements on financial resources.*

4.6 The trustee shall:

- (a) possess key personnel with the knowledge, organizational resources and experience relevant to the holding of real estate under a scheme that operates in a manner similar to that of a scheme authorised under this Code; or
- (b) belong to a corporate group that:
  - (i) is of good repute;
  - (ii) has acted as trustees for REITs or schemes of similar nature in overseas jurisdictions; and
  - (iii) is able to provide the trustee with adequate support in all material aspects to enable the trustee to discharge its functions in relation to the scheme.

### **Retirement of Trustee**

4.7 The trustee shall not retire except upon the appointment of a new trustee whose appointment has been subject to the prior approval of the Commission. The retirement of the trustee shall take effect at the same time as the new trustee takes up office.

### **Independence of Trustee**

4.8 The trustee and the management company shall be independent of each other.

4.9 Notwithstanding 4.8 above, if the trustee and the management company are both corporations having the same ultimate holding company, whether incorporated in Hong Kong or outside Hong Kong, the trustee and the management company are deemed to be independent of each other if:

4.8.1 [deleted]

4.8.2 neither the trustee nor the management company is a subsidiary of the other;

4.8.3 no person is a director of both the trustee and the management company;

- 4.8.4 both the trustee and the management company sign an undertaking that they will act independently of each other in their dealings with the scheme; and

*Note: Among other things, there should be systems and controls in place to ensure that persons fulfilling the custodial function/safekeeping of the scheme's assets are functionally independent from persons fulfilling the scheme's management functions, for example, with an independent board, separate governance structure/lines of reporting to the management of the trustee and separate operational teams within the same corporate group.*

- 4.8.5 the ultimate holding company of the trustee and the management company submits a declaration and an undertaking to the Commission that the trustee and the management company are, and that the ultimate holding company shall ensure that they continue to be, independent of each other, except as regards their relationship with each other as member companies in the same group.

## **Chapter 5: Management Company, Auditor, Listing Agent and Financial Adviser**

### **General Obligations of a Management Company**

- 5.1 A management company shall:
- (a) manage the scheme in accordance with the scheme's constitutive documents in the sole interest of the holders. It shall also fulfill the duties imposed on it under general law;
  - (b) ensure that the financial and economic aspects of the assets of the scheme are professionally managed in the sole interest of the holders; including, without limitation:
    - (i) formulating the investment strategy and policy of the scheme and managing risks connected with the scheme efficiently;
    - (ii) determining the borrowing limit of the scheme;
    - (iii) investing in real estate that meets the investment objective of the scheme;
    - (iv) managing the cash flows of the scheme;
    - (v) managing the financial arrangements of the scheme;
    - (vi) formulating dividend payment schedules of the scheme;
    - (vii) arranging adequate property insurance and public insurance coverage in relation to the real estate of the scheme;

*Note: In jurisdictions where it is a common practice to take out title insurance, the management company is expected to make such insurance arrangement in respect of properties located in such jurisdictions.*

- (viii) planning the tenant mix and identifying potential tenants;
  - (ix) formulating and implementing leasing strategies;
  - (x) enforcing tenancy conditions;
  - (xi) ensuring compliance with government regulations in respect of the real estate under management;
  - (xii) performing tenancy administration work, such as managing tenant occupancy and ancillary amenities, and negotiating with tenants on grant, surrender and renewal of lease, rent review, termination and re-letting of premises;
  - (xiii) conducting rental assessment, formulating tenancy terms, preparing tenancy agreements, rent collection and accounting, recovery of arrears and possession;
  - (xiv) securing and administering routine management services, including security control, fire precautions, communication systems and emergency management;
  - (xv) formulating and implementing policies and programmes in respect of building management, maintenance and improvement; and
  - (xvi) initiating refurbishment and monitoring such activity;
- (c) ensure that the scheme has proper legal title to the real estate owned by the scheme, as well as to the contracts (such as rental agreements) entered on behalf of the scheme with respect to its assets, and that all such contracts are legal, valid and binding, and enforceable by or on behalf of the scheme in accordance with its terms;
- (ca) implement appropriate policies and conduct due diligence such that investments are made only after careful and diligent investigations by the management company. All such procedures and processes followed, and decisions made in relation to whether to invest or not to invest in a particular country or a property by a scheme shall be fully, properly and clearly documented as part of the record-keeping function of the management company;

*Notes: (1) The management company shall take all reasonable steps to ensure that the rights of a scheme over the overseas properties are properly vested and registered under applicable land title and property laws of the relevant jurisdiction(s) and are enforceable in the judicial system of such overseas jurisdiction(s).*

- (2) *While the areas or issues in relation to which due diligence shall be conducted vary according to the property, its geographical location and other circumstances, the standards of due diligence to be performed on a property shall be the same regardless of the location of the property.*
- (3) *It is the management company's responsibility to conduct all proper and thorough due diligence on all relevant aspects of any property investment. While what are relevant aspects would depend on the nature and specific circumstance relating to the property and the jurisdiction in which it is located, relevant aspects would include matters such as:*
- (i) the ownership and title of the property;*
  - (ii) necessary government approvals and town planning requirements;*
  - (iii) restrictions on property usage and foreign ownership;*
  - (iv) safety requirements;*
  - (v) land premium requirements;*
  - (vi) existence of encumbrances on the property;*
  - (vii) compliance with zoning and building requirements;*
  - (viii) current and prospective leases and material agreements;*
  - (ix) outgoings required in maintaining and operating the property; and*
  - (x) the scope and value of the insurance in place.*
- (The above list is meant to give some indication of the areas requiring due diligence and is not meant to be exhaustive.)*
- (d) maintain or cause to be maintained proper books and records of the scheme (and where applicable of all SPVs and joint ownership arrangements) in Hong Kong and prepare the scheme's financial statements which are in agreement with the scheme's books and records and in accordance with the relevant provisions of this Code, the constitutive and offering documents or circulars in relation to the scheme and which give a true and fair view of the state of affairs of the scheme at the end of the financial period and of the financial transactions of the scheme for the financial period then ended;
- (e) prepare and publish reports, and at least two reports shall be published in respect of each financial year, such reports to be sent to all holders and filed with the Commission within the time frame specified in Chapter 10;
- (f) ensure that all documents in relation to the scheme, (including those in relation to its listing but excluding such documents containing commercially sensitive information) are made available for inspection by the public in Hong Kong, free of charge at all times on the scheme's website or at the place of business of the management company and that of the approved person during normal office hours; and ensure that copies of such documents are available upon request by any person upon the payment of a reasonable fee;

- (g) ensure that holders are given sufficient prior notice, and where applicable, right to vote, with respect to any material change to the scheme, such as an increase in the level of management fees, changes in investment objectives or proposal to de-authorise the scheme; ~~and~~
- (h) ensure compliance with any applicable laws, rules, codes or guidelines issued by governmental departments, regulatory bodies, exchanges or any other organizations regarding the activities of the scheme or its administration; ~~and~~
- (i) provide relevant information to the trustee to discharge its regulatory obligations including those obligations pursuant to 4.2.

## **Section 1 – Proposed consequential amendments to the Fund Manager Code of Conduct**

### **4. Custody**

*Paragraphs 4.1.2 to 4.4.1 (inclusive) of this sub-section are only applicable to a Fund Manager that is responsible for the overall operation of a fund.*

*In the case of funds adopting a unit trust structure, for paragraphs 4.1.1 to 4.1.2 (inclusive) and 4.2.2 to 4.3.3 (inclusive) of this sub-section, references to a “custodian” should be read as references to a “trustee” and references to “arrange for the appointment of/arranging for the appointment of” should be read as “appoint (where applicable)/appointing (where applicable)”.*

#### *Safety of Fund Assets*

- 4.1.1 A Fund Manager should ensure that any fund assets entrusted to it are properly safeguarded. In this connection, a Fund Manager should ensure that fund assets are segregated from the assets of the Fund Manager, and, unless held in an omnibus client account, assets of its affiliates and other clients. Fund assets not capable of being held in custody shall be identified as owned beneficially by the fund and not by the Fund Manager or the custodian through proper record-keeping.

*Note: Where fund assets are held in an omnibus client account, the Fund Manager should ensure that adequate safeguards are put in place such that fund assets belonging to each client are appropriately recorded with frequent and appropriate reconciliations being performed.*

- 4.1.2 A Fund Manager should select and arrange for the appointment of, and entrust the fund assets to, a custodian that is functionally independent from it. Where self-custody is adopted, the Fund Manager should ensure that it has policies, procedures, and internal controls in place to ensure that the persons fulfilling the custodial function are independent from the persons fulfilling the fund’s management functions.

*Note: In the case of self-custody, the Fund Manager should comply with, where applicable, all relevant requirements under the SFO, including the Securities and Futures (Client Money) Rules and the Securities and Futures (Client Securities) Rules.*

#### *Selection and Appointment of Custodian*

- 4.2.1 A Fund Manager should exercise due skill, care and diligence in the selection, arranging for the appointment of and ongoing monitoring of the custodian and take all reasonable steps to ensure that the custodian is properly qualified for the performance of its functions. On an ongoing basis, a Fund Manager should satisfy itself as to the continued suitability and financial standing of any appointed custodian.

*Note: In the case of funds adopting a unit trust structure, a Fund Manager should exercise due skill, care and diligence in the selection and appointment (where applicable) of the trustee and ongoing monitoring of the trustee's performance of its custodial functions and references to custodian in this paragraph 4.2.1 should be read as references to the trustee (in the performance of its custodial functions). In addition, references to "sub-custodian" should be read as references to "custodian".*

*In considering whether a custodian is properly qualified for the performance of its functions, the Fund Manager should consider the following as part of the selection process for custodians:*

- (a) *whether the custodian has appropriate segregation arrangements in place such that the fund assets are segregated from
  - (i) *the assets of the custodian / sub-custodian throughout the custody chain; and*
  - (ii) *the assets of other funds and other clients of the custodian throughout the custody chain (unless the fund assets are held in an omnibus client account, in which case the principles set out in the note to paragraph 4.1.1 should apply);**
- (b) *the custodian's legal and regulatory status (i.e. authorization to undertake custody business);*
- (c) *the custodian's financial resources (i.e. the custodian's financial capacity to safekeep the fund assets and the custodian's credit worthiness);*
- (d) *the custodian's management of potential conflicts of interest;*
- (e) *the custodian's organisational capabilities; and*
- (f) *where appointment of sub-custodians is allowed, the custodian would use due skill, care and diligence in the selection and monitoring of its sub- custodians.*

4.2.2 In selecting and arranging for the appointment of a custodian, a Fund Manager should ensure that the custodian should be any of the following:

- (a) a registered trust company;
- (b) an authorized financial institution (including a licensed bank, deposit-taking company or restricted-license bank) or the subsidiary of a licensed bank;
- (c) a banking institution or trust company outside Hong Kong that is subject to prudential supervision; ~~or~~
- (cc) a depositary licensed or registered to carry on Type 13 regulated activity

under Part V of the SFO; or

- (d) any other appropriately qualified institution.

#### *Custody Agreement*

- 4.3.1 The Fund Manager should ensure that a formal custody agreement is entered into with the custodian that is to be entrusted with a fund's assets.

*Note: In the case of funds adopting a unit trust structure, a Fund Manager should ensure that a formal trust deed is entered into with the trustee that is to be entrusted with a fund's assets.*

- 4.3.2 The Fund Manager should formulate custody arrangements with due skill, care and diligence and clarify the duties and responsibilities of the various parties to the custodial arrangements. In particular, the Fund Manager should ensure that the custody agreement contains provisions to specify the scope of the responsibility and liability of the custodian.

*Note: In the case of funds adopting a unit trust structure, a Fund Manager should ensure that the trust deed contains provisions to specify the scope of the responsibility and liability of the trustee in relation to the custody of fund assets.*

- 4.3.3 The Fund Manager should monitor custody arrangements and the custodian's compliance with the terms of the custody agreement on an ongoing basis.

*Note: In the case of funds adopting a unit trust structure, a Fund Manager should monitor custody arrangements and the trustee's compliance with the terms relevant to the custody arrangements in the trust deed on an ongoing basis.*

#### *Disclosure of Custody Arrangements*

- 4.4.1 A Fund Manager should ensure that the custody arrangements in respect of assets of the fund and any material risks associated with the arrangements are properly disclosed to the fund investors and that fund investors are updated about any significant changes.

- 4.4.2 Where the Fund Manager retains custody of fund assets, the Fund Manager should also specifically disclose the existence of such an arrangement and the additional safeguards that have been put in place to mitigate any potential conflicts of interest.

## **Section 2 – Proposed amendments to the Guidelines on Competence**

(a) Footnote 1 to paragraph 1.1

<sup>1</sup> Any of the regulated activities specified in Part 1 of Schedule 5 to the Securities and Futures Ordinance. This includes:

- Type 1: dealing in securities (RA 1)
- Type 2: dealing in futures contracts (RA 2)
- Type 3: leveraged foreign exchange trading (RA 3)
- Type 4: advising on securities (RA 4)
- Type 5: advising on futures contracts (RA 5)
- Type 6: advising on corporate finance (RA 6)
- Type 7: providing automated trading services (RA 7)
- Type 8: securities margin financing (RA 8)
- Type 9: asset management (RA 9)
- Type 10: providing credit rating services (RA 10)
- Type 11: dealing in OTC derivative products or advising on OTC derivative products (RA 11)
- Type 12: providing client clearing services for OTC derivative transactions (RA 12)
- Type 13: providing depository services for a relevant CIS (RA 13)

(b) Paragraph 4.2.2 - Recognised industry qualifications to be an RO for RA13

### 4.2.2 Recognised industry qualifications

4.2.2.1 For an individual applying to be an RO, a summary of the RIQ requirements for each type of RA is set out below. These will be updated on the SFC's website as and when changes occur.

RA	RIQ
1, 4 & 8	HKSI LE Papers 7 & 8
2, 5 & 11 <sup>26</sup>	HKSI LE Papers 7 & 9
3	Vocational Training Council (VTC) Leveraged Foreign Exchange Trader's Responsible Officer Examination Paper 2
6	HKSI LE Papers 7 & 11
7	No RIQ requirement
9	HKSI LE Papers 7 & 12
10	HKSI LE Papers 7 & 10
12 <sup>26</sup>	HKSI LE Papers 7 & 14
<u>13</u>	<u>HKSI LE Papers 7 &amp; new industry paper</u>

(c) Paragraph 4.2.3 – Local regulatory framework papers to be an RO for RA 13

4.2.3 Local regulatory framework papers

4.2.3.1 For an individual applying to be an RO, a summary of the LRP requirements for each type of RA is set out below. These will be updated on the SFC’s website as and when changes occur.

RA	LRP
1, 4 & 8	HKSI LE Papers 1 & 2
2, 5 & 11 <sup>27</sup>	HKSI LE Papers 1 & 3
3	VTC Leveraged Foreign Exchange Trader’s Responsible Officer Examination Paper 1
6	HKSI LE Papers 1 & 5
7	No LRP requirement
9	HKSI LE Papers 1 & 6
10	HKSI LE Papers 1 & 4
12 <sup>27</sup>	HKSI LE Papers 1 & 13
<u>13</u>	<u>HKSI LE Papers 1 &amp; new regulatory paper</u>

(d) Paragraph 4.3.2 – Recognised industry qualifications to be an LR for RA13

4.3.2 Recognised industry qualifications

4.3.2.1 For an individual applying to be an LR, a summary of the RIQ requirements for each type of RA is set out below. These will be updated on the SFC’s website as and when changes occur.

RA	RIQ
1, 4 & 8	HKSI LE Papers 7 & 8
2, 5 & 11 <sup>35</sup>	HKSI LE Papers 7 & 9
3	VTC Leveraged Foreign Exchange Trader’s Responsible Officer Examination Paper 2 or Representative Examination Paper 2
6	HKSI LE Papers 7 & 11
7	No RIQ requirement
9	HKSI LE Papers 7 & 12
10	HKSI LE Papers 7 & 10
12 <sup>35</sup>	HKSI LE Papers 7 & 14
<u>13</u>	<u>HKSI LE Papers 7 &amp; new industry paper</u>

(e) Paragraph 4.3.3 – Local regulatory framework papers to be an LR for RA 13

4.3.3 Local regulatory framework papers

4.3.3.1 For an individual applying to be an LR, a summary of the LRP requirements for each type of RA is set out below. These will be updated on the SFC’s website as and when changes occur.

RA	LRP
1 – <del>1213</del> <sup>36</sup> (except 3 and 7)	HKSI LE Paper 1
3	VTC Leveraged Foreign Exchange Trader’s Responsible Officer Examination Paper 1 or Representative Examination Paper 1
7	No LRP requirement

## List of respondents

(In alphabetical order)

1. **Baker McKenzie**
2. **Clifford Chance**
3. **Eversheds Sutherland**
4. **Hong Kong Trustees' Association**
5. **State Street Corporation**
6. **Submission of one respondent is published on a “no-name” basis**
7. **Submission of three respondents are withheld from publication**