



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

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

March 2023

Contents

Executive summary	3
Comments received and SFC's responses	
Part 1 – Proposed approach to defining RA 13	4
Part 2 – Proposed amendments to subsidiary legislation	4
Part 3 – Proposed amendments to SFC codes and guidelines	7
Part 4 – Other comments	9
Way forward	11
Appendix A – Summary of comments on technical issues in the subsidiary legislation and the SFC's responses	
Appendix B – Final form of amendments to subsidiary legislation	
Appendix C – Final form of Schedule 11 to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission	
Appendix D – List of respondents	

Executive summary

1. Following general support for proposals in an initial consultation¹ on a framework for a new regulated activity, Type 13 (RA 13), the Securities and Futures Commission (SFC) issued in February 2022 a consultation paper on proposed amendments to the subsidiary legislation and SFC codes and guidelines for the implementation of the new regime to regulate top-level trustees and custodians (ie, depositaries) of SFC-authorized collective investment schemes (CISs).
2. The consultation period ended in April 2022. Five written submissions were received from an industry association, two market participants, a business organisation and an individual. A list of respondents (other than those who requested anonymity) is set out in Appendix D.
3. Respondents generally supported the proposals and most of the comments sought clarification of technical issues. Key comments related to the scope of the oversight function under the proposed approach to defining RA 13, the interpretation of terms such as “client assets” and “associated entities” under the subsidiary legislation and requests for exemptions from certain subsidiary legislation and the level of responsibility under Schedule 11 to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Schedule 11) for different activities. This paper summarises the key comments received and our responses. The questions on technical issues and our responses are summarised in Appendix A. We will also issue clarifications via frequently-asked-questions (FAQs) where appropriate.
4. The SFC would like to thank the respondents and the industry for their comments and suggestions.
5. The consultation paper, the responses (other than those requested to be withheld from publication) and this paper are available on the SFC website at www.sfc.hk.

¹ See the Consultation Paper on the Proposed Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes issued in September 2019 (<https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/doc?refNo=19CP3>).

Part 1 – Proposed approach to defining RA 13

Question 1: Do you have any comments on the proposed approach for the definition of RA 13?

Public comments

6. The industry association respondent commented that the scope of a depositary's oversight function to ensure that a CIS is operated in accordance with the provisions of its constitutive documents (proposed to be set out in the RA 13 definition) is wider than the existing requirements² under the Product Codes³. The respondent suggested that CIS operations which are subject to a depositary's oversight should be limited to those under the Product Codes.

The SFC's response

7. The proposed approach is in line with current regulatory requirements. It should be noted that, among other things, the Product Codes require that the constitutive documents of a CIS set out the CIS operations which are subject to a depositary's oversight⁴.
8. To introduce RA 13, an amendment to Schedule 5 to the Securities and Futures Ordinance (SFO) will be effected by a notice by the Financial Secretary published in the Government Gazette, subject to negative vetting by the Legislative Council. We have been working with the Administration on the amendment. Interested parties are welcome to refer to the notice by the Financial Secretary published in the Government Gazette on 24 March 2023.

Part 2 – Proposed amendments to subsidiary legislation

Question 2: Do you have any comments on the proposed amendments to the Securities and Futures (Client Money) Rules (CMR)?

Question 3: Do you have any comments on the proposed amendments to the Securities and Futures (Client Securities) Rules (CSR)?

Question 4: Do you have any comments on the proposed amendments to the Securities and Futures (Keeping of Records) Rules (KRR)?

² Such as Chapter 4 of the Code on Unit Trusts and Mutual Funds (UT Code).

³ As set out in paragraph 9(a) of the consultation paper of September 2019, the Product Codes collectively refer to the UT Code, the Code on Pooled Retirement Funds, the Code on Real Estate Investment Trusts (REIT Code), and the Code on Open-Ended Fund Companies.

⁴ Such as paragraphs D4 and D5 in Appendix D to the UT Code.

- Question 5: Do you have any comments on the proposed amendments to the Securities and Futures (Financial Resources) Rules (FRR), Securities and Futures (Insurance) Rules (Insurance Rules), Securities and Futures (Account and Audit) Rules (AAR) and Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (Contract Notes Rules)?**
- Question 6: Do you have any comments on the proposed amendments to the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (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.**

9. The vast majority of comments received related to clarifications of technical issues in the proposed amendments to the subsidiary legislation. The paragraphs below summarise the key comments and our responses. Other comments and responses are summarised in Section 1 of Appendix A or will be addressed by way of FAQs where appropriate.
10. Where appropriate, the proposed amendments to the subsidiary legislation have been revised to take into account comments received as well as to incorporate comments from the Department of Justice. The final form of the amendments is set out in Appendix B.

Public comments – client assets and associated entities

11. The industry association respondent asked for clarification of what is meant by client assets and associated entities (AEs) of an RA 13 depository. It commented that it would be difficult to comply with the relevant requirements without a clear explanation.
12. In addition, it asked whether a global custodian in the same banking group as an RA 13 depository which is a trustee would be the trustee's AE and therefore subject to the applicable subsidiary legislation. It also asked for an exemption for AEs which are banks supervised by the Hong Kong Monetary Authority (HKMA).

The SFC's response

13. Our approach is to set out new provisions in the subsidiary legislation (ie, the CSR, CMR, KRR, FRR and AAR) so that the obligations under them will apply in respect of scheme securities, scheme money, scheme assets⁵ and relevant CIS property⁶ (as the case may be) held by RA 13 depositories and their AEs. This provides sufficient clarity on how these requirements apply to RA 13 depositories and their AEs.

⁵ In the context of RA 13, "scheme assets" may be regarded as a subset of "client assets", "scheme securities" as a subset of "client securities" and "scheme money" as a subset of "client money".

⁶ Among other requirements, RA 13 intermediaries are required to keep records of relevant CIS property under the KRR and report information about relevant CIS property under the FRR. "Relevant CIS property" refers to any property of the CIS.

14. An AE of an RA 13 depository is an entity which is (i) in a controlling entity relationship with an RA 13 depository and (ii) holds scheme assets. An AE would be subject to the applicable requirements set out under the relevant subsidiary legislation.
15. Since the AE concept and applicable statutory obligations apply to all regulated activities, in principle there is no justification for exempting AEs of RA 13 depositories from the statutory requirements, regardless of whether or not the AE is a bank. However, the CMR, FRR⁷ and AAR do not apply to authorised financial institutions (AFIs) (and in the case of the CMR⁸ and AAR⁹, this includes AEs which are AFIs).

Public comments – OTCD Reporting Rules

16. While the industry association respondent welcomed the proposed exemption from the reporting requirements under the OTCD Reporting Rules for RA 13 depositories who are counterparties to OTC derivative transactions (OTCD transactions) in their capacity as trustees of relevant CISSs, it commented that RA 13 depositories should not be required to keep certain records under the OTCD Reporting Rules because those records are primarily kept by the investment managers or are not relevant to RA 13 depositories.

The SFC's response

17. The record keeping obligation under the OTCD Reporting Rules applies to both reporting entities and entities which are exempted from reporting. There is no justification to exempt RA 13 depositories from the record keeping obligations under the OTCD Reporting Rules because as counterparties to OTCD transactions¹⁰, they should have the relevant records even if the investment decisions were made by the investment managers¹¹.

Public comments – OTCD Clearing Rules

18. The industry association respondent suggested exempting RA 13 depositories from the clearing obligations under the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (OTCD Clearing Rules) on the basis that (i) the risk incurred would be confined within each CIS; (ii) the aggregated position would not be a true reflection of the risks and (iii) risk management of OTCD transactions falls within the management company's remit.

The SFC's response

19. The SFC and HKMA do not believe an exemption for RA 13 depositories from the OTCD Clearing Rules is necessary or appropriate for the time being bearing in mind

⁷ Section 145(1) of the SFO.

⁸ Section 149(7) of the SFO.

⁹ Section 156(7) of the SFO.

¹⁰ For the avoidance of doubt, if a trustee is not a counterparty to a specified OTCD transaction and it does not conduct transactions in Hong Kong on behalf of its affiliates, it will not be required to report the transaction or keep records in respect of it under the OTCD Reporting Rules.

¹¹ The industry is also reminded of the proposed changes to the KRR under a separate consultation issued in December 2017 on, among other things, additional record keeping obligations relating to OTCD transactions. As a counterparty to an OTCD transaction, an RA 13 depository will be required to keep records required under the revised KRR as well as those under the OTC derivative regime.

factors including the high clearing threshold¹² and the fact that no other prescribed persons are currently exempted. Considering the policy objective of mitigating systemic risk in the OTC derivatives market, the SFC and HKMA will keep in view the appropriateness of any clearing exemptions taking into account developments in the market and the regulatory landscape.

Part 3 – Proposed amendments to SFC codes and guidelines

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

20. Many respondents sought clarification of technical issues in Schedule 11. The paragraphs below summarise the key comments and our responses. Other technical comments and responses are summarised in Section 2 of Appendix A or will be addressed by way of FAQs where appropriate.
21. The final form of Schedule 11 (with marked-up texts showing revisions against the version in the consultation paper of February 2022) is set out in Appendix C.

Public comments

22. In the case where an operation of a CIS that is subject to the oversight of a depositary is carried out by the depositary (in its capacity as fund administrator or transfer agent (TA) or otherwise)¹³, Schedule 11¹⁴ requires the depositary to have responsibility for such activity. Two respondents (including the industry association respondent) commented that those operations are not core functions of RA 13 and depositaries should not be held primarily responsible for them. They suggested that even where the activity is carried out by a functionally segregated team within the firm, the depositary should remain responsible only for its oversight role.
23. The industry association respondent also objected to the proposed requirement that subscription, redemption and distribution proceeds must be held on trust for the CIS investors until such money is paid into the bank accounts of the relevant CIS (for subscription money) or the relevant investors or agents (for redemption and distribution proceeds)¹⁵. The respondent was of the view that since the bank accounts are maintained or operated by the depositary in its capacity as the TA, those activities should not fall within the scope of RA 13. It was also suggested that using the term “on trust” may lead to a misunderstanding that fiduciary obligations are imposed on the TA, which is not in line with the typical contractual agreements for those activities.

¹² The threshold currently stands at US\$20 billion.

¹³ For example, Schedule 11 requires a depositary to have oversight of the relevant operator to ensure that calculations of the CIS' net asset values are accurate. If the depositary, as a fund administrator, calculates the value itself, it will be primarily responsible for the calculations.

¹⁴ Paragraph 2 of Schedule 11.

¹⁵ Note to paragraphs 9(i) and 11(b) of Schedule 11.

The SFC's response

24. Where an operation which is normally subject to the oversight of a depositary is in fact carried out by the depositary, the depositary should be responsible as the performance of that activity may affect the fitness and properness of the depositary as a regulated entity, particularly where the activity is closely related to its regulated activity.
25. Where a management company has delegated a function to the depositary (as fund administrator or TA or otherwise), the fact that the depositary may be subject to primary responsibility does not absolve the management company of its obligations for that operation under the relevant regulatory requirements.
26. We are of the view that irrespective of the capacity in which an RA 13 licensed corporation (LC) holds the subscription, redemption and distribution proceeds (ie, as TA or otherwise), those proceeds should be held by the RA 13 LC on trust for the relevant CIS investors. These proceeds are typically not considered as "scheme money" and therefore fall outside the scope of the CMR. To protect investors, it is important that they are subject to requirements under Schedule 11.

Question 9: Do you have any comments on the proposed amendments to the Product Codes and Fund Manager Code of Conduct (FMCC)?

Public comments

27. There were only a few requests for clarification of the proposed amendments to the Product Codes and FMCC. One technical comment and our response is discussed in Section 3 of Appendix A.
28. The industry association respondent asked if the proposed amendments to the FMCC should correspond to the amendments in the Product Codes regarding the eligibility of custodians.

The SFC's response

29. The FMCC applies to fund managers acting for both public and private funds. In line with the scope of RA 13, the proposed amendments to the FMCC relate to depositaries of public funds and are aligned with those in the Product Codes.
30. In view of the above, no further amendments will be made to the Product Codes and FMCC.

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

Public comments

31. The industry association respondent asked about the provisions¹⁶ in the Licensing Handbook which state that the performance of compliance and legal functions need to be segregated from the performance of activities which constitute regulated activities and whether this applies to RA 13 in view of the nature of the depositary's oversight duties and whether a compliance officer assuming these oversight duties should be licensed for RA 13.

The SFC's response

32. The expectations set out in paragraphs 1.4.22 and 1.4.23 of the Licensing Handbook also apply to RA 13. Generally speaking, compliance officers of an RA 13 depositary are not expected to be licensed if they only carry out the compliance function of the depositary such as performing internal reviews, or providing internal compliance advice, on the work conducted by the depositary's licensed staff for the purpose of ensuring that the work has been or will be conducted in compliance with the depositary's internal policies and procedures as well as the applicable laws and regulations. However, if a compliance officer of an RA 13 depositary is also directly performing the oversight function required of the depositary under RA 13, there would be no reason to exempt the compliance officer from the licensing requirements.
33. In view of the above, there are no further amendments to the Guidelines on Competence.

Part 4 – Other comments

Anti-money laundering (AML) and Counter-terrorist financing (CFT) obligations

Public comments

34. The industry association respondent asked for more clarity as to whom the customer due diligence (CDD) requirements may be applied by an RA 13 depositary and the implications of such application on the definition of "client" under SFO subsidiary legislation, codes and guidelines.
35. Another respondent suggested adding a paragraph to Schedule 11 to require depositaries to establish an AML/CFT policy in order to demonstrate their AML/CFT controls to banks when opening and maintaining segregated bank accounts to hold scheme money.

The SFC's response

36. For the purpose of AML/CFT, an RA 13 depositary is generally expected to carry out CDD on the CIS (whether it is in trust, corporate or other form) to which the depositary

¹⁶ Paragraphs 1.4.22 and 1.4.23.

services are provided. The consultation paper¹⁷ sets out specific conditions which, if met, permit the depositary to perform CDD measures on the management company of the CIS. This should however not be taken to mean that the management company is the “client” of the RA 13 depositary for the purposes of the SFO or other rules or regulations.

37. We consider it unnecessary to specifically highlight in Schedule 11 that a depositary should establish an AML/CFT policy as an RA 13 depositary would be subject to AML/CFT regulations which include establishing and implementing effective AML/CFT policies, procedures and controls. These regulations are prescribed under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance and the AML/CFT guidelines published by the SFC, Companies Registry and HKMA¹⁸.
38. We will issue FAQs to provide further guidance on AML/CFT matters when the RA 13 regime becomes effective.

Transitional arrangements

Public comments

39. The industry association respondent sought clarification of whether the transitional arrangements apply to firms which are not currently depositaries of SFC-authorized CISs but intend to carry on RA 13 business in Hong Kong.
40. The respondent also asked if there are any requirements (eg, work experience in carrying out RA 13 activities) for an individual to be exempted from passing the local regulatory framework paper (LRP) under the proposed grandfathering arrangement.

The SFC’s response

41. The transitional arrangements will apply to all trustees and custodians which are providing depositary services for relevant CISs in Hong Kong and these firms are required to be licensed or registered for RA 13 in order to continue these services upon the commencement of the RA 13 regime.
42. Individuals engaged by a depositary to provide depositary services at the time their applications relating to RA 13 are submitted to the SFC or HKMA (as the case may be) during the transitional period will be exempted from passing the LRP, provided that they complete a course of not less than five hours on the legal and regulatory framework for RA 13 conducted by a continuous professional training provider within 12 months of securing licensing or registration approval¹⁹. There is no particular requirement for work experience attached to this grandfathering arrangement. However, in addition to the LRP, these individuals will also be required to satisfy other competence requirements such as academic or professional qualifications, recognised industry qualifications, relevant industry experience and management experience, where applicable. Details of the competence requirements (including related exemptions) are set out in section 4 of the Guidelines on Competence.

¹⁷ See paragraph 88 of the consultation paper of February 2022.

¹⁸ See paragraphs 83 and 87 of the consultation paper of February 2022.

¹⁹ As proposed in paragraph 47 of the consultation paper of September 2019.

Way forward

43. We will work with the Government on the legislative process to implement RA 13. We anticipate that the amendments will be gazetted on the same date as this paper and the RA 13 regime to come into effect on 2 October 2024 when the transitional period comes to an end.
44. We will maintain dialogue with depositaries which are conducting business in Hong Kong and work closely with them to address their concerns about the implementation of RA 13. FAQs on technical issues will be issued in due course.

Section 1 - Summary of comments on technical issues in the subsidiary legislation and the SFC's responses

Client Money Rules (CMR)		
	Public comments	The SFC's response
1.	Suggest aligning the name of the types of accounts in the CMR, ie, "trust account or client account for the relevant CIS" and "relevant CIS account".	<p>Alignment is not appropriate as the two types of accounts are different and cater for different legal structures of a relevant CIS –</p> <ul style="list-style-type: none"> • a "relevant CIS account" applies in the case of a relevant CIS in the form of an open-ended fund company (OFC) (or other corporate form) and means an account established and maintained by the board of directors in the name of the OFC for the purpose of holding scheme money; and • for a relevant CIS in the form of a trust or other non-corporate forms, the segregated account for holding scheme money should be a "trust account or client account" established and maintained by the depositary.
2.	Whether the requirement that each "relevant CIS account" for scheme money must be established and maintained for only one relevant CIS extends to accounts at the sub-custodian level.	The requirement applies to a relevant CIS structured as an OFC or other corporate form. An OFC may establish and maintain a relevant CIS account for the OFC and any sub-fund of the OFC in respect of which the RA 13 depositary or its AE has control. Given that the RA 13 depositary in these cases is the global custodian, the requirement would also apply to a relevant CIS account of any sub-custodian which is an AE of the global custodian.

Client Securities Rules (CSR)		
	Public comments	The SFC's response
3.	<p>Would depositing scheme securities in an “omnibus account” with adequate safeguards in accordance with paragraph 14(b) of Schedule 11 be considered as meeting the requirement for depositing scheme securities in a “segregated account” under section 9B(a) of the CSR.</p>	<p>Paragraph 14 of Schedule 11 sets out requirements for the custody and safekeeping of all relevant CIS property (including scheme securities) whereas section 9B of the CSR sets out specific requirements for how scheme securities received or held in Hong Kong should be held and registered by the RA 13 depository and its AEs.</p> <p>Scheme securities held in an omnibus or individual account designated as a trust account or client account as described in paragraph 14(b) of Schedule 11 does not necessarily mean that section 9B(a) of the CSR is complied with because section 9B(a) contains additional requirements e.g. the account must be established and maintained in Hong Kong and scheme securities must be held with certain types of entities specified in that section only.</p>
4.	<p>Does the requirement for scheme securities to be deposited in safe custody in a segregated account designated as a trust account or client account with an authorised financial institution; an approved custodian or another intermediary licensed for Type 1 RA under section 9B(a) extend to the sub-custodian level?</p>	<p>Yes, if the sub-custodian is an AE of the RA 13 depository.</p> <p>The depository is also required to reconcile its securities holding records with relevant CIS property records maintained pursuant to paragraph 14(h) of Schedule 11.</p>

	Public comments	The SFC's response
5.	<p>Whether the market practice of registering scheme securities in the name of HKSCC Nominees Limited (ie the nominee company at the central depository) would satisfy the requirement of registering scheme securities in the name of a relevant CIS or the AE on behalf of the relevant CIS under section 9B(b) of the CSR.</p>	<p>Where an RA 13 depository or its AE is a participant of the Central Clearing and Settlement System (CCASS) operated by Hong Kong Securities Clearing Company Limited (HKSCC) and it or its AE has one or more stock segregated accounts at CCASS to hold scheme securities on behalf of a relevant CIS, the RA13 depository is considered to be in compliance with section 9B(a) of the CSR. HKSCC as the operator of CCASS is an approved custodian under the CSR. If scheme securities are kept in the form of physical scrip, the relevant certificates should be registered in the name of the relevant CIS or an AE of the RA13 depository on behalf of the relevant CIS pursuant to section 9B(b) of the CSR.</p>
6.	<p>The reference to “dispose of” in section 9C(2) should be expanded to cover lending, pledging, re-pledging and dealing with scheme securities.</p>	<p>The wording of sections 9C(1) and (2) tracks the existing wording of sections 6(1), 6(2) and 6(3). Section 9C(2) would apply where the lending, pledging, re-pledging or dealing of scheme securities constitutes a disposal of scheme securities and such action is performed in settlement of any liability incurred by or on behalf of a relevant CIS to the intermediary, its AE or a third person.</p>

	Public comments	The SFC's response
7.	Whether the “relevant CIS account” definition under the CMR (which applies only to a relevant CIS in the form of an OFC or other corporate) should also be applied to the CSR.	The “relevant CIS account” definition is introduced in the CMR to specifically cater for relevant CISs in corporate form (such as OFCs) where the accounts for holding scheme money may be established and maintained by the board of directors in the name of the OFC. On the other hand, as how scheme securities are held should be the same for relevant CISs in both corporate and non-corporate form, it is not necessary to introduce a similar definition in the CSR.
Keeping of Records Rules (KRR)		
	Public comments	The SFC's response
8.	Whether the record keeping requirements for RA 13 cover only records relating to the financial affairs of the RA 13 depositary in its conduct of RA 13 business but would not extend to other functions which the firm may carry out such as fund administration or TA functions.	Similar to section 3(1) which applies to other types of regulated activities, section 3A(2) and certain paragraphs in Schedule 2 ²⁰ require an RA 13 depositary to keep accounting, custody and other records which are sufficient to explain and reflect its financial position and operations as a whole (including its fund administration and TA functions) ²¹ .

²⁰ For example, see section 3A(2)(a)(i), (ii) and (v), and paragraphs 1(a), (b), (c), (i) and (j), and paragraph 2 of Schedule 2.

²¹ This means the depositary's statement of profit or loss and other comprehensive income, statement of financial position and other records should reflect its financial position and assets held for others as a whole.

	Public comments	The SFC's response
9.	REIT depositaries should be exempted from the record keeping requirements on the basis that investment decisions for REITs are made by the management company and the depositary may not keep those records.	The records that depositaries would be required to keep under the KRR primarily relate to the relevant CIS property and not the investment decisions made by the management companies. There are no grounds to exempt depositaries from the record keeping requirements.
10.	The definitions of “scheme money” and “scheme securities” include those received or held in Hong Kong and overseas. This is wider than the respective definitions under the CMR and CSR which only include money or securities received or held in Hong Kong.	The scope of “client money” and “client securities” in the KRR is not limited to money and securities received or held in Hong Kong for other regulated activities. The approach for “scheme money” and “scheme securities” for RA 13 in the KRR is aligned with this.
Financial Resources Rules (FRR)		
	Public comments	The SFC's response
11.	The definition of “scheme money” under the FRR is wider than the definition under the CMR which only includes money received or held in Hong Kong.	The scope of “client money” in the FRR is not limited to money received or held in Hong Kong for other regulated activities. The approach for “scheme money” for RA 13 in the FRR is aligned with this.
12.	Whether the segregation requirements under section 37A ²² of the FRR would apply to cash deposited with (and therefore on the balance sheet of) an AFI in its role as an RA 13 depositary.	The FRR applies to LCs and not registered institutions, and therefore it does not apply to an AFI in its role as an RA 13 depositary.

²² Section 37A of the FRR sets out requirements for the amounts to be included in an RA 13 LC's ranking liabilities.



Section 2 - Summary of comments on technical issues in Schedule 11 and the SFC's responses

	Public comments	The SFC's response
1.	<p>The scope of delegates and third parties subject to a depositary's oversight under paragraph 6 is "broader" than current requirements. The depositary should only be required to oversee the delegates that it appoints (eg, it should not include sub-custodians appointed by the global custodian instead of the trustee in the case of a unit trust).</p>	<p>As set out under paragraph 6, where a delegate or third party is appointed or engaged to carry out an activity which is relevant to the depositary, the depositary should have established internal control policies and procedures to properly oversee the delegate or third party so that the depositary can be reasonably satisfied that the delegate or third party is competent to carry out the relevant activity.</p>

	Public comments	The SFC's response
2.	<p>Whether segregated <i>omnibus</i> accounts designated as trust account or client account can be considered as segregated bank accounts designated as a trust account or client account (for holding money which constitutes relevant CIS property whether in Hong Kong or overseas) as required in paragraph 14(e) (and paragraph 9(d)) provided that the omnibus account is segregated from the RA 13 depositary's house account.</p>	<p>Where money falls within the definition of "scheme money" under the CMR, the relevant requirements under section 10B of the CMR would apply. Such segregated accounts should not be omnibus accounts. Subject to this, the "segregated bank account designated as a trust account or client account" for holding money which constitutes relevant CIS property under paragraphs 9(d) and 14(e) can be one or more segregated bank accounts separate from the RA 13 depositary's house accounts.</p> <p>Where the RA 13 depositary receives money which does not constitute relevant CIS property (ie, subscription proceeds before the relevant subscription orders are accepted²³, redemption or distribution proceeds in respect of a relevant CIS), it may hold such proceeds either in (i) an omnibus bank account designated for holding such proceeds; or (ii) two or more segregated bank accounts, each designated for holding the corresponding type of proceeds. In each case, the bank account should be separate from the depositary's house account as well as from the segregated account designated as trust account or client account.</p>

²³ Or in the case of a pooled retirement fund, where the subscription order is placed.

	Public comments	The SFC's response
3.	Paragraph 13(e) (Investment monitoring) may imply that depositaries are required to ensure that the counterparties for all transactions (eg, brokers or financial institutions of a transaction) are on the relevant CISs' authorised list. The depositary's oversight obligation should be confined to ensuring that the relevant operator has maintained a list of eligible counterparties and has procedures in place to ensure that those counterparties are on the authorised list.	Depositaries are expected to have oversight to ensure that a relevant CIS's investment transactions are only carried out with counterparties on the authorised list. The depositary may either monitor on a per transaction basis or put in place other appropriate procedures to ensure that all transactions are conducted in the required manner.
4.	Reconciliation can only be done on a daily basis for cash held by the depositary but not time deposits held with third party banks (as required in paragraph 14(h)).	Daily reconciliation of cash records is an existing requirement under Appendix G ²⁴ to the UT Code.
5.	Whether scheme collateral held for the same CIS under different security arrangements may be held in one segregated scheme collateral account for that CIS (under paragraph 14(i)).	Scheme collateral under different security arrangements for the same CIS may be held under the same segregated account for that CIS as long as the depositary keeps proper records which enable identification of the scheme collateral to which each security arrangement relates.

²⁴ See paragraph 8(d)(16)(xi) of Appendix G.

	Public comments	The SFC's response
6.	<p>In the case of REITs, it is the REIT manager's responsibility to maintain the books and records of the REITs for the calculation of net asset value (NAV), which is subject to the audit by an independent auditor.</p> <p>Under 4.2(m) of the REIT Code, a REIT depositary is obliged to take all reasonable care to ensure the NAV is calculated as and when an annual valuation report is published by the valuer for the relevant period , and that such NAV must be published in the annual report.</p> <p>Accordingly, it should be sufficient for the REIT depositary to discharge its oversight duties under paragraph 10 of Schedule 11 by obtaining sign-off from the auditor and principal valuer on the REIT's NAV.</p>	<p>A REIT depositary should have proper internal controls, procedures and operating systems to ensure compliance with all legal and regulatory requirements (including those under the REIT Code and Schedule 11), as well as its obligations under the relevant constitutive documents. In general, a REIT depositary should take all reasonable care to ensure that the NAV is calculated in accordance with the relevant constitutive documents. Merely obtaining sign-off from the auditor and principal valuer on the NAV alone would not suffice for compliance with 4.2(m) of the REIT Code or paragraph 10 of Schedule 11.</p>
7.	<p>In the case of REITs, special purpose vehicles (SPVs) are used widely for operational purposes and the REIT depositary may only receive and review management accounts submitted by the REIT manager on a monthly basis, except for accounts opened in the trustee's name. Is this practice sufficient for complying with paragraph 14(g) to maintain up-to-date and accurate records of relevant CIS property.</p>	<p>A REIT depositary should ensure that its practices and procedures comply with the relevant requirements under the REIT Code as well as those in Schedule 11, including paragraph 19(c). Paragraph 19(c) provides that where certain assets of the REIT (eg, title documents of real estate and bank accounts) are held, maintained or operated by the manager in the name of the REIT or any SPV, the depositary should ensure that the manager has put in place proper safeguards and controls to ensure that the assets are properly segregated and held in custody and to enable the depositary to monitor and have effective oversight of the assets on an ongoing basis.</p>

	Public comments	The SFC's response
8.	Title documents are typically transferred physically to lending banks as collateral for securing financial accommodation for the REIT. A REIT depository seeks annual confirmation from the banks. Is this practice sufficient for compliance with the requirement under paragraph 14(i), which requires any scheme property subject to security interest to be held in safe custody in segregated account or otherwise dealt with in accordance with provisions of the relevant constitutive documents.	In this case, the depository should ensure compliance with paragraph 14(i) having due regard to its fiduciary and other duties under the REIT Code and ensure it discharges such duties with diligence and prudence.

Section 3 - Summary of comments on technical issues in Product Codes and the SFC's responses

	Public comments	The SFC's response
1.	<p>RA13 depositories will be subject to the relevant capital requirements under the FRR. The proposed notes to 4.4 of the UT Code and 4.5 of the REIT Code state that the capital requirement²⁵ and the alternative of relying on the holding company's standing commitment²⁶ will not apply to RA 13 depositories.</p> <p>Does this mean that the capital requirement and the alternative of relying on the holding company's standing commitment will apply only to overseas banks or entities (which are subject to prudential regulation and supervision by an acceptable overseas supervisory authority) seeking to be authorised as trustees or custodians of relevant CISs?</p>	Yes, the capital requirement and alternative arrangements in the UT Code and REIT Code will only, and continue to, apply to overseas banks and entities as they are not bound by the FRR.

²⁵ This refers to the minimum paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency. See 4.3 of the UT Code and 4.4 of the REIT Code.

²⁶ Pursuant to 4.4 (a) and (b) of the UT Code or 4.5 (a) and (b) of the REIT Code.



Appendix B

Final form of amendments to subsidiary legislation

Section 1 – Final form of amendments to the CSR

Section 2 – Final form of amendments to the CMR

Section 3 – Final form of amendments to the KRR

Section 4 – Final form of amendments to the FRR, Insurance Rules, AAR and Contract Notes Rules

Section 5 – Final form of amendments to the OTCD Reporting Rules

Final form of amendments to subsidiary legislation

The highlighted parts indicate revisions to the subsidiary legislation which differ from the proposed amendments set out in the consultation paper of February 2022.

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

Section 1 – Final form of amendments to the CSR

Amendments to sections 2, 3, 11, 12 and 13, heading 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 Type 13 regulated activity, 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;

scheme securities (計劃證券) means any client 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 Type 13 regulated activity; 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 Type 13 regulated activity,

constituting relevant CIS property in respect of a relevant CIS;

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) Subsections 3(2) and sections 4, 5, 6, 7, 8, 8A, 9 Part 2 and section 10 of these Rules do not apply to—~~

~~(a) an intermediary licensed or registered for Type 13 regulated activity- providing depositary services for a relevant CIS; or~~

~~(b) an associated entity of the intermediary,~~

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

- (4) ~~Part 2A and section 10A of these Rules apply only to—~~
- ~~(a) an intermediary licensed or registered for Type 13 regulated activity providing depositary services for a relevant CIS; or~~
 - ~~(b) an associated entity of the intermediary,~~
- ~~in relation to the conduct by the intermediary of that regulated activity providing depositary 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 Type 13 Regulated Activity Providing Depositary Services for a Relevant CIS and their Associated Entities~~

Part 2A

Scheme Securities Received or Held by Intermediaries in Conduct of Type 13 Regulated Activity Providing Depositary Services for a Relevant CIS and their Associated Entities

9A. Interpretation of Part 2A

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 depositary services for a relevant CIS or an authorized financial institution, that is licensed or registered for Type 13 regulated activity which is registered under section 119 of the Ordinance for providing depositary services for a relevant CIS;~~

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

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

~~**scheme documents** (計劃文件) has the meaning given 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 depositary 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 must 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 limiting prejudice to subsection (1), in accordance with the scheme 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 the intermediary, the associated entity or a third person. —
 - (i) the intermediary;
 - (ii) the associated entity; or
 - (iii) a third person.
- (3) In subsection (1), —

a **written instruction** (書面指令) is means 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 ~~scheme constitutive~~ documents of the relevant CIS.

Part 3 Miscellaneous

10A. Limitations on the treatment of scheme securities

- (1) An intermediary in the conduct of Type 13 regulated activity ~~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 and scheme securities

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 Type 13 regulated activity providing depository 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 – Final form of amendments to the CMR

Amendments to sections 2, 3, 11 and 12, addition of headings 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) and (4);~~

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) Subsection (3) and Part 2 of these Rules and section 3(3) do not apply to—~~
- ~~(a) a licensed corporation licensed for Type 13 regulated activity providing depositary services for a relevant CIS; or~~
- ~~(b) an associated entity of the licensed corporation,~~
~~in relation to the conduct by the licensed corporation of that regulated activity providing depositary services for a relevant CIS.~~
- ~~(5) Part 3 of these Rules apply applies only to—~~
- ~~(a) a licensed corporation licensed for Type 13 regulated activity providing depositary services for a relevant CIS; or~~
- ~~(b) an associated entity of the licensed corporation,~~
~~in relation to the conduct by the licensed corporation of that regulated activity providing depositary services for a relevant CIS.~~

Part 2

Client Money Received or Held by Licensed Corporations other than in the Conduct of Type 13 Regulated Activity Providing Depositary Services for a Relevant CIS and their Associated Entities

Part 3

Scheme Money Received or Held by Licensed Corporations in Conduct of Type 13 Regulated Activity Providing Depositary Services for a Relevant CIS and their Associated Entities

10A. Interpretation of Part 3

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 licensed for Type 13 regulated activity which is granted a licence under section 116 of the Ordinance for providing depositary services for a relevant CIS;~~

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

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

~~**relevant CIS account** (相關有關集體投資計劃帳戶) means an account—~~

- ~~(a) 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 any other~~

corporate form in the name of the relevant CIS in accordance with section 10B(5) and (6) and (7); and

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

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

scheme documents (計劃文件) has the meaning given by Part 2 of Schedule 5 to the Ordinance;

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

- (a) received or held in Hong Kong by the licensed corporation in the course of the conduct of Type 13 regulated activity 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 Type 13 regulated activity providing depositary services for a relevant CIS.

that which constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions thereto to it 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, means 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 means 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 that is constituted in any other form, means refers to the separate part of relevant CIS property that is divided in accordance with the scheme constitutive documents of the relevant CIS, and which is a relevant CIS;

written instruction (書面指令) — see section 10E.

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

- (1) Subject to subsection (5) (4), a licensed corporation or an associated entity of the a licensed corporation that receives or holds scheme money in respect of a relevant CIS must shall establish and maintain in Hong Kong 1 one or more segregated accounts for the scheme money in accordance with subsections (2), and (3) and (4), each of which must shall be designated as a trust account or client account for the relevant CIS.
- (2) Subject to subsection (3), each Each segregated account for scheme money referred to in subsection (1) shall must 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)~~ Subject to subsection (4), each segregated account for scheme money referred to in subsection (1) must be established and maintained for only 1 relevant CIS.
- ~~(3)(4)~~ For the purposes of subsection (3) (2), where a relevant CIS consists of 1 ~~one~~ or more sub-funds, a licensed corporation or an associated entity of a licensed corporation may establish and maintain 1 ~~one~~ segregated account for scheme money in respect of the relevant CIS and all of its 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)(5)~~ For ~~in the case of~~ a relevant CIS that is constituted in the form of an open-ended fund company or any other corporate form, a licensed corporation or an associated entity of ~~the a~~ 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) if ~~provided that~~ the scheme money is received or held in a relevant CIS account that is established and maintained in accordance with subsections ~~(5) and (6) and (7)~~.
- ~~(5)(6)~~ Each relevant CIS account for scheme money referred to in subsection (4) shall ~~must 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)(7)~~ For the purposes of subsection (5), each ~~Each~~ relevant CIS account for scheme money ~~must shall~~ be established and maintained for only 1 ~~one~~ relevant CIS, unless a relevant CIS consists of 1 ~~one~~ or more sub-funds, in which case 1 ~~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)(8)~~ 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 a~~ licensed corporation ~~must shall~~ be dealt with in accordance with subsection (9) (8), ~~except—~~
- ~~(a)~~ proper charges that may be deducted by the licensed corporation in connection with Type 13 regulated activity ~~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 that ~~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 ~~scheme constitutive~~ documents of the relevant CIS.
- ~~(8)(9)~~ Within 3 ~~three~~ business days after a licensed corporation or an associated entity of ~~the a~~ licensed corporation receives any amount of scheme money in respect of a relevant CIS as referred to in subsection (8) (7), the licensed corporation or associated entity ~~must shall—~~

- (a) where subsection (1) applies, pay it into a segregated account for scheme money in respect of the relevant CIS;
- (b) where subsection (5) (4) applies, pay it into a relevant CIS account for scheme money in respect of the relevant CIS; or
- (c) subject to subsection (10) (9), pay it in accordance with a written instruction.

(9)(10) 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 scheme 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 a licensed corporation that holds any amount of scheme money in respect of a relevant CIS in a segregated account or a relevant CIS account must shall not pay scheme money out of the account unless it is—

- (a) paid by the licensed corporation in accordance with the scheme constitutive 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 scheme 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 a licensed corporation that holds scheme money in respect of a relevant CIS must 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(9)(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 scheme constitutive documents of the relevant CIS.

10F. Receipt of cheques for scheme money

For the purposes of sections 10B(1) and (8)(7), a licensed corporation or an associated entity of the a 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 (9)(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 – Final form of amendments to the KRR

Amendments to sections 2, 3, 4, 10 and 12, renumbering of the Schedule and addition of new sections 3A and 4A and Schedule ~~2-1A~~:

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;

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

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

~~**scheme assets** (計劃資產) means—~~

~~(a) scheme money; and~~

(b) scheme securities:

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

- (a) received or held in Hong Kong or overseas by the intermediary in the course of the conduct of Type 13 regulated activity 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 intermediary, in relation to such conduct of Type 13 regulated activity providing depositary services for a relevant CIS,

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

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

- (a) received or held in Hong Kong or overseas by the intermediary in the course of the conduct of Type 13 regulated activity 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 intermediary, in relation to such conduct of Type 13 regulated activity providing depositary services for a relevant CIS,

which that 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 an the intermediary in relation to the conduct by the intermediary of Type 13 regulated activity providing depositary 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 an the intermediary in relation to the conduct by the intermediary of Type 13 regulated activity providing depositary 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 Type 13 regulated activity the regulated activity of providing depository 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 statements of profit or loss and other comprehensive income and statements of financial position ~~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 Type 13 regulated activity providing depositary services for a relevant CIS

- (1) This section applies to an intermediary licensed or registered for Type 13 regulated activity providing depositary services for a relevant CIS.
- (2) An intermediary must ~~shall~~, in relation to the businesses which constitutes Type 13 regulated activity ~~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 statements of profit or loss and other comprehensive income and statements of financial position ~~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); and
- (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 must ~~shall~~, where applicable, include the records specified in Schedule 2 4A.

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 Type 13 regulated activity providing depository services for a relevant CIS) must ~~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 licensed or registered for Type 13 regulated activity providing depositary services for a relevant CIS

- (1) An associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity must 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, custody 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 the 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 must 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, 3A-B, 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, 3A-B, 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 2-1A

Records to be kept by Intermediaries Licensed or Registered for Type 13 Regulated Activity providing depositary services for a relevant CIS under Section 3A(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 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 the 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 the 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;

Section 4 – Final form of amendments to the FRR, Insurance Rules, AAR and Contract Notes Rules

FRR

Amendments to sections 2, 20, 21, 30, 37 and 56, addition of section 37A and addition of Type 13 to Tables 1 and 2 of Schedule 1:

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. I);
 - (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;

(ab) any amount of scheme money held by a licensed corporation licensed for Type 13 regulated activity in—

(i) a segregated account in accordance with the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);

(ii) to the extent not covered in subparagraph (i), a segregated account with an authorized financial institution; or

(iii) a segregated account with a bank incorporated outside Hong Kong;

(ac) any amount held by a licensed corporation licensed for Type 13 regulated activity on behalf of—

(i) subscribers or scheme participants of a relevant CIS constituting subscription proceeds in respect of the relevant CIS;

(ii) unit holders, shareholders or scheme participants of a relevant CIS constituting redemption proceeds in respect of the relevant CIS; or

(iii) unit holders, shareholders or scheme participants of a relevant CIS constituting distribution proceeds in respect of the relevant CIS,

in an account which is separate from its own account and designated for holding such proceeds maintained with an authorized financial institution, a bank incorporated outside Hong Kong or a person approved by the Commission under section 4(2) or 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules;

- (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) other than a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity, 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) other than a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity, 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 (股票掛鉤票據) 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—

- (a) amounts payable to clients in respect of—
 - (ai) client money held by it in a segregated account in accordance with the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);

- (bii) 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) subparagraph (i)~~, in a segregated account with an authorized financial institution; ~~and~~
- (eiii) client money held by it in a segregated account with a recognized clearing house;

(b) any amount of scheme money held by a licensed corporation licensed for Type 13 regulated activity in—

- (i) a segregated account in accordance with the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); or
- (ii) a segregated account with a bank incorporated outside Hong Kong and, to the extent not covered in subparagraph (i), a segregated account with an authorized financial institution; and

(c) any amount held by a licensed corporation licensed for Type 13 regulated activity on behalf of—

- (i) subscribers or scheme participants of a relevant CIS constituting subscription proceeds in respect of the relevant CIS;
- (ii) unit holders, shareholders or scheme participants of a relevant CIS constituting redemption proceeds in respect of the relevant CIS; or
- (iii) unit holders, shareholders or scheme participants of a relevant CIS constituting distribution proceeds in respect of the relevant CIS,

in an account which is separate from its own account and designated for holding such proceeds maintained with an authorized financial institution, a bank incorporated outside Hong Kong or a person approved by the Commission under section 4(2) or 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules;

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; or
- (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 (相關有關集體投資計劃) has the meaning given assigned to it by Part 2 of Schedule 5 to the Ordinance;

relevant CIS property (相關有關集體投資計劃財產) has the meaning given 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 client money—

- (a) received or held in Hong Kong or overseas by the licensed corporation in the course of the conduct of Type 13 regulated activity 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 Type 13 regulated activity providing depositary services for a relevant CIS,

which that constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions to it 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; ~~or~~

(c) in the case of a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity, is an account for holding scheme money which 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)

20. Cash in hand and at bank

(1) A Other than a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity, a licensed corporation must include in its liquid assets—

- (a) cash in hand which it beneficially owns;
- (b) money which it beneficially owns and holds in an account in its name, or in a segregated account, with an authorized financial institution or an approved bank incorporated outside Hong Kong in the form of—
 - (i) a demand deposit; or
 - (ii) a time deposit which will mature in 6 months or less;
- (c) interest accrued on any deposit referred to in paragraph (b)(ii); and
- (d) money which it holds on behalf of a client in an account in its name, or in a segregated account, with an authorized financial institution or an approved bank incorporated outside Hong Kong, and which it has received from the client for the purposes of settling a purchase of, or subscription for, securities by it on behalf of the client.

(2) A licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity must include in its liquid assets—

- (a) cash in hand which it beneficially owns;
- (b) money which it beneficially owns and holds in an account in its name, or in a segregated account, with an authorized financial institution or an approved bank incorporated outside Hong Kong in the form of—

- (i) a demand deposit; or
 - (ii) a time deposit which will mature in 6 months or less; and
 - (c) interest accrued on any deposit referred to in paragraph (b)(ii).
- (3) A licensed corporation licensed for Type 13 regulated activity must not include in its liquid assets—
- (a) any amount of scheme money held by the licensed corporation—
 - (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 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. I); or
 - (iv) in an account maintained with an authorized financial institution or a bank incorporated outside Hong Kong which 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 unit holders, shareholders or scheme participants of a relevant CIS constituting redemption proceeds in respect of the relevant CIS; or
 - (iii) on behalf of unit holders, shareholders or scheme participants of a relevant CIS constituting distribution proceeds in respect of the relevant CIS,
in an account which is separate from its own account and designated for holding such proceeds maintained with an authorized financial institution, a bank incorporated outside Hong Kong or a person approved by the Commission under section 4(2) or 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules.

21. Amounts receivable from clients in respect of purchase of and subscription for securities

- (1) Subject to subsections (3) and (7), a licensed corporation must include in its liquid assets the following amounts arising from the purchase by any of its clients of securities on a cash-against-delivery basis—
- (a) any amount receivable from the client which, when calculated on a transaction-by-transaction basis, is not yet due for settlement according to the settlement date or has been outstanding for 5 business days or less after the settlement date;
 - (b) in respect of any amount receivable from the client which, when calculated on a transaction-by-transaction basis, has been outstanding for more than

- 5 business days but less than 1 month after the settlement date—the amount which, when calculated on a transaction-by-transaction basis, is the lower of—
- (i) the amount receivable less any specific provision for bad or doubtful debts made in respect of the amount receivable; and
 - (ii) the market value of the securities to which the amount receivable relates.
- (2) A licensed corporation may, subject to subsection (2A), elect to set-off, on a client-by-client basis, any amount receivable from, and amount payable to, a client where such amounts arise from the purchase and sale of securities by the client on a cash-against-delivery basis, if the licensed corporation has obtained from the client a written authorization to—
- (a) set-off such amounts against each other; and
 - (b) dispose of securities held for the client for the purpose of settling any of the amounts payable by the client to the licensed corporation.
- (2A) An election made by a licensed corporation under subsection (2) must be in respect of all of its clients from whom it has obtained a written authorization referred to in that subsection.
- (3) Subject to subsection (7), where a licensed corporation makes an election under subsection (2), it must include in its liquid assets in respect of the amount receivable by it from and the amount payable by it to a client which arise from the purchase and sale of securities by the client on a cash-against-delivery basis the amount which is the lower, when calculated on a client-by-client basis, of—
- (a) any amount receivable that remains after the set-off referred to in subsection (2) less any specific provision for bad or doubtful debts made in respect of such amount receivable; and
 - (b) the market value of the securities held for the client, less the haircut amounts in relation to the securities.
- (4) Subject to subsection (7), a licensed corporation must include in its liquid assets any amount receivable from any of its clients arising from the purchase by the client of securities on a free delivery basis which, when calculated on a transaction-by-transaction basis—
- (a) in the case where the clearing system of the exchange on which the securities are traded effects settlement only on a free delivery basis—
 - (i) is not yet due for settlement according to the settlement date; or
 - (ii) has been outstanding for 2 weeks or less after the settlement date; or
 - (b) in any other case—is not yet due for settlement according to the settlement date.
- (5) Subject to subsection (7), a licensed corporation must, in respect of securities subscribed for on behalf of any of its clients, include, prior to the commencement of trading of the securities on any exchange on which they are listed, in its liquid assets the amount which is the lower, when calculated on a transaction-by-transaction basis, of—
- (a) 90% of the total costs to the client of subscribing for the securities; and
 - (b) any amount receivable from the client for subscribing for the securities.

- (6) Subject to subsection (7), a licensed corporation must, in respect of securities subscribed for on behalf of any of its clients, include, after the commencement of trading of the securities on any exchange on which they are listed, in its liquid assets any amount receivable from the client arising from subscribing for the securities in accordance with subsection (1) or (3) as if the securities had been purchased on a cash-against-delivery basis.
- (7) The aggregate of amounts that a licensed corporation includes in its liquid assets under subsections (1), (3), (4), (5) and (6) must not exceed the aggregate of amounts receivable from its clients referred to in those subsections less the aggregate of amounts of specific and general provisions for bad or doubtful debts made in respect of such aggregate of amounts receivable.
- (8) In subsections (2) and (2A), **written authorization** (書面授權) includes an agreement in writing within the meaning of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H).

(9) This section does not apply to a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity.

30. Amounts receivable from clients in respect of purchase of exchange-traded unlisted options contracts

- (1) A licensed corporation must include in its liquid assets any amount receivable from any of its clients arising from the purchase of any unlisted options contract traded on a specified exchange which, when calculated on a transaction-by-transaction basis—
- (a) is not yet due for settlement according to the settlement date; or
 - (b) has been outstanding for 5 business days or less after the settlement date.

(2) This section does not apply to a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity.

37. Amounts payable to clients, etc.

- (1) 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(1)(d)); ~~or~~ 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~~ and

~~(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.~~

~~(2) This section does not apply to a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity.~~

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. I); or~~

~~(iv) in an account maintained with an authorized financial institution or a bank incorporated outside Hong Kong and which 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 ~~unit holders~~ ~~unitholders~~, shareholders or scheme participants of a relevant CIS constituting redemption proceeds in respect of the relevant CIS; or~~

~~(iii) on behalf of ~~unit holders~~ ~~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, a bank incorporated outside Hong Kong or a person approved by the~~

Commission under section 4(2) or 10B(2) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I) for the purposes of those Rules; and

(c) any amount payable to any person which arises from the carrying on of Type 13 regulated activity in relation to any obligation incurred solely on behalf of a relevant CIS other than an amount payable without recourse to the assets of the licensed corporation.

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) other than a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity, 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 the carrying on of 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 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>

Insurance Rules

Addition of item 10 to Part 2 of Schedule 2 after item 9:

PART 2 INSURED AMOUNT

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

AAR

Amendments to sections ~~2 to 4 and~~ 5:

2. Interpretation

In these Rules, unless the context otherwise requires—

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

margin client (保證金客戶) means—

- (a) in relation to a corporation licensed for dealing in securities, a client to whom the corporation provides securities margin financing; or
- (b) a client of a corporation licensed for securities margin financing;

relevant CIS (相關集體投資計劃) has the meaning given by Part 2 of Schedule 5 to the Ordinance;

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

scheme assets (計劃資產) means—

- (a) scheme money; and
- (b) scheme securities;

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

- (a) received or held by the intermediary in the course of the conduct of Type 13 regulated activity; or
- (b) received or held by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of Type 13 regulated activity,

that constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions to it whether as capital or income;

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

- (a) received or held by the intermediary in the course of the conduct of Type 13 regulated activity; or
- (b) received or held by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of Type 13 regulated activity,

that constitute relevant CIS property in respect of a relevant CIS;

systems of control (監控系統), in relation to a licensed corporation or an associated entity of an intermediary, means in so far as applicable the internal controls and trading, accounting, settlement, ~~and~~ stock holding systems ~~and holding systems for scheme securities~~ it has implemented to ensure its compliance with the provisions specified in section 4(1)(e).

3. Financial statements and other documents to be prepared by licensed corporations and associated entities of intermediaries

- (1) For the purposes of section 156(1)(a) of the Ordinance, the financial statements and other documents that a licensed corporation shall prepare, in respect of each financial year, are—
- (a) a set of accounts consisting of each of the following, prepared in accordance with generally accepted accounting principles—
 - (i) a ~~statement of profit or loss and other comprehensive income-profit and loss account~~;
 - (ii) a ~~statement of financial position-balance sheet~~; and
 - (iii) notes to the accounts;
 - (b) in so far as applicable, the following returns as referred to in section 56 of the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N), each made up to the last day of the financial year—
 - (i) a liquid capital computation;
 - (ii) a required liquid capital computation;
 - (iii) a summary of bank loans, advances, credit facilities and other financial accommodation available to it;
 - (iv) an analysis of its margin clients;
 - (v) an analysis of collateral received from margin clients;
 - (vi) an analysis of its rolling balance cash clients;
 - (vii) ~~other than a licensed corporation licensed for Type 13 regulated activity in relation to the carrying on by it of Type 13 regulated activity,~~ an analysis of its client assets; ~~and~~
 - (viii) an analysis of its proprietary derivative positions; and
 - (ix) ~~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 the carrying on of Type 13 regulated activity; and~~
 - (c) a business and risk management questionnaire.
- (2) For the purposes of section 156(2)(a) of the Ordinance, the financial statements and other documents required to be prepared by a licensed corporation that ceases carrying on all of the regulated activities for which it is licensed are—
- (a) a set of accounts as referred to in subsection (1)(a); and
 - (b) a liquid capital computation as referred to in subsection (1)(b)(i).
- (3) For the purposes of section 156(1)(a) of the Ordinance, the financial statements and other documents that an associated entity of an intermediary shall prepare, in respect of each financial year, are—
- (a) a set of accounts consisting of each of the following, prepared in accordance with generally accepted accounting principles—
 - (i) a ~~statement of profit or loss and other comprehensive income-profit and loss account~~;
 - (ii) a ~~statement of financial position-balance sheet~~; and
 - (iii) notes to the accounts;

- (b) other than an associated entity of an intermediary licensed or registered for Type 13 regulated activity in relation to the carrying on by the intermediary of Type 13 regulated activity, an analysis of client assets as at the end of the financial year; ~~and~~
 - (ba) where it is an associated entity of an intermediary licensed or registered for Type 13 regulated activity in relation to the carrying on by the intermediary of Type 13 regulated activity, an analysis of scheme assets at the end of the financial year; and
 - (c) a business and risk management questionnaire.
- (4) For the purposes of section 156(2)(a) of the Ordinance, the financial statements and other documents required to be prepared by an associated entity of an intermediary that ceases to be such an associated entity are—
- (a) a set of accounts as referred to in subsection (3)(a); ~~and~~
 - (b) other than an associated entity of an intermediary licensed or registered for Type 13 regulated activity in relation to the carrying on by the intermediary of Type 13 regulated activity, an analysis of client assets as referred to in subsection (3)(b); ~~and~~
 - (c) where it is an associated entity of an intermediary licensed or registered for Type 13 regulated activity in relation to the carrying on by the intermediary of Type 13 regulated activity, an analysis of scheme assets as referred to in subsection (3)(ba).

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 statement of profit or loss and other comprehensive income and the statement of financial position ~~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 statement of financial position ~~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 statement of profit or loss and other comprehensive income ~~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).

Contract Notes Rules

Amendments to sections 2 and 3:

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 Type 13 regulated activity 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 that regulated activity 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 – Final form of amendments to the OTCD Reporting Rules

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 (相關有關集體投資計劃) has the meaning given 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 Type 13 regulated activity 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 C

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

The marked-up texts indicate revisions to Schedule 11 which differ from the version set out in the consultation paper of February 2022.

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 providing depositary services for a relevant CIS_s (a “Depositary”).
2. A Depositary should establish and implement internal control policies and procedures to meet the Additional Requirements. The internal controls and procedures 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 and the nature of the relevant CIS property. In the case where an operation of the relevant CIS that is subject to the oversight of a Depositary is in fact carried out by the Depositary, 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 Depositary 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)).

3. In this Schedule:
 - (a) a “relevant CIS” has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO;
 - (b) “relevant CIS property” has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO;
 - (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”)¹;
 - (iii) the Code on Real Estate Investment Trusts (“REIT Code”); and
 - (iv) the Code on Pooled Retirement Funds (“PRF Code”);
 - (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;
 - (e) a “PRF” means a pooled retirement fund (which may comprise various

¹ 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.

investment portfolio(s)) which is authorized by the Commission under section 104 of the SFO and pursuant to the PRF 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, registrar and, in the case of a PRF, a product provider.

4. 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

5. 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 functions and obligations 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 impact 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 impact 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 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 if there is any material change to 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”.

6. Appointment and oversight of delegates or third parties

- (a) Where a delegate or third party is appointed or engaged to carry out any activity that is relevant to the Depositary, the Depositary should have established internal control policies and procedures to enable it to have proper oversight over the delegate or third party so that the Depositary can be reasonably satisfied that the delegate or third party is competent to carry out the relevant activity. Such internal control policies and procedures include those relating to:
- (i) the selection of a delegate or third party, including an assessment of their competence, regulatory and financial status, capabilities and internal controls and systems in carrying out the relevant activity;
 - (ii) the ongoing monitoring (including a regular review) of the delegate or third party so that the Depositary is satisfied that:
 - (1) 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 relevant activity; and
 - (iii) addressing actual or potential conflicts of interests that may arise from the appointment and oversight of delegates or third parties.
- (b) A Depositary should establish an appropriate contingency plan in relation to the engagement of delegates or third parties, including actions and measures to be taken in the event of breaches and solvency matters as well as other material issues related to them.
- (c) Although a delegate may be engaged for the custody and safekeeping of relevant CIS property, the responsibilities and obligations of a Depositary in respect of such activity shall remain with the Depositary.

Note 1: For the purposes of paragraph 6, delegates or third parties include those appointed or engaged by the Depositary, 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 Depositary refer to activities that a Depositary is primarily responsible for (e.g. custody and safekeeping of relevant CIS property), and operation of the relevant CIS for which the Depositary has an oversight obligation over, in each case in accordance with the provisions under the relevant Product Code(s).

Operational controls and compliance

7. Record keeping

A Depositary should ensure that its record keeping policies 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.

8. Oversight of the relevant CIS

A Depositary should have oversight of the relevant CIS to ensure that it is operated (or in the case of a relevant CIS that is a PRF, administered) in accordance with the provisions of the constitutive documents of the relevant CIS.

9. Subscription and redemption

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

- (a) subscription and redemption transactions are processed on a timely basis;
- (b) subscription and redemption orders are carried out in accordance with the provisions of the constitutive documents of the relevant CIS;
- (c) where subscription proceeds are received by the Depositary 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;
- (f) unit or share certificates (where appropriate) are issued and cancelled in a timely manner;
- (g) 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);
- (h) the frequency of reconciliation conducted is consistent with that of subscriptions and redemptions; and
- (i) 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 Depositary and the management company.

Note: 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.

10. Valuation/price/net asset value calculation monitoring

A Depositary 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 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 Depositary) 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. 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 maintains proper recording of interest income, dividend income and other corporate actions in relation to each relevant CIS.

11. Distribution payments

- (a) A Depositary should have oversight of the relevant operator(s) to ensure that:
 - (i) distribution calculations are carried out in accordance with the provisions of the constitutive documents of the relevant CIS; and
 - (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.

12. 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) identify cash flows which are inconsistent with the operations of the relevant CIS.

13. 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) on a regular basis, provide or make available copies of the Depositary'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 Depositary 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 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) have oversight of the relevant operator(s) to ensure that daily mark-to-market value on collateral and reconciliation of reports provided by counterparties with regard to the collateral are prepared and/or reviewed by the relevant operator(s) appropriately.

14. Custody and safekeeping of relevant CIS property

In respect of each relevant CIS, a Depositary should:

- (a) assess and manage custody risk with adequate organisational arrangements to minimise the risks of loss of the relevant CIS property;
- (b) unless the relevant CIS property are held in 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 relevant CIS property are properly recorded with frequent reconciliations, segregate the relevant CIS property of each relevant CIS from the property of:

- (i) the management company, investment delegate and their respective connected persons;
 - (ii) the Depositary and any nominees, agents or delegates throughout the custody chain; and
 - (iii) other relevant CIS and clients of the Depositary and its or their nominees, agents or delegates throughout the custody chain;
- (c) properly register the relevant CIS property in the name of or to the order of the Depositary, unless prohibited by any relevant laws or regulations;
 - (d) properly 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;
 - (f) obtain sufficient and reliable information and conduct verification of ownership of relevant CIS property;
 - (g) maintain comprehensive, up-to-date and accurate records of relevant CIS property, including cash and assets that cannot be held in custody;
 - (h) ensure reconciliation is carried out on a daily basis for cash and on a regular basis for other relevant CIS property;
 - (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
 - (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 Depositary under the constitutive documents of the relevant CIS, the Depositary should have proper oversight of the management company to ensure that the management company has properly authorized or has obtained the relevant authorization.

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

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

A Depositary 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;
- (b) ensure that the relevant operator(s) has effective controls in place for obtaining the Depositary's prior written consent for transaction(s) between the relevant CIS and the entities mentioned in the relevant Product Code(s), such transactions are executed at 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 Depositary 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.

16. Handling different classes of investors fairly

A Depositary 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 units/shares are treated fairly, 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.

17. Professional indemnity insurance

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

Part II

Depositary of a relevant CIS authorized under the REIT Code

Introduction

18. A Depositary of a REIT should generally observe the requirements set out under Part I of this Schedule with the modifications 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. A Depositary 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 the particular nature, 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 Depository of a REIT.

Modifications to Part I of this Schedule for a Depository of a REIT

19. The following requirements in Part I of this Schedule apply to the Depository of a REIT 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.

(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 12 and 14(h) of Part I of this Schedule, the Depository of a REIT should ~~(i) should~~ ensure that the management company has put in place proper cash flow management policy and controls and ~~(ii) should~~ have oversight on and regular monitoring of the 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.

(c) Custody and safekeeping of relevant CIS property

The Depository of a REIT should ensure that all the assets of the REIT 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, including the safe custody of all title documents of the real estate owned by the REIT subject to the paragraph below and paragraph 14(i) of this Schedule.

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 (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.

(d) Connected party transactions

The requirements under paragraph 15 of Part I of this Schedule do not apply to a Depositary of a REIT. The Depositary 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 D

List of respondents

(In alphabetical order)

- 1. BNP Paribas Securities Services**
- 2. Mr. Chan Wai-Kit, Ricky (respondent has requested submission to be withheld from publication)**
- 3. Hong Kong Trustees' Association**
- 4. Submission of one respondent is published on a “no-name” basis**
- 5. Submission of one respondent is withheld from publication**