Consultation conclusions on proposed subsidiary legislation, code and guidelines for implementing an uncertificated securities market in Hong Kong

July 2024

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Introduction and executive summary

Background

1. In March 2023, the Securities and Futures Commission (**SFC**) issued a consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market (**USM**) in Hong Kong. The paper (**March 2023 Consultation**) proposed two new pieces of subsidiary legislation and amendments to various existing legislation. The two new pieces of subsidiary legislation provide for: (i) the regulation of various operational, technical, and procedural matters in the USM environment (**USM Rules**); and (ii) the regulation of approved securities registrars (**ASR Rules**).

2. Subsequently, in October 2023, the SFC issued a consultation paper on a proposed code (**ASR Code**) and guidelines (**ePO Guidelines**) which would supplement the USM Rules and ASR Rules. The paper (**October 2023 Consultation**) also proposed further amendments to the Stamp Duty Ordinance (**SDO**) to facilitate stamping and stamp duty payment in the USM environment.

3. The consultations ended on 30 June 2023 and 15 December 2023 respectively. We received a total of 12 submissions to the March 2023 Consultation and 5 to the October 2023 Consultation. Respondents included issuer representatives, banks, intermediaries, law firms and industry associations. A list of the respondents (other than those who requested to remain anonymous) is set out in **Annex 1** and the full text of their comments (unless requested to be withheld from publication) can be accessed via the SFC's website at www.sfc.hk.

4. This Conclusions Paper summarises the feedback received on the two consultations, our responses to the same, and our conclusions and proposals for taking the USM initiative forward.

5. As part of the consultation process, we met with a number of respondents to better understand their comments and concerns, and to clarify related aspects of the USM initiative and proposals. We also briefed the Legislative Council's Panel on Financial Affairs in May 2024. The further feedback from these discussions has also been taken into account.

6. This paper should be read together with the March 2023 Consultation and October 2023 Consultation, and the comments received. Terms used in this paper are defined in the Glossary on page 58.

Feedback received and our response

7. In general, respondents continued to express support for the USM initiative, and our proposals for taking it forward. However, respondents also expressed concerns about a few overarching issues, ie:

   (a) the need for a more definitive timeline for transitioning the market to full dematerialization;

   (b) the potential cost impact of implementing USM, and related concerns about ASRs' fees; and

(c) the need for incentives as well as sufficient publicity and market education to encourage the market's transition to full dematerialization as quickly as possible.

Respondents also sought clarification and put forward suggestions on various other aspects. We summarise below.

Key overarching concerns

8. **Timeline to full dematerialization**: The majority of respondents urged us to provide greater clarity and details regarding the timetable for transitioning the market to full dematerialization. Two respondents also expressed concerns about the lack of a clear timeline for mandating the dematerialization of securities held outside the Central Clearing and Settlement System (**CCASS**). On the other hand, one respondent opposed any plan to mandate the dematerialization of securities held outside CCASS. We clarify that *full* dematerialization (ie, the removal of *all* title instruments) may take time, but the aim is to hasten this process as much as possible. To that end, and in light of the concerns raised, we propose as follows.

(a) All "eligible"[1] prescribed securities (other than subscription warrants and rights under a rights issue) existing at the time of USM implementation must become participating securities within 5 years after USM is implemented. To ensure orderly transition, all eligible prescribed securities will be lined up in a queue so that each has its own specific deadline (within the overarching 5-year period) by when it must become participating securities. Such deadlines will be determined jointly by the issuer's ASR, Hong Kong Securities Clearing Company Limited (**HKSCC**) and the Stock Exchange of Hong Kong Limited (**SEHK**). Issuers will be able to express any views or concerns through their ASRs.

(b) All eligible prescribed securities (other than subscription warrants and rights under a rights issue) which are *first* listed after USM is implemented must be in uncertificated form from the time of their listing, unless specific exemption is granted by the SEHK. However, any such exemption will be granted in exceptional cases only, and only during the first year following implementation.

(c) Eligible prescribed securities that are subscription warrants or rights under a rights issue must be in uncertificated form if, at the time of their issue, their underlying securities (ie, the securities that can be acquired upon exercising such warrants or rights) are already participating securities.

(d) Certain restrictions will apply to prescribed securities once they become participating securities, ie: (i) title instruments may no longer be issued in respect of them; (ii) new units can only be in uncertificated form; and (iii) all units of such securities held in CCASS must be dematerialized within 6 months of the securities becoming participating securities.

(e) Breach of the above will constitute offences punishable by fines at level 4 ($25,000) and daily fines of $700.

[1] By "eligible" here, we mean those securities whose home laws are compatible with our USM regime. This will cover all prescribed securities constituted under Hong Kong law. We are also aiming to cover, as far as possible, all prescribed securities constituted under the laws of Bermuda, Cayman Islands or Mainland China, but we will review this list again when the subsidiary legislation for implementing USM is submitted to the Legislative Council for negative vetting.

To ensure sufficient flexibility to cater for unique cases, we also propose to incorporate appropriate exemption and deferral powers.

9. **Cost impact on stakeholders**: Many respondents raised concerns about the costs of implementing USM particularly on issuers and their ASRs. We understand these concerns, and note that our proposals on introducing a more specific implementation timeline should help alleviate some of these concerns. Issuers and ASRs can also reduce the cost impact by hastening the market's transition to full dematerialization through appropriate fee incentives. Moreover, retention of the central nominee structure in CCASS means securities held in CCASS will continue to be registered in the name of HKSCC Nominees Limited (**HKSCC-NOMS**) and hence many existing processes can be retained, or retained with little change. As a result the cost impact on market participants will be limited. Additionally, although the initial development costs are expected to be borne largely by Hong Kong Exchanges and Clearing Limited (**HKEX**) and share registrars, it would be reasonable for them to seek to recover some of these from the market, over time, given that the USM initiative will bring benefits to different stakeholders and market participants. We expect this will, to a large extent, be driven by incentives (in the case of investors) and by commercial considerations and negotiations (in the case of others). In terms of impact on investors, fees imposed by HKSCC will be subject to SFC approval, and certain fees charged by ASRs will be standardised (as discussed in the next paragraph).

10. **ASRs' fees and standardising certain fees**: A few respondents commented on our proposals around fees charged by ASRs, including our proposals to standardise transfer fees, dematerialization fees and fees for setting up a USI facility. In general, respondents sought more clarification on various aspects relating to fees charged by ASRs, including the basis for determining any standardised rates. In light of the concerns raised, we propose to conduct a further consultation on the levels and charging basis for any standardised fees. Other comments and suggestions made in respect of ASRs' fees will also be taken into account when conducting such further consultation.

11. **Incentives to accelerate USM**: Many respondents emphasised the need for incentives to encourage early participation in USM. A number of suggestions were also put forward in this regard. We welcome these suggestions and agree in principle with the idea of using different fee levels and waiver fee periods to encourage early participation. We note however that some fee levels and fee waivers will ultimately be a matter for relevant parties to consider and determine. Separately, concerns were also raised about intermediaries' fees potentially discouraging investors from holding prescribed securities in their own names and thus defeating the objectives of the USM initiative. We note these concerns. We expect competitive pricing among intermediaries will help keep their fees at reasonable levels, but we will also monitor developments in this regard.

12. **Publicity and market-wide education**: Several respondents stressed the importance of sufficient publicity and investor education prior to USM implementation. We agree that publicity efforts will be critical as we near implementation. We will work with HKEX and the Federation of Share Registrars Limited (**FSR**) to ensure a coordinated approach that delivers a clear and consistent message to different market participants. A detailed market communications plan will be developed to facilitate work in this regard. As one of the first steps in this regard, HKEX and the FSR are currently working on information papers (**Information Papers**) that will provide more specific information on some of the key

operational processes under USM. HKEX's paper will be more intermediaries-focused while the FSR's paper will be more issuer and investor-focused. The papers are expected to be issued later this year.

Other key concerns

13. **Scope and application of the new regime**: A few respondents sought clarification around the scope and application of the proposed USM regime. We clarify that units in listed funds will be covered but only if they are withdrawable from CCASS, but that convertible bonds will not. We also clarify that:

    (a) "prescribed securities" refers to all of those securities that *may* come within scope subject to certain procedures and formalities being completed in respect of them; while

    (b) "participating securities" refers to those prescribed securities in respect of which such procedures and formalities have been completed, and which can therefore, in practice, be held and transferred without paper instruments.

14. **Application to securities held in CCASS**: A few respondents sought clarification on the impact of the proposed regime on securities held in CCASS. We clarify that the impact will be limited as the central nominee structure in CCASS will be retained, which means many of the processes within CCASS will remain largely unchanged. The main change will be to the processes for depositing/withdrawing prescribed securities into/out of CCASS once they become participating securities — these processes will be electronic rather than paper-based, and the current immediate credit policy will no longer apply when depositing participating securities that are in uncertificated form.

15. **Authenticated messages**: Two respondents expressed significant concerns about having to use authenticated messages, noting that there are already industry standards with respect to messaging and instructions sent among parties within the industry. Following further engagement with these respondents, we clarify that the concept of "authenticated messages" is only intended to cover communications between: (i) issuers/offerors; and (ii) registered holders/transferees. It does *not* apply to messages exchanged between intermediaries and their clients, or between HKSCC and its clearing/custodian participants. Existing messaging standards and platforms can therefore continue to be used for these. We also clarify that the sending and receipt of authenticated messages will be governed by the operating rules and procedures of the messaging facilities through which they are sent.

16. **Operational processes and arrangements**: We received a wide range of comments on the operational processes and arrangements under USM. Key issues included:

    (a) whether investors should be *mandated* to dematerialize their holdings — we remain of the view that they should not;

    (b) that the obligation to issue confirmations and annual statements should be imposed on issuers rather than ASRs — we agree that confirmations should be issued by issuers since these are securities-specific, but remain of the view that annual statements should be issued by ASRs;

    (c) concerns that the requirement to suspend trading in securities where the issuer does not have an ASR may harm minority shareholders and be abused by issuers

— we remain of the view that suspension is necessary to ensure that investors who hold securities in their own name outside CCASS are not unfairly prejudiced;

(d) concerns about issuers' and ASRs' respective obligations if prescribed securities are to be delisted — in light of concerns raised, we now propose that:

(i) issuers should, before the securities are delisted, update the register of members or holders of the securities (**ROM**) to reflect that the securities are no longer held in uncertificated form, and as soon as reasonably practicable afterwards: (A) issue title instruments to uncertificated holders if the terms of issue of the securities so require; and (B) inform uncertificated holders if they are entitled to obtain title instruments and the process for doing so;

(ii) ASRs should issue annual statements to each uncertificated holder within 7 days of the delisting or of the ASR's ceasing to be the securities registrar for those securities (whichever occurs first), and these should reflect the holder's balance as at that time; and

(iii) to facilitate withdrawals from CCASS following a delisting, title instruments issued to HKSCC-NOMS as registered holder should be in such number and denomination as HKSCC-NOMS may specify.

17. **Regulatory standards in respect of ASRs**: We also received a wide range of comments on the regulation of ASRs in the USM environment. Key issues included:

(a) concerns about differences in the scope of services covered under the ASR Rules and ASR Code — we propose to amend some of the language to address the concerns raised;

(b) concerns about the use of "client" to cover investors — we propose to amend some of the terminology to address the concerns raised;

(c) concerns that the proposed standards and requirements relating to ASRs' computer systems and facilities are too prescriptive and onerous — we disagree; the proposed standards are only intended to apply in respect of computer systems and facilities used in connection with, or that may impact, an ASR's business and operations as an ASR, and we propose to amend some of the language to make this clear;

(d) concerns about the remedial measures against cyber risks in the USM environment, and the feasibility of establishing a levy fund to cover cyber risks — we note that ASRs will be required to take appropriate steps to guard against and manage cyber and other risks, and that detailed requirements in this regard are set out in the ASR Code;

(e) concerns about issuers' and ASRs' responsibility for inaccuracies in the ROM — we note that, as is the case today, it is possible that both issuers and ASRs might have to bear responsibility for inaccuracies in the ROM;

(f) concerns about ASRs' obligations when dealing with conflicts of interests between issuer-clients and securities holders — we note that the intention is to require ASRs to play a more proactive role in trying to address such conflicts, but that we also recognise that this may not always be possible; and

(g) a suggestion that existing share registrars be grandfathered into the new regime so as to ensure continuity of services to the market — we note that a grandfathering approach is not feasible given that existing share registrars (including their systems, operations and personnel) have never been reviewed by the SFC; that said, we will put in place arrangements for completing the application process in time.

18. Our proposed revised versions of the USM Rules, ASR Rules and ASR Code are at **Annex 2**, **Annex 3** and **Annex 4** respectively. Mark-ups reflect changes to the versions attached to the earlier consultations. As may be noted, the numbering on the revised versions is alphanumeric in places (ie, where new provisions are added). This is solely to avoid confusion when comparing the revised versions attached to this paper with the versions attached to the earlier consultations. The numbering will be tidied up before the rules/code are finalised, and (in the case of the rules) submitted to the Legislative Council. As for the SML Rules, OFC Rules and ePO Guidelines, no substantive concerns were raised in respect of our suggested changes to these and hence no further amendments are proposed.

19. Additionally, given that many of the issues discussed in the two earlier consultations are inter-related, the discussion in this paper is by reference to topics rather than by reference to the specific questions posed in those consultations. However, for reference, we include a table at **Annex 5** which lists all of the questions we posed, and cross-references the provisions of this paper that deal with the matters covered by each of these.

Way forward

20. The conclusion of the two earlier consultations marks another key milestone towards implementing USM in Hong Kong. In terms of next steps, we will focus our efforts on the following:

(a) finalising the text of all relevant laws and regulations, and proceeding with relevant approval processes including (in the case of laws) completing the legislative process;

(b) continuing to work with HKEX and the FSR to finalise the few remaining technical and operational details of the model for implementing USM, and monitoring progress of HKEX's and FSR members' respective system development efforts; and

(c) developing a detailed plan with HKEX and the FSR to enhance the market's understanding of the USM initiative, its impact on different market participants, and the preparatory steps needed ahead of implementation.

21. We are currently working with the Government to finalise the text of the various items of legislation discussed in the two earlier consultations, and to submit them to the Legislative Council within the fourth quarter of this year. Subject to the legislation being enacted by the first quarter of next year, we aim to implement USM around the end of 2025. This will allow about 9 to 12 months to deal with matters that can only be completed *after* the legislation is enacted, eg, amendments to issuer's articles/bye-laws.

22. Lastly, we take this opportunity to thank all those who took the time and effort to respond to our consultations and engage with us in further discussions. As we progress with work on this initiative, we will continue to engage with different market segments as necessary.

Key areas of concern

23. The consultation feedback and subsequent engagement with respondents suggested that respondents' concerns revolved around several key areas, and that some of our proposals may have been misunderstood. This section addresses these key concerns and clarifies some key concepts.

Scope and application of the new regime

24. A few respondents commented on the range of securities covered by the USM initiative, including in particular listed funds and debt securities. We clarify as follows.

Prescribed securities

25. The USM initiative will apply in respect of prescribed securities only, ie:

    (a) listed[2] shares;

    (b) listed depositary receipts;

    (c) listed stapled securities;

    (d) listed funds;

    (e) listed subscription warrants; and

    (f) listed rights under a rights issue.

26. In the case of listed funds, these will be covered only if: (i) the fund is an authorized collective investment scheme (**CIS**) under the Securities and Futures Ordinance (**SFO**); *and* (ii) its units can be withdrawn from CCASS and registered in an investor's own name[3]. It follows that units in listed real estate investment trusts (REITs) will come within scope as prescribed securities, while units in the vast majority of exchange-traded funds (ETFs) will not.

27. In the case of subscription warrants and rights under a rights issue, these will be covered only if the securities that can be acquired upon exercising the warrants/rights (**underlying securities**) are shares, depositary receipts, stapled securities, or units in CIS that are withdrawable from CCASS.

28. As for debt securities, these are *not* covered at this stage. It follows that convertible bonds are *not* covered, even if convertible into prescribed securities such as listed shares.

Prescribed securities vs participating securities

29. As mentioned above, the USM initiative will apply to *all* prescribed securities. However, before prescribed securities can actually *participate* in the initiative – ie, before they can be held in uncertificated form and transferred without paper instruments – certain procedures and formalities must first be completed, namely:

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[2] In this paper, "listed" means listed, or approved for listing, on the SEHK.

[3] The terms of issue will usually confirm whether the units are withdrawable from CCASS.

(a) the issuer of the securities must appoint an ASR to: (i) maintain the ROM for those securities; and (ii) provide an UNSRT system for evidencing and transferring legal title to those securities without paper instruments;

(b) the appointed ASR must have: (i) completed everything necessary for legal title to those securities to be evidenced and transferred through its UNSRT system without paper instruments[4]; and (ii) confirmed to the issuer a date from when such evidencing and transferring through its UNSRT system may begin; and

(c) (where necessary[5]), the terms of issue relating to those securities (eg, the articles of association in the case of shares) must have been amended to ensure consistency with the USM regime.

30. The term "participating securities" is thus used to refer to prescribed securities in respect of which the above procedures and formalities have been completed, and which can thus, in practice, be held in uncertificated form and transferred without paper instruments. For better clarity, we now propose to define the term "participating securities" more specifically – see new section 3A of the revised USM Rules at Annex 2. The definition also requires the issuer to specify the date from which its securities will become participating securities, and to publish it in accordance with the Listing Rules. This will provide better transparency and certainty as to which securities are participating securities and from when.

Securities held in CCASS

31. A few respondents sought clarification on the application of the USM initiative to securities held in CCASS and its consequent impact. We clarify as follows.

Impact on investors and intermediaries

32. The USM initiative *will* apply to prescribed securities held in CCASS. This means prescribed securities held in CCASS can also be held in uncertificated form and transferred (into and out of CCASS) without paper instruments. However, this will have limited impact on the investors and intermediaries concerned. This is because:

(a) CCASS' central nominee structure will be retained following the implementation of USM. Consequently, and similar to today, HKSCC-NOMS will remain the legal owner of all prescribed securities held in CCASS.

(b) It follows that processes within CCASS – including in particular settlement processes, and processes for moving securities between accounts within CCASS – will remain largely unchanged. Intermediaries will also be able to continue providing custodian services to investors who prefer to hold their securities in CCASS.

(c) The main change will be to the processes for depositing/withdrawing prescribed securities into/out of CCASS once they become participating securities. Currently,

[4] This essentially means the ASR has "onboarded" the securities into its UNSRT system, eg, created necessary accounts and identities within its systems to reflect holdings in the securities and movements of such holdings.

[5] Sections 101AAD and 101AAE of the SFO (introduced under section 7 of the USM Amendment Ordinance) allow for any conflicting provisions in the constitutional document or other terms of issue to be overridden. However, in the case of securities constituted under the laws of a place outside Hong Kong, this override is subject to the laws of that place. Therefore, in some cases, the terms of issue may need to be amended before the securities can become participating securities.

these processes are paper-based. Under USM, they will be largely electronic.[6] More details on these processes will be provided in the Information Papers to be issued by HKEX and the FSR later this year.

No immediate credit for electronic deposits

33. The current immediate credit policy will no longer apply to participating securities that are in uncertificated form, and hence deposited into CCASS electronically. This means the deposit of such securities into CCASS for settlement purposes (ie, their transfer to HKSCC-NOMS) will have to be completed before expiry of the T+2 settlement period. While HKSCC and ASRs will facilitate this, investors will also need to ensure that they meet relevant timelines. More details in this regard will be provided in the Information Papers to be issued by HKEX and the FSR later this year.

34. For completeness, we note that the immediate credit policy will continue to apply in respect of participating securities that are still in certificated form when they are deposited into CCASS. However, this too will fade over time as more and more securities become dematerialized, and given that there will be no option to rematerialize except on delisting.

Authenticated messages

Impact on existing messaging standards

35. Two respondents expressed significant concerns about having to use authenticated messages. They noted that there are already existing industry standards with respect to messaging and instructions sent among parties within the industry, and that given the volume of transactions processed, a significant level of straight-through-processing is required. We engaged with these respondents to better understand their concerns. In light of the further discussions, we clarify as follows.

36. The concept of "authenticated messages" is *not* intended to cover all messaging across market and industry participants. The concept is intended to apply only to a narrow and specific range of messages, namely messages that concern participating securities, and that are exchanged either: (i) between an issuer and a registered holder or transferee; or (ii) between an offeror and a registered holder.

37. The concept therefore does *not* apply to messages exchanged between intermediaries and their clients, or between HKSCC and its clearing/custodian participants. Existing messaging standards and platforms can continue to be used for these.

Criteria and implications of using authenticated messages

38. A few respondents sought clarification on specific matters regarding authenticated messages, including who can send such messages, when they are to be regarded as received, how their authenticity and confidentiality will be ensured, and through which channels they can be received. We clarify as follows.

[6] Where the securities to be deposited into CCASS are *already* in uncertificated form, the process is expected to be entirely electronic. However, where they are still in certificated form, some manual and paper processes will still be involved (eg, physical delivery of the title instruments to the issuer's ASR).

(a) As noted in paragraph 36 above, authenticated messages can only be exchanged between issuers/offerors and registered holders/transferees. The sender (or recipient of such messages) can therefore be any of these persons or any agents authorized to send (or receive) such messages on their behalf. In general, issuers and offerors are expected to appoint an ASR to send/receive authenticated messages on their behalf. However, registered holders and transferees are generally expected to send/receive authenticated messages on their own rather than through agents, and to do so via the ASR's platform[7].

(b) Authenticated messages will have to be exchanged through the messaging facilities of a recognized clearing house (**RCH**) or an ASR. The operation of such facilities will be governed by their respective operating rules and procedures, and these will provide for all relevant matters such as: (i) the processes for accessing the facilities; (ii) the processes and purposes for using them; and (iii) the rights, obligations and liabilities of persons authorised to access and use them. The operating rules and procedures are therefore expected to cover matters such as when messages will be regarded as sent or received, and the safeguards for ensuring authenticity and confidentiality of messages. Further information in this regard will be provided in the Information Papers to be issued by HKEX and the FSR later this year.

Concerns about custodians being regarded as agents

39. The proposed USM Rules envisage that authenticated messages may be sent or received by a person themself or through an agent.

40. Two respondents raised concerns about this proposal. They noted that instructions sent by custodians are not sent as principal, and that intermediaries should not be responsible for the accuracy of information in a message. They requested that appropriate carve-outs or amendments be made to recognise this. In light of subsequent discussions with these respondents, we clarify as follows.

41. The concept of principal and agent has a very specific and limited purpose in the context of authenticated messages. Essentially, the aim is to ensure that authenticated messages are not deniable or retractable except as permitted under the operating rules and procedures applicable to the messaging facilities through which they are sent. This is important in order to ensure the reliability of instructions received by way of authenticated messages, particularly where the instructions relate to the registration of a transfer of legal title to prescribed securities.

42. As noted in paragraph 38(a) above, where an authenticated message is sent or received by an issuer or offeror, it is generally expected to be sent by an ASR on its behalf. However, where the message is sent or received by a registered holder or transferee, it is generally expected to be sent by the registered holder or transferee themself. In the event that a registered holder or transferee *does* send their authenticated messages through an agent, it will be important to ensure that the message is reliable and cannot be retracted – either by the registered holder/transferee or their agent. Assurances as to accuracy of the information contained in a message sent by an agent, and the agent's authority to send it are therefore crucial.

[7] Registered holders who hold securities in uncertificated form will have to establish a USI facility with the relevant ASR. This will give them access to view and manage their uncertificated securities electronically via the ASR's platform.

43. In the case of custodians, the provisions relating to authenticated messages will only be relevant if:

(a) their clients are registered holders or transferees of prescribed securities, ie, if their clients hold, or are seeking to hold, *legal* title to such securities; and

(b) the custodians are sending instructions to the issuer of those securities, or to an offeror in respect of those securities (eg, instructions to transfer legal title to those securities), and doing so as duly appointed agents of the client[8].

Timeline to full dematerialization

Respondents' feedback

44. There was overall market support for prioritizing the implementation of USM. The majority of respondents also asked for more clarity and details regarding the timetable and transitional arrangements. One respondent also suggested facilitating implementation of USM by empowering each ASR to develop a plan for transitioning their issuer-clients into the USM environment in phases.

45. Additionally, two respondents expressed concerns about the lack of a clear timeline for dematerializing securities held outside CCASS, noting that this: (i) will increase the operational, technical and financial burden of ASRs; (ii) could cause confusion to investors and the market; and (iii) goes against the objectives of the USM initiative, ie, enhancing market efficiency and competitiveness. On the other hand, one respondent opposed any plan to mandate the dematerialization of securities held outside CCASS from the perspective of investor rights.

Our response – More specific timeline now proposed

46. We note the strong demand for clarity on the timeline to full dematerialization. However, it is important to recognise that *full* dematerialization (ie, the removal of *all* title instruments) may take time given: (i) the volume of title instruments currently in circulation; (ii) the possibility that not all registered holders may be ready to dematerialize their holdings at the outset; and (iii) in the case of some non-Hong Kong prescribed securities, their terms of issue and/or the laws of their home jurisdiction may require amendment before the securities can become participating securities. Nevertheless, we aim to hasten the transition to full dematerialization as much as possible. To that end, and following subsequent discussions with HKEX and the FSR, we now propose to amend Part 7 of the USM Rules so that it sets out a more specific timeline for transitioning the market to full dematerialization as summarised below.

(a) Overarching 5-year timeline for existing securities

First, we propose that all "eligible" prescribed securities (other than subscription warrants and rights under a rights issue) that are already listed when USM is implemented must become participating securities within 5 years from implementation of USM.

[8] Authorization to send instructions on behalf of a legal owner (such as instructions to transfer legal title) may require formal documentation such as a power of attorney.

By "eligible" here, we mean those securities whose home laws are compatible with our USM regime. This will cover all prescribed securities constituted under Hong Kong law. We are also currently aiming to cover, as far as possible, all prescribed securities constituted under the laws of Bermuda, Cayman Islands or Mainland China[9], but we will review and adjust this list as appropriate when the subsidiary legislation for implementing USM is submitted to the Legislative Council for negative vetting (eg, if other jurisdictions can be added by that time).

(b) Sequencing arrangement

To ensure an orderly transition within this overarching 5-year period, we propose that a detailed sequencing timetable be put in place, ie, that eligible prescribed securities be lined up in a queue so that each has its own specific deadline (within the 5-year period) by when it must become participating securities.

We propose that the detailed sequencing timetable be agreed among the issuer's ASR, HKSCC and the SEHK – these being the key parties that will need to coordinate and make necessary arrangements for prescribed securities to become participating securities[10]. In doing so, they will need to keep in mind the overarching 5-year timeline within which *all* eligible prescribed securities will have to become participating securities. They will also need to take into account all relevant facts and circumstances specific to each issuer (eg, its size, number of title instruments in circulation, any upcoming corporate actions, the need for amendments to its terms of issue, etc).

Issuers will have to ensure that their securities become participating securities by the deadline specified in respect of them. They will also need to comply with relevant disclosure and other obligations under the Listing Rules regarding their transitioning to and participation in USM.[11] Sufficient advance notice will be given to each issuer to ensure necessary arrangements can be put in place by the deadline specified in respect of its securities. However, the duration of such notice may vary from issuer to issuer depending on the particular facts and circumstances of their case (eg, the extent and complexity of the amendments needed to its terms of issue).

While issuers will not be among the parties determining the detailed sequencing timetable, they will be able to express any views or concerns through their ASRs. They will also be able to apply to the SFC to review the deadline specified in respect of their securities.

(c) IPO securities to be uncertificated from outset unless SEHK permits otherwise

We also propose that all eligible prescribed securities (other than subscription warrants and rights under a rights issue) that are *first* listed after USM is

[9] We are focusing on these 3 jurisdictions because, collectively, they comprise the overwhelming majority of all overseas companies listed on the SEHK, ie, over 98% by number, and over 92% by market capitalisation (as at the end of June 2024).

[10] The issuer's ASR will need to make arrangements for the securities to be evidenced and transferred through its UNSRT system. HKSCC will need to organize the dematerialization of any units of those securities held in its vault – see paragraph 46(e)(iii) below. The SEHK will need to ensure that relevant requirements under the Listing Rules relating to securities becoming participating securities are complied with – see next footnote.

[11] The Listing Rules will expand on these disclosures and other obligations. They may include obligations to publish various announcements, set up dedicated webpages carrying information specific to an issuer's transition to and participation in USM, etc.

implemented (ie, IPO securities) will have to be in uncertificated form from the time of their listing, unless the SEHK permits otherwise.

The rationale for enabling the SEHK to permit otherwise (ie, to permit IPO securities to be in certificated form even after USM is implemented) is to provide flexibility to deal with exceptional cases, particularly at the initial stage of implementing USM. A typical example would be where the issuer was expecting to list its IPO securities *before* implementation of USM but was eventually unable to do so, and it would unreasonably delay the listing schedule to require that the securities be in uncertificated form from the time of listing. That said, given the complexities and cost implications of issuing securities in certificated form and then converting them to uncertificated form within a short period, we expect issuers will only seek SEHK permission to list IPO securities in certificated form where absolutely necessary.

Also, the SEHK's ability to permit IPO securities to be in certificated form will only be exercisable during the first year after USM implementation. Moreover, the SEHK will have to confirm a date by when the securities must become participating securities (ie, be convertible into uncertificated form). Such date will have to be within the overarching 5-year period, and determined after confirming that the issuer's ASR has been duly consulted[12].

As with the deadline specified for each issuer under the sequencing arrangement, issuers will be able to apply to the SFC to review the deadline specified by the SEHK in respect of their IPO securities.

(d) Subscription warrants and rights under a rights issue

In the case of subscription warrants and rights under a rights issue, different considerations apply given their short-dated nature[13], and the fact that their readiness to become participating securities will likely depend on whether their underlying securities have become participating securities[14]. In view of this, we propose to require that only warrants and rights issued after their underlying securities have become participating securities must be participating securities and issued in uncertificated form. No requirement will be imposed in respect of warrants or rights that: (i) already exist at the time of USM implementation; or (ii) are issued after implementation but before the underlying securities become participating securities.

(e) Restrictions/requirements on participating securities

Once any prescribed securities have become participating securities:

(i) it will no longer be possible to issue new title instruments in respect of them (eg, following any transfer, split/consolidation, request for replacement due to loss or damage, etc);

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[12] Consultation with the issuer's ASR is important because it is the ASR's UNSRT system through which title to securities in uncertificated form will be evidenced and transferred.

[13] It serves no meaningful purpose to require existing rights/warrants to become participating securities if they are to expire soon afterwards.

[14] The two are likely to share the same constitutional documents or other terms of issue, and be handled by the same ASR. The arrangements for their becoming participating securities are therefore likely to be dealt with simultaneously.

(ii) any new units of those securities (eg, bonus issues, securities issued pursuant the exercise of subscription warrants or rights, etc) will have to be in uncertificated form; and

(iii) all units of those securities held in CCASS will have to be converted into uncertificated form within 6 months.

These restrictions will help progress and accelerate the dematerialization of securities held outside CCASS without compelling the same. In particular, the requirement for securities in CCASS to be dematerialized will be significant since these represent a substantial portion of all holdings in prescribed securities. It is worth highlighting also that the above restrictions will not be limited to *eligible* prescribed securities but will also apply to other prescribed securities that have become participating securities on a voluntary basis.[15]

(f) Consequences of breach

To ensure compliance with the matters discussed in paragraphs (a) to (e) above, breach will constitute an offence, punishable by fines[16]. Additionally, because these requirements will be set out in the USM Rules, breach will also call into question the suitability of the securities concerned to be or remain listed.[17]

(g) Exemptions

The requirements discussed in paragraphs (a) to (e) above will not apply in respect of any prescribed securities that are in the process of delisting[18]. For flexibility, we also propose that the SFC have powers to exempt or defer the application of any of the above requirements.[19] It follows that decisions by the SEHK regarding IPO securities will not be reviewable under the Listing Rules, nor of course, will any decision on sequencing made by the ASR, HKSCC and SEHK.

It is worth emphasising that these powers are intended to be exercised with restraint and only in exceptional cases where the circumstances so justify. In particular, a mere change of an issuer's ASR, or failure by an issuer to take prompt action in amending its constitutional documents or terms of issue, will not be regarded as sufficient justification for a deferral or exemption.

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[15] In other words, these restrictions will also apply in respect of prescribed securities that have become participating securities on a *voluntary* basis rather than being *mandated* to do so as discussed under paragraphs 46(a) to 46(d) above. The rationale for this is that if *existing* units of any securities can be held and transferred without paper instruments, it should be possible for *new* units of the same securities to be so held and transferred also. Consequently, there should be no difficulty in complying with the restrictions discussed in this paragraph (e).

[16] The proposed fines are set at level 4 (ie, $25,000) and daily fines of $700.

[17] The SEHK's Guidance on a Listed Issuer's Suitability for Continued Listing (HKEX-GL96-18) requires listed issuers to comply with applicable laws and regulation at all times, and notes that intentional, systemic and/or repeated breaches of laws and regulation may affect their suitability for listing. Where concerns about suitability arise, the SEHK may suspend trading in the securities and eventually cancel their listing. Similarly, the SEHK's Guide for New Listing Applicants (Guide for New Listing Applicants, Chapter 1.2D) notes that material non-compliance may affect an applicant's suitability for listing.

[18] Securities are regarded as being "in the process of delisting" if the SEHK has received an application to cancel their listing, been directed by the SFC to cancel their listing, or has decided to cancel their listing – see section 2(2) of the revised USM Rules at Annex 2.

[19] This includes the power to defer any deadline specified under the sequencing arrangement (as discussed under paragraph 46(b) above), or in respect of IPO securities that cannot be in uncertificated form from the time of listing (as discussed in paragraph 46(c)).

Amendments to the USM Rules

47. The above changes necessitate substantive amendments to Part 7 of the proposed USM Rules. In particular:

    (a) the overarching 5-year timeline and sequencing arrangement for requiring existing eligible prescribed securities to become participating securities are reflected in sections 27(1A), (1D), (1G) and (1H);

    (b) the requirement for IPO securities to be in uncertificated form is reflected in sections 27(1B), (1E), (1F), (1G) and (1H);

    (c) the requirement for subscription warrants and rights under a rights issue to be in uncertificated form is reflected in sections 27(1C);

    (d) the restrictions relating to participating securities are reflected in sections 28, 29 and 30;

    (e) the offence provisions are in sections 27(2), 28(2), 29(2) and 30(3); and

    (f) the SFC's deferral and exemption powers are in section 32.

48. Additionally, section 25 (under Part 6 of the proposed USM Rules) is now proposed to be deleted. The provision was previously intended to clarify that an investor cannot demand a title instrument if the issuer exercises its prerogative not to issue one. However, this is no longer necessary given that we now propose to prohibit the issue of title instruments in respect of *any* securities that have become participating securities.

Other prescribed securities

49. For prescribed securities other than those that are "eligible", we will work with HKEX and the FSR to find a suitable solution for mandating them to become participating securities and be issued in uncertificated form. While the aim is to achieve this within the 5-year timeline discussed above, the precise timeline will depend on the work involved and whether changes are needed to the laws of any place outside Hong Kong. In the meantime, there is nothing in our proposed legislation that would *prevent* such securities from becoming participating securities. It remains open to the issuers of them to do so should they wish to, and provided that the laws of their home jurisdiction, and constitutional documents or other terms of issue, are USM-consistent.

Cost impact on stakeholders

Respondents' feedback

50. While respondents recognized the benefits of implementing USM, many raised concerns about the associated costs, including in particular:

    (a) anticipated increases in costs as a result of having to continue operating existing systems and processes for certificated securities over an unspecified time period while also implementing new systems and processes for USM; and

    (b) the potentially excessive financial burden that may be imposed on stakeholders (particularly issuers and their ASRs) barring government subsidies.

Our response – limited impact

51. We understand the market's concerns about potential cost implications. We note however that our proposal to introduce a more specific implementation timeline for transitioning the market to full dematerialization[20] should help alleviate some of these concerns. Issuers and ASRs can also facilitate the market's transition to full dematerialization by introducing appropriate fee incentives, particularly at the early stage when USM is first implemented. Moreover, retention of the central nominee structure in CCASS will mean that many existing processes can be retained, or retained with little change, thus limiting the cost impact on market participants.

52. It is also important to keep in mind that the USM initiative will further elevate Hong Kong's financial market infrastructure and in the process benefit different market participants.

    (a) Investors will benefit from enhanced investor choice and protection, while also being able to access their portfolios and conduct transactions more easily, conveniently and efficiently.

    (b) Issuers will benefit from greater shareholder transparency, as well as enhanced efficiency and cost savings from streamlining and automating processes and minimising the need for manual intervention.

    (c) Market intermediaries will also enjoy enhanced efficiency and cost reductions as a result of streamlined processes that are less manual.

53. In view of the above, it is only reasonable that the costs of implementing USM should eventually be shared among all stakeholders. Hence, although the initial development costs are expected to be borne largely by HKEX and share registrars, it would be reasonable for them to seek to recover some of these from the market over time. We expect this will, to a large extent, be driven by incentives (in the case of investors) and by commercial considerations and negotiations (in the case of others).

54. In terms of the impact on investors, we would add that fees imposed by HKSCC will be subject to SFC approval, and certain fees charged by ASRs will be standardised (as discussed in the next section on fees).

ASRs' fees

Respondents' feedback

55. The October 2023 Consultation proposed that fees imposed by ASRs, particularly those payable by securities holders, should be transparent, fair and reasonable in the circumstances, and commensurate with the services provided and work done.

56. Respondents generally supported this proposal. However, a few respondents noted that:

    (a) the proposed requirement should not apply to fees and charges imposed on issuers, which are negotiated and agreed with the ASR contractually;

    (b) the proposed requirement may pressure ASRs to seek recovery from issuers to avoid arguments as to whether fees and charges imposed on securities holders are fair and reasonable; and

[20] See paragraphs 44 to 49 above.

(c) fees charged in the USM environment should also be proportionate to the risks associated with processing a transaction (including but not limited to risks of fraud, systems risks and processing risks), as well as the operational and compliance costs of operating the USI facility.

Our response – requirements to stay largely unchanged

57. We note the concerns raised. We remain of the view that fees and charges, even where imposed on issuers, should be fair and reasonable. We also expect that competition among ASRs will in any event help ensure that such fees remain fair and reasonable. We agree however that there is no need for these to be made public and therefore propose to amend the ASR Code to make this clear[21].

58. On the point about ASRs being pressured to seek recovery from issuers, we disagree. Even today, share registrars impose fees and charges on securities holders and others for various services rendered, rather than charging all of these to issuers. Also, to the extent that any fees are standardised (as discussed in paragraphs 60 to 64 below) and upper limits set in respect of them, such concerns should not arise.

59. As for providing that fees should be proportionate to risks and compliance costs, we do not consider it necessary or appropriate to provide for this specifically. The requirements for fees and charges to be "fair and reasonable in the circumstances" and "commensurate with the services provided and work done" provide sufficient flexibility to accommodate such considerations to the extent appropriate.

Standardising certain fees

Respondents' feedback

60. The March 2023 Consultation sought views on whether dematerialization fees, transfer fees and fees for setting up a USI facility should be standardised, and if so whether any upper limits in respect of them should be set out in legislation or SFC codes rather than in the Listing Rules.

61. There was general support for setting upper limits on an ASR's fees for baseline services that are core to the USM regime, with one respondent noting that this would help address concerns about price levels being controlled by the few ASRs in the market. Many respondents agreed that the SFC should directly regulate any standardised fees and charges imposed by an ASR on investors, and set these out in the ASR Code rather than the Listing Rules.

62. We also received several suggestions regarding this matter, including:

(a) that the basis for determining standardized rates for fees and charges be shared with the market in a more transparent manner;

(b) that other fees also be standardised, such as fees for corporate action related services (eg, dividend collection) and recurring fees (eg, monthly custody fees);

[21] See note added under section 2.2 of the revised ASR Code at Annex 4.

(c) that standardised fees be reviewed periodically taking into account inflation rates and costs incurred;

(d) that the current transfer fee level of $2.50 per certificate be reassessed given that it has been in place for a long time and the current per certificate basis will no longer be relevant in the USM environment; and

(e) that ASRs be allowed to charge different fees for different service levels offered, and a premium for any value-added services.

Our response – standardise and incorporate in the ASR Code

63. We appreciate the feedback and suggestions received. In view of these:

(a) we will proceed with work on standardising transfer fees, dematerialization fees and fees charged for setting up a USI facility;

(b) in terms of the levels and charging basis for each of these fees, we will conduct a public consultation on these before they are finalised; and

(c) eventually, we will incorporate these fees into the ASR Code and prescribe them as caps.

64. As for the various other comments regarding fees (eg, standardising other fees, reviewing standardised fees regularly, etc), we will keep these suggestions in view when we further consult the market as mentioned above.

Incentives to accelerate transition to USM

Respondents' feedback

65. In raising concerns about costs, fees and various other proposals, many respondents emphasised the need for incentives to encourage early participation in USM. Suggestions included:

(a) adopting different fee levels and turnaround times for: (i) certificated and uncertificated holders; and (ii) system-members and provisional system-members, so as to encourage dematerialization, and to better reflect the higher costs associated with paper processes;

(b) introducing fee waiver periods to encourage early dematerialization;

(c) keeping any ongoing fees for uncertificated holdings as low as practicable, and no higher than current rates for holding securities in CCASS;

(d) permitting HKEX and intermediaries to charge higher fees in respect of certificated holdings; and

(e) ensuring that intermediaries' fees are not such as to discourage investors from holding prescribed securities in their own name and thus defeat the objectives of the USM initiative.

Our response – encourage use of incentives

66. We welcome these suggestions and agree that fee structures need to be fair, reasonable and conducive to furthering the objectives of USM. We also agree in principle with the

idea of using different fee levels and waiver fee periods to encourage dematerialization as early as possible.

67. We note however that — apart from the three fees proposed to be standardised and fees charged by HKSCC — fee levels and fee waivers will ultimately be a matter for relevant parties to consider and determine. We encourage them to further explore the suggestions put forward as they develop their respective fee structures and levels. As for fees charged by intermediaries, we expect competitive pricing will help keep these at reasonable levels, but we will also monitor developments in this regard.

Publicity and market-wide education

Respondents' feedback

68. Several respondents stressed the importance of conducting sufficient publicity and developing a clear market-wide communication plan and investor education strategy. They noted that this would be critical to the market's understanding of the benefits of the USM initiative, and consequently to its successful implementation.

Our response – coordinated publicity and investor education

69. We agree that publicity efforts will be critical as we near implementation. We will work with HKEX and the FSR to ensure a coordinated approach that delivers a clear and consistent message about the benefits of USM and the steps to be taken by each stakeholder group. A detailed market communications plan will be developed to facilitate work in this regard.

70. We would add that both HKEX and the FSR are currently working on the Information Papers that will provide details of some of the key operational processes under USM.

    (a) HKEX's paper will focus on operational processes that are more relevant to intermediaries. It will also expand on the preparatory steps needed ahead of implementation (such as possible system enhancements) as well as any ongoing requirements and arrangements that might impact them.

    (b) The FSR's paper will focus on operational processes that are more relevant to issuers and investors. It will also expand on the benefits of participating in USM, the preparatory steps needed for such participation, and any ongoing requirements and arrangements that might impact them.

71. The Information Papers will thus serve as one of the first steps in publicity efforts. They are expected to be issued later this year.

Operational processes and arrangements in the USM environment

72. The earlier consultations discussed our proposals for regulating various operational, technical, and procedural matters in the USM environment. Details were set out in the proposed draft USM Rules at Annex 2 of the March 2023 Consultation. While respondents were generally supportive, many also expressed concerns about a few overarching issues (discussed in the last section on key areas of concern), and a range of more technical and operational issues, which we discuss in this section.

Deferral of the USS option

73. The operational model for implementing USM envisaged two options for investors to hold securities in their own name and in uncertificated form, ie: (i) via a USS facility (ie, which would require investors to manage their uncertificated holdings via a clearing or custodian participant and through CCASS); and (ii) via a USI facility (ie, which would enable investors to manage their uncertificated holdings directly). The March 2023 Consultation proposed that implementation of the USS option be deferred to a later stage given the costs and complexities involved, and that we proceed first with the USI option only.

74. There was broad support for this proposal. Several respondents also requested that the SFC conduct further consultation before proceeding with the USS option.

75. We welcome respondents' support and confirm that we will consult the market further before implementing the USS option.

Dematerialization

Investors to have option to dematerialize

76. We received mixed views on our proposal that once prescribed securities become participating securities, any dematerialization of such securities (ie, their conversion from certificated form to uncertificated form) should be at the registered holder's request.

77. While there was support for the proposal, concerns were also raised. In particular, there was concern that the proposal would:

    (a) require ASRs to maintain dual processes for an indefinite period;

    (b) cause confusion among investors;

    (c) add to costs; and

    (d) go against the USM initiative's objectives of enhancing market efficiency and competitiveness.

78. We note the concerns raised but remain of the view that registered holders should have the option to dematerialize their securities rather than be mandated to do so. A main reason for this is that we consider the return of title instruments (as opposed to their outright invalidation) to be essential to ensuring that we do not inadvertently affect third-party rights (eg, where securities are pledged as collateral by delivery of the title instrument).

79. That said, we agree that incentives can help encourage registered holders to dematerialize, eg, higher fees and longer turnaround times for paper options and

processes compared to electronic ones. We will work with relevant stakeholders to see what incentives can be put in place.

80. It is also worth highlighting that the proposed restrictions and requirements discussed under paragraph 46(e) above should also help progress and hasten the dematerialization of securities. In particular:

(a) The requirement that prescribed securities held in CCASS must be dematerialized within 6 months of their becoming participating securities will mean a substantial portion of such securities will be dematerialized very quickly[22].

(b) The requirement that new units of participating securities be issued in uncertificated form only will mean that, over time, investors will increasingly be holding securities in uncertificated form. Holdings in certificated form will thus gradually diminish.

(c) The prohibition on issuing new title instruments in respect of participating securities will mean that such securities will *have* to be dematerialized if any active steps are taken in respect of them (eg, if they are transferred[23], or if an application is made to replace lost or damaged title instruments[24]). In such cases, there will no longer be any option to continue holding the securities in certificated form.

As such, concerns of the kind raised should be limited.

Dematerialization where title instruments released or lost

81. One respondent sought clarification on how to deal with securities that were still registered in a custodian's name, and where the related title instruments had been released to the client concerned but the latter had not registered the securities into their own name and was no longer contactable.

82. We clarify that, in such cases, there is little that the custodian can do. Ultimately, it falls to the client concerned to dematerialize any securities that have become participating securities. In any event, we expect such cases to be rare, and the custodian's position will not be any worse than today.

83. It is worth covering a related scenario in this context, ie, where the title instruments are lost or damaged. In such cases, if the securities are participating securities, the registered holder will no longer be able to obtain replacement title instruments, and will instead be compelled to dematerialize their securities.

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[22] Currently, there are over 5 million title instruments registered in the name of HKSCC-NOMS and held in HKSCC's vault.

[23] If participating securities are transferred, the transferee will have to hold them in uncertificated form. The transferor will also be required to dematerialize any remaining holdings covered by the title instrument that is presented for effecting the transfer. (For example, a transferor who holds 1,000 shares may wish to transfer only 300 shares. If all 1,000 shares are represented by a single share title instrument, the 700 shares retained after the transfer will have to be dematerialized also because no new title instrument can be issued in respect of them.)

[24] If the issuer of participating securities is satisfied that any title instrument in respect of them is lost or damaged, it may cancel the instrument. However, no new title instrument can be issued, and the securities will have to be dematerialized instead.

Ability to trade securities that are in process of dematerialization

84. One respondent asked whether an investor will be unable to trade for a certain period after submitting a dematerialization request.

85. We clarify that investors who hold their securities in certificated form and wish to trade will not need to first complete the dematerialization process separately before the securities can be transferred or deposited into CCASS to settle trades executed on the SEHK. Moreover, as noted in paragraph 34 above, the immediate credit policy will still apply in respect of participating securities that are in certificated form when deposited into CCASS. More details in this regard will be provided in the Information Papers to be issued by HKEX and the FSR later this year.

Transfers

Issuers' ability to refuse instrument of transfer

86. The proposed USM Rules do not mandate the use of instruments of transfer or specified requests in any particular circumstance. Rather, issuers are given the flexibility to decide which is acceptable in what circumstance. By doing so, issuers are given the necessary authority to decide on the means for effecting transfers, but still have flexibility to take into account the specific circumstances of a case.

87. Two respondents suggested that instead of granting issuers such flexibility, it might be more effective to give issuers the authority to refuse an instrument of transfer except in a few prescribed situations. We clarify that section 10 of the proposed USM Rules simply emphasises that issuers may refuse to accept instruments of transfer in certain circumstances, but does not otherwise mandate when an instrument of transfer must be used or refused. Effectively therefore, the provision gives issuers full authority to accept or refuse instruments of transfer in *any* scenario.

Rationale for exceptions

88. In the March 2023 Consultation, we noted that in the case of prescribed securities that are already in uncertificated form, the transfer process is expected to be electronic, but that there may be limited circumstances where this is not feasible. We went on to list three examples of such circumstances, ie: (i) cases involving elderly/non-tech savvy investors or joint holders; (ii) cases involving securities that are in the process of being delisted; and (iii) cases where there may be practical limitations.

89. One respondent sought clarification on the rationale for the examples cited, and whether they would impact the overall USM regime. We clarify that the examples were intended for illustrative purposes only, ie, to better explain why reliance on paper options might be unavoidable in some circumstances – see paragraph 32 of the March 2023 Consultation for details. That said, we expect that the need to retain paper options will fade over time with continued advances in technology and increasing familiarity with electronic options. We therefore expect any overall impact on the USM regime to be limited.

Transfers to/from HKSCC-NOMS

90. Many respondents asked for more information about technical and operational details, particularly in relation to the process for transferring securities between a USI holder and HKSCC-NOMS, including:

(a) whether a USI holder can transfer securities to an intermediary's account in CCASS, and the workflow for handling such transfers;

(b) the efficiency of the transfer process, including the frequency of batch-settlement runs, possible fixes if a transfer fails, and timeline for recovery;

(c) whether immediate credit will indeed no longer be available; and

(d) details relating to the stamping of transfers in the USM environment.

91. We appreciate that the detailed process for effecting transfers to/from HKSCC-NOMS will be particularly critical. We have relayed respondents' comments and concerns in this regard to HKEX and the FSR, and understand that they will be providing more details on this in the Information Paper to be issued by them later this year. In the meantime, we clarify as follows.

(a) The USI facility is essentially a mechanism to enable registered holders (whether individuals or corporates) to view and manage their prescribed securities where these are in uncertificated form.

(b) The USI facility is not intended to subsume intermediaries' role of facilitating trading on the SEHK or providing custodian services. Consequently, securities will still have to be transferred to the USI holder's intermediary's account in CCASS and registered in the name of HKSCC-NOMS, before they can be used to settle trades executed on the SEHK.

(c) The concept of "immediate credit" will no longer apply in respect of uncertificated securities. USI holders who wish to deposit their uncertificated securities into CCASS to settle trades executed on the SEHK will therefore need to ensure that the transfer to HKSCC-NOMS is completed in time for the T+2 settlement period.

(d) On the issue of stamping, for transfers effected wholly within CCASS, the stamping arrangements will remain the same as today. For transfers to/from HKSCC-NOMS (ie, deposits into and withdrawals out of CCASS), similar to today, no stamp duty will be chargeable if there is no change in beneficial interest, although intermediaries will need to confirm this as part of the transfer process. For transfers wholly outside CCASS, ASRs will facilitate stamping as discussed in paragraphs 97 to 98 below.

Transfers involving joint holders

92. The March 2023 Consultation proposed that joint holders of prescribed securities in uncertificated form have the option to send their transfer instructions in paper form and that the ASR then enter these electronically into its system.

93. There was support for this proposal, but also suggestions to allow one joint holder to enter instructions on behalf of all. One respondent also indicated that more time should be allowed for ASRs to process paper form instructions from joint holders given that manual processes (such as entering instructions into the system, validating signatures, etc) are involved.

94. Since the March 2023 Consultation, we understand that some ASRs may be able to receive instructions electronically from all joint holders. However, some will not be able to

accommodate this at the initial stage due to the high cost and complexity involved in incorporating such functions into their systems.

95. On the issue of allowing one joint holder to enter instructions on behalf of all, we have no objections to this. However, we remain of the view that this should be at the option of the joint holders, and hence dealt with by way of contractual arrangements and powers of attorney. There is no need for the USM Rules to enable this.

96. As for allowing more time to process paper form instructions from joint holders, we are concerned that this would mean joint holders have to bear the consequences of some ASRs' inability to take electronic instructions. Moreover, allowing a longer processing time may discourage such ASRs from enhancing their systems to accommodate instructions from joint holders. We also note that contractual arrangements and powers of attorney can be put in place to facilitate receiving instructions from one joint holder on behalf of all. That said, we will discuss this issue with each ASR to understand the limitations it faces and its plans for overcoming these. In appropriate cases, a longer processing time may be allowed for a limited period.

Stamp duty arrangements for transfers wholly outside CCASS

97. In the October 2023 Consultation, we proposed a simpler and more practical stamp duty arrangement for transfers wholly outside CCASS. Specifically, we proposed that ASRs leverage on the existing e-stamping arrangements under Part IIA of the SDO by acting as applicants under that Part – see paragraphs 58 to 61 of the October 2023 Consultation.

98. We received no objections to this proposal. However, one respondent noted that ASRs' involvement as applicants should not increase their burden or liability. In particular, the obligation to pay stamp duty should remain on the parties to the transfer. We confirm that this is the intention.

Registers of holders (ROMs)

Confirmations and annual statements of holdings

99. The March 2023 Consultation proposed that, in the absence of paper title instruments, registered holders of prescribed securities in uncertificated form should receive: (i) written confirmations of any changes entered in the ROM in respect of them or their holdings; and (ii) annual statements showing their securities balances as at the beginning and end of each year.

100. Respondents acknowledged the importance of confirmations and annual statements to be provided to such holders, but also raised the following concerns:

(a) that the obligation to send these documents should be imposed on issuers and not ASRs;

(b) that any restriction on charging fees for sending annual statements should be limited to fees charged to registered holders, ie, ASRs should be entitled to charge issuers as their provision of statements is as agent of the issuer; and

(c) that it is critical to conduct regular reconciliation between a registered holder's own records and the ASR's records, and hence statements should be sent more frequently, eg, on a monthly basis.

101. In light of the feedback received, we clarify as follows.

(a) As confirmations will be specific to a particular transaction and prescribed securities, we agree that it is more appropriate to require issuers to send them. We therefore propose that the obligation to send confirmations be imposed on the issuer rather than the ASR (and hence moved to the USM Rules[25]). The obligation will only apply in respect of a person's uncertificated holdings.[26] However, we consider that the obligation to send annual statements should remain on the ASR (and hence remain in the ASR Rules[27]). As annual statements will generally cover all holdings reflected within a particular ASR's system, they will be specific to a particular ASR rather than to particular securities or transactions. We therefore consider it more appropriate to require ASRs to issue these.

(b) On the matter of charging fees, we confirm that the restriction on charging fees for statements is intended to be limited to fees charged to registered holders. We believe this is clear, but have made additional editorial amendments to make this more specific.[28]

(c) As for providing more frequent statements, we clarify that there is no intention to prohibit this. We note however that different holders may have different needs and preferences in this regard, eg, some may prefer monthly statements, some may prefer quarterly or half-yearly statements, and some may consider that annual statements suffice. Moreover, registered holders will be able to view their current balances online. We therefore do not propose to regulate this further. We will instead leave it to holders to approach the ASR to arrange for statements to be sent on a more frequent basis as desired, and agree on the charges (if any) for the same. More details about online access and provision of statements will be provided in the Information Paper to be issued by the FSR later this year.

Limitations on ROM closures

102. The March 2023 Consultation proposed that, in the USM environment, ROM closures should be limited to no more than 2 consecutive business days at a time, or (if longer) any period during which the prescribed securities in question are suspended from trading. The rationale for this is to ensure that investors holding securities in their own name outside CCASS are not unfairly prejudiced.[29]

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[25] See section 4A of the revised USM Rules at Annex 2, and deletion of section 24 in the revised ASR Rules at Annex 3.

[26] So, for example, where a person holds both certificated and uncertificated units of the same prescribed securities, the issuer will only be required to send confirmations of changes to the person's particulars (eg, name, address, etc) and changes to the balance of their uncertificated holdings. It will not need to send confirmations of changes to the person's certificated holdings (eg, following a consolidation or division). Section 4A(b) of the revised USM Rules at Annex 2 seeks to make this clear.

[27] See section 25 of the revised ASR Rules at Annex 3.

[28] See section 25(6) of the revised ASR Rules at Annex 3, which makes clear that the restriction is on charging "recipients" of the statement, defined in section 25(2) to mean persons who hold or held prescribed securities in uncertificated form during the period covered by the statement.

[29] Investors holding securities in their own names outside CCASS need to transfer their securities to HKSCC-NOMS if they are to be used to settle trades executed on the SEHK. However, such transfers cannot be effected during any period when the ROM is closed. It follows that if the ROM is closed for more than 2 business days, such investors may be unable to execute trades on the SEHK. In contrast, investors holding securities in CCASS do not face similar issues since their securities are already in the name of HKSCC-NOMS.

103. Two respondents noted that, at the initial stage, it is likely that a large number of physical certificates will continue to be held by investors, and the re-registration process will continue to be effected manually. In view of this, the respondents were concerned that some ASRs may not have sufficient capacity to complete the re-registration process within the proposed 2-business day ROM closure period.

104. We disagree. The current proposal is to allow ASRs 5 business days to handle transfers where the transferor holds them in certificated form and the transferee is to hold them in uncertificated form. In order to comply with this, ASRs will simply set an earlier cut-off period for receiving instructions to register such transfers so that they can complete the processing of such transfers before the ROM is closed. More details in this regard will be provided in the Information Paper to be issued by the FSR later this year.

105. That said, it is necessary to also cater for the highly exceptional circumstance where an issuer is unable to appoint an ASR and needs to resume the role of securities registrar itself. In such cases, the 2-business day limit on closure may or may not present a problem depending on the volume of transactions that require registration. To ensure sufficient flexibility to deal with such circumstances, we propose to incorporate an exemption power under which the SFC may exempt the issuer from the 2-business day limit.[30] We emphasise however that any such exemption would be granted only in exceptional cases, and only where the SFC is satisfied that: (i) none of the units of the issuer's securities are in uncertificated form[31]; and (ii) it would not be in the interest of the investing public or in the public interest to disallow a longer closure period.

106. We also take this opportunity to clarify that the provision on limiting ROM closures applies only in respect of participating securities, and not all prescribed securities.

Corporate actions

Consolidation of entitlements

107. The March 2023 Consultation proposed that where an investor holds any prescribed securities partially in certificated form and partially in uncertificated form, it would be up to the issuer and its ASR to decide whether to consolidate holdings in the two forms for the purposes of entitlements calculation.

108. A few respondents were against this proposal. One suggested that shareholders should be given the right to decide. Other respondents suggested that entitlements should be distributed on a per-record basis and not consolidated. They added that it may be confusing for a registered holder who holds securities in both certificated and uncertificated forms if the issuer or its ASR can decide when to consolidate or split holdings for the purposes of entitlements calculation and distribution. It was also suggested that if the matter is to be left to issuers and their ASRs, then there should be sufficient disclosure in the relevant corporate action announcement.

109. We disagree that the proposal may cause confusion. This is because the entitlements letter will identify the holdings that the entitlements are based on. We also clarify that the rationale for this proposal is that it may not always be possible for the issuer or its ASR to

[30] See section 7(2A) of the revised USM Rules at Annex 2.

[31] This pre-requisite is necessary to ensure that investors holding securities in their own names in uncertificated form are not unfairly prejudiced – see paragraph 66(b) of the March 2023 Consultation.

know or establish if securities held in certificated form and uncertificated form belong to the same person. This is because the securities may have been acquired at different times and the particulars submitted at the time of registration may not be identical.[32] In such cases, the issuer may be compelled to treat the holdings as belonging to different persons, and hence consolidation will not be possible without confirmation from the holder. On the other hand, there may be cases where it is clear that the certificated and uncertificated holdings belong to the same person.[33] In such cases, there would be no doubt that the securities belong to the same person and consolidation would be possible and expected so as not to disadvantage the holder. We therefore remain of the view that the matter is best left to issuers and their ASRs rather than legislated.

110. We would add that the question of whether to consolidate or not is not entirely new. Even today, an issuer or its ASR may be compelled to treat the certificated holdings of the same person as belonging to two different people if: (i) the holdings were acquired at different times; and (ii) the particulars submitted on each occasion were not identical.

Rights issues

111. One respondent sought clarification on whether the inclusion of rights issues means that provisional allotment letters can be issued, split and transferred electronically.

112. We clarify that, in the USM environment, if the rights are participating securities, they will have to be: (i) issued and held in uncertificated form; and (ii) sold/transferred and exercised electronically. It will also be possible to sell/transfer only some of the rights received. Moreover, as there will no longer be any title instruments, there will be no provisional allotment letter to return for reissue or "splitting" in such cases.

113. We would add that we do not expect rights issues to become participating securities until their underlying securities (ie, the securities that can be acquired upon exercising the rights) have become participating securities. Rights still existing at the time of implementing USM may therefore remain in certificated form until their expiry. See also paragraphs 46(d) above which discusses this in more detail.

Change of an issuer's ASR

114. The March 2023 Consultation included proposals for ensuring that any handover from one ASR to another is effected as smoothly and seamlessly as possible. Specifically, we proposed: (i) limitations on when ASRs may cease to act as an issuer's ASR; (ii) obligations in respect of the passing of the issuer's ROM and related records to the incoming ASR; and (iii) advance notification to the SFC and SEHK. We received a range of comments in relation to this proposal.

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[32] For example, there may be slight differences in the name provided at different times (such as inclusion or exclusion of a middle name, the use of initials instead of full names, etc), or the person may have moved and hence provided different addresses at different times without updating older ones, etc.

[33] For example, the uncertificated holdings may have been acquired on the basis of the certificated holdings (eg, bonus issues in uncertificated form acquired on the basis of certificated holdings), or where the registered particulars are identical.

Seeking SFC permission to cease to act as ASR

115. One respondent raised concerns about the requirement for the issuer's consent or SFC permission before an ASR can cease to act, noting that:

(a) it was unclear in what circumstances SFC permission would be granted and whether it would cover cases where payments due from an issuer to an ASR remain outstanding for an unreasonable period (eg, 3 months); and

(b) consideration should also be given to protecting the rights of ASRs, including the right to withhold the release of an issuer's records until outstanding amounts are settled or breaches of material obligations under the service agreement are remedied.

116. We appreciate the concerns raised and agree that it would be unfair to expect ASRs to continue acting if payments remain outstanding for an unreasonable period, or if there are breaches of material obligations by issuers. We have no intention to disregard the interests of ASRs. However, these do need to be balanced against the interests of investors and the wider market. As may be appreciated, it is difficult to give an exhaustive list of when permission will be granted as all relevant facts and circumstances of a case will need to be taken into account and these can vary from case to case. That said, in general, we would consider it unreasonable for payments to be outstanding for more than 3 months in the absence of any breach or omission by the ASR.

117. As regards ASR's ability to retain an issuer's records by way of a lien, we understand that this is a current practice, and clarify that we have no intention to prohibit it. However, we expect outgoing ASRs to act reasonably and responsibly when seeking to retain an issuer's records. Similarly, we do not expect incoming ASRs to commence service as an issuer's ASR if it has not received the issuer's ROM and related records. In both cases, failure to do so could impugn the ASR's fitness and properness to remain an ASR.

Restricting issuers from changing ASRs

118. One respondent proposed that issuers should be prohibited from changing their ASR more than a certain number of times per period (eg, once a year) without reasonable justification. They noted that this was to maintain operational stability and reduce the impact on investors.

119. While we appreciate the rationale behind this suggestion, we also do not believe issuers are likely to change their ASRs for no sound reason given the associated costs involved and potential impact on them. Moreover, such changes may be driven by legitimate considerations (eg, the range or quality of services provided by an ASR or its fee model/levels, the reputation or any current news about the ASR, etc). Therefore, it would be inappropriate to restrict issuers' choice in this regard. The regulatory focus should instead be on ensuring that any change is effected in an orderly manner with minimal impact on investors and the market. To that end, the proposal that changes in ASR be notified to the SFC and the SEHK in advance is intended to help ensure sufficient oversight of the handover process.

120. The above said, we will pay close attention to cases involving frequent changes of an issuer's ASR. In particular, we will seek to understand the reasons for the changes, and whether they signify a more significant underlying cause.

Transparency regarding ASR changes

121. One respondent asked if HKEX will maintain a list of ASRs for all prescribed securities, and announce changes to market participants.

122. We clarify that the SFC will maintain a public register of all ASRs, but this will not list the prescribed securities that each ASR provides services in respect of. As for announcing changes of ASRs, we note that the Listing Rules currently require issuers to announce changes of their ASRs[34]. This requirement will continue after USM is implemented. Additionally, ASRs' obligation to issue annual statements will be triggered in various circumstances including when there is a change in ASR.[35] Registered holders will therefore be directly and promptly notified of any ASR change affecting them.

Other issues regarding handover process

123. Respondents submitted various other comments regarding the handover of records from an outgoing ASR to an incoming ASR, including:

(a) whether the SFC will be involved in the handover process to ensure that it is properly conducted;

(b) whether the ASR Rules could be amended to clarify how records are transferred (ie, in either hard copy or electronic form);

(c) arrangements for ensuring that no confidential information is retained by the outgoing ASR; and

(d) that ASRs should be permitted to recover costs incurred in the handover process, including any costs for transferring data.

124. We clarify that the SFC will monitor the handover process with a view to ensuring that it is completed as scheduled, and that any issues arising are properly dealt with.

125. On the question of how records are to be transferred, in general, we expect outgoing ASRs and incoming ASRs to cooperate in facilitating the transfer process so that it is completed properly and as quickly and efficiently as possible. To that end, we expect records to be transferred electronically as far as reasonably practicable, and in a format agreed in advance. Needless to say, where the records are in paper form, the original paper form record should be transferred. We propose to add a note under section 3.3 of the ASR Code to make this clear.

126. As for the non-retention of confidential information and cost recovery, we note that these are existing issues rather than issues arising in the USM environment. We expect also that they can be covered by the Personal Data (Privacy) Ordinance (Cap 486) and contractual agreements between the relevant issuer and the ASR.

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[34] See rule 13.51(5) of the Main Board Listing Rules and Rule 17.50(3) of the GEM Listing Rules.

[35] See definition of "annual reporting period" under section 25(7) of the revised ASR Rules at Annex 3. The term refers to the period in respect of which a statement under section 25 is to be issued.

Trading suspension where no ASR

127. The March 2023 Consultation proposed that an issuer of prescribed securities must ensure that an ASR is appointed in respect of the securities at all times, failing which the SEHK must (if the securities are not yet listed) reject the application for them to be listed, or (if they are already listed) suspend them from trading.

128. A few respondents raised concerns and sought clarification on this proposal, including:

(a) that such suspension may harm the interests of investors, especially minority shareholders;

(b) that there should be a time limit on any suspension in order to avoid affecting investors for a prolonged period;

(c) that issuers may abuse this by using it as a means to trigger a suspension for their own purposes;

(d) that in the absence of a prohibition on off-exchange trading within CCASS, investors holding securities in CCASS will have an unfair advantage; and

(e) whether there would be safeguards for issuers whose ASRs lose their status as ASR as a result of breaching regulatory obligations.

129. We note the concerns but do not consider that they raise significant issues.

(a) In general, we expect incidents of suspension to be extremely rare, and not to last long. If this is not the case, the root problem is likely to be something more significant than the issuer's inability to appoint an ASR. Any impact on investors is therefore likely to be temporary.

(b) In terms of setting a time limit for trading suspensions, this is not practically feasible as the duration of any suspension will depend on the facts and circumstances of the particular case including the reasons for the issuer's inability to appoint an ASR, the efforts made, the potential impact on investors (particularly registered holders) if the securities are not suspended from trading[36], etc.

(c) As regards potential abuse, we do not believe issuers will be able to easily abuse the provision on suspension without negatively impacting themselves as well. Nevertheless, we will keep a close watch over any suspensions and consider what additional steps can be taken to deal with any abuse.

(d) We also disagree that the proposal gives investors in CCASS any unfair advantage to trade off-exchange within CCASS. Such investors will still need to identify a potential counterparty on their own, and negotiate the terms of the transaction on a bilateral basis, ie, the SEHK's order matching and price discovery facilities will not be available to them when trading is suspended. Moreover, investors holding securities in their own names outside CCASS will be in no different a position, ie,

[36] As explained in paragraph 134 of the March 2023 Consultation, suspension is necessary to ensure equal treatment as between: (i) investors who hold their securities in uncertificated form outside CCASS; and (ii) investors who hold their securities inside CCASS. In the absence of an ASR, the former will be unable to effect transfers of their securities, and hence unable to settle trades executed on the SEHK. In contrast, the latter will be able to continue doing so. A trading suspension means neither will be able to trade, thus ensuring equal treatment.

they too may trade off-exchange but will need to identify their potential counterparty on their own and negotiate the terms of the transaction on a bilateral basis.

(e) As for concerns about ASRs' approval status being lost, this is unlikely to be something that occurs suddenly given that the SFC will be monitoring ASRs' finances and operations on an ongoing basis. Moreover, where suspension or revocation becomes necessary, arrangements will be made for the ASR to wind down in an orderly manner and hand over to another ASR with minimal impact on investors.

130. It is worth highlighting that the SFC will have power to disapply or uplift a trading suspension that was triggered by an issuer not having an ASR.[37] However, such power is expected to be exercised with restraint and only in exceptional circumstances such as where:

(a) due to reasons beyond the issuer's control, the issuer is unable to appoint an ASR, and is thus compelled to act as its own securities registrar; and

(b) the concerns necessitating a trading suspension do not exist (eg, because either: (i) the securities in question are not participating securities; or (ii) none of the securities are held in uncertificated form).

Delisting

Rematerialization and issuers' obligations on delisting

131. The March 2023 Consultation proposed that rematerialization should not be permitted except in the event of the delisting of the securities concerned. We also proposed that it should be for the issuer to decide whether or not to rematerialize its securities on delisting but that if the issuer decides to do so, the rematerialization should be completed before the delisting.

132. While there was support for the proposal to limit rematerialization to delisting situations only, we received mixed views on issuers' obligations to rematerialize on delisting.

(a) One respondent suggested removing such requirement, noting that any obligation to issue title instruments will be governed by the law of the issuer's place of incorporation or the Articles of Association. It also added that issuers should be permitted to fulfil such obligation within a reasonable period after the delisting.

(b) Another respondent agreed that it should be left to the issuer to decide whether to rematerialize securities or not.

(c) Two respondents noted that investors holding securities in CCASS should have the right to become registered holders and be issued title instruments in respect of their holdings. They added that issuers should allow sufficient time for this process.

133. We disagree that the matter of rematerialization on delisting should be left to the laws of the issuer's home jurisdiction or terms of issue, as these may not necessarily provide for

[37] See section 14(3) of the proposed SML Rules at Annex 4 of the March 2023 Consultation.

title instruments to be issued on rematerialization.[38] We however take the point that more time may be needed for issuers to arrange the issue of title instruments. We also agree that investors in CCASS should have the option to become registered holders following a delisting and that sufficient time should be allowed for this.

134. In light of the feedback received, we now propose that where prescribed securities are to be delisted, the issuer must, in respect of any securities that are in uncertificated form:

(a) before the securities are delisted, update the ROM to reflect that the securities are no longer in uncertificated form;

(b) as soon as reasonably practicable after such updating, issue title instruments to the then registered holders, unless the terms of issue of the securities do not require title instruments to be issued;[39] and

(c) clarify to such holders whether they are entitled to be issued a title instrument, and if so, the procedures (if any) for obtaining such instrument.[40]

135. In terms of timing, we propose that the ROM update must be done before the delisting, but that any issue of title instruments can be done subsequently also. Additionally, as there will be a change to ROM entries, the issuer will need to issue a confirmation (as discussed under paragraph 101(a) above). In view of this, we propose that the clarifications mentioned in paragraph 134(c) above be included in such confirmation.

ASRs' obligation on delisting

136. We are mindful that if an issuer fails to issue confirmations and/or title instruments as required, holders may be unable to demonstrate what their holdings were at the time of the delisting. To address this, we propose that balances as at delisting should be reflected in the annual statements to be issued by ASRs, and that within 7 days of the delisting or of the ASR's ceasing to be the securities registrar for those securities (whichever occurs first), the ASR should issue a statement to each uncertificated holder reflecting the holder's balance as at that time.[41]

Facilitating withdrawal from CCASS on delisting

137. Currently, investors often encounter difficulty in withdrawing securities from CCASS after a delisting because HKSCC may not hold, and may not be able to obtain, title instruments of the correct denomination to facilitate the withdrawal.

138. Two respondents (both industry associations) raised specific concerns around this issue. One noted that even where the securities are worthless, intermediaries have no choice but to keep these on their books and continue to incur administrative and compliance costs (eg, issue monthly statements). Another sought clarity on how to handle title

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[38] For example, the CO only requires the issue of certificates on allotment, transfer and satisfactory proof of loss or damage. There is no requirement to issue certificates on rematerialization.

[39] We are mindful that there may be circumstances where it might be unreasonable to expect the issuer to issue title instruments even if the terms of issue require it (eg, if the issuer is likely to go into liquidation). The "reasonable excuse" qualifier in section 26(3) of the revised USM Rules at Annex 2 should suffice to cater for this.

[40] See section 26(2B) of the revised USM Rules at Annex 2.

[41] See section 25(7) of the revised ASR Rules at Annex 3, and in particular the note at the end of the definition of "annual reporting period".

instruments for delisted securities that are still held by intermediaries on behalf of their clients.

139. We expect that withdrawal should be easier in the USM environment.

(a) Where no title instruments have been issued to HKSCC-NOMS (eg, because the terms of issue do not so require or because the issuer has failed to do so), withdrawal will only require delivery of a signed instrument of transfer, ie, no title instruments will need to be delivered. The current difficulties should therefore no longer arise.

(b) On the other hand, where title instruments have been issued to HKSCC-NOMS (as the registered holder), withdrawal will only be feasible if HKSCC-NOMS has title instruments of the correct number and denomination. In view of this, we propose that, where title instruments are to be issued following a delisting, the number and denomination issued to HKSCC-NOMS should be as per HKSCC's request.[42] HKSCC can obtain relevant information from its participants (ie, as to the number and denomination of title instruments needed) before making such request.

140. As for title instruments that are still held with an intermediary, we would expect these to have been received from a particular client and hence returnable to that client if necessary.

Other matters

Pledging

141. One respondent asked for more information about how current practices of providing securities as collateral for a loan by pre-signing instruments of transfer might be replaced in the USM environment. In particular, they asked if it is possible to have a pre-authenticated transfer message, and whether it is possible for the pledgee to send instructions to the relevant ASR directly. They also asked how pledged securities might be enforced during any ROM closure period.

142. We understand that services for "locking" securities to facilitate pledging are already offered by some securities registrars today. However, given that detailed arrangements to facilitate securities pledging in the USM environment may vary among securities registrars, and from case to case depending on the complexities involved, we do not consider it appropriate for the legislation to mandate that pledging services be provided. We consider it more appropriate to leave this as a matter for commercial agreement among the ASR and other parties concerned. We understand also that more details in this regard will be provided in the Information Paper to be issued by the FSR later this year. As for enforcing a pledge during any ROM closure period, our understanding is that, as is the case today, no changes can be made to the ROM while it is closed, including therefore any change stemming from the enforcement of a pledge.

[42] See section 26(2A) of the revised USM Rules at Annex 2.

FINI and SWT

143. We received a few questions on the interaction between the USM initiative and two other recent initiatives, ie: (i) the Fast Interface for New Issuance (**FINI**) platform; and (ii) implementation of severe weather trading (**SWT**) arrangements.

144. We consider that although FINI, SWT and USM are separate initiatives, they share a common underlying goal, namely to further enhance efficiency in Hong Kong's financial markets through streamlining processes and increased digitalisation.

145. In terms of interaction among the various initiatives, we clarify as follows:

(a) FINI is a business-to-business platform which seeks to enable faster settlement for IPOs in Hong Kong. The operation of FINI is expected to continue unchanged under the USM environment given that: (i) its users will continue to be market intermediaries, issuers' advisers and agents, and regulatory authorities, and *not* investors; and (ii) IPO securities applied for through FINI will continue to be registered in the name of HKSCC-NOMS rather than individual investors[43]. One difference however will be that issuers will no longer issue physical title instruments to HKSCC-NOMS or others for the IPO securities that they are allotted.

(b) SWT is an initiative that seeks to allow trading to continue even under severe weather conditions[44]. Under the initiative, trading, post-trade and listing arrangements will be substantially the same as on normal days except that manual processes (such as delivery of title instruments for deposit into CCASS) will not be available. The arrangements are therefore expected to be consistent with arrangements under USM and are not expected to require further change.[45]

More information about the interaction of FINI and SWT with USM will be provided in the Information Papers to be issued by HKEX and the FSR later this year.

Application to open-ended fund companies (**OFCs**)

146. One respondent suggested that the 2-day ROM closure limit should apply to OFCs. They also sought clarification as to the implementation requirements, and roles and responsibilities of fund managers and custodians of OFCs. We clarify that the USM regime will only apply to OFCs whose shares are listed and withdrawable from CCASS. Accordingly, the 2-business day limit on ROM closures will apply in respect of such OFCs only. Similarly, the managers and operators of only such OFCs will be responsible for obligations imposed on issuers under the USM Rules.

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[43] Investors wishing to acquire IPO securities in their own names do not currently submit their applications through FINI. This will remain unchanged in the USM environment.

[44] Severe weather conditions refer to when a typhoon signal No 8 or above is hoisted or a black rainstorm warning signal is issued by the Hong Kong Observatory, and/or "extreme conditions" is announced by the Hong Kong Government.

[45] Under SWT, it will not be possible to deliver physical documents. Consistent with this, it will not be possible to receive requests for: (i) dematerialization; or (ii) dematerialization and transfer, as these require delivery of title instruments and instruments of transfer.

Regulatory standards in respect of ASRs

147. The earlier consultations discussed our proposals for regulating ASRs. Details were set out in the proposed draft ASR Rules at Annex 3 of the March 2023 Consultation, and expanded and supplemented in the proposed draft ASR Code at Annex 2 of the October 2023 Consultation. In general, respondents did not have concerns about the overall regulatory approach. However, we did receive feedback on various specific issues. We highlight these below.

General comments

Level of regulation

148. One respondent raised concerns about ASRs being subject to the same or higher regulatory standards than intermediaries, noting that ASRs' business activities are very different, and that the risks associated with providing securities registrar services are significantly lower.

149. We note the concerns raised, but disagree that the standards proposed are inappropriate. While we *have* drawn reference to other SFO regimes when developing the regime for ASRs, we have also kept in mind differences, including differences in the role ASRs will play and the risks they may present. To that end, the regime for ASRs is primarily systems-focused, and business/operational requirements take into account features unique to ASRs (including the services they will provide and their role as issuers' agents). Likewise, reporting and notification requirements have been tailored to take into account ASRs' business and operations. Moreover, we have not proposed that ASRs' officers or staff should be individually approved as well, nor have we imposed extensive financial requirements.

Scope of services regulated

150. One respondent noted that the scope of services covered by the proposed ASR Code was broader than the scope under the proposed ASR Rules, noting in particular that:

    (a) the scope of application reflected in section 1.2(a) of the proposed ASR Code covers both securities registrar services, and "other related services" provided to issuers or investors; and

    (b) in light of the above, the various references in the code to an ASR's "businesses and operations" was overly expansive and broad enough to cover business lines that do not fall within the meaning of securities registrar services.

151. We clarify that we only intend to regulate an ASR's provision of securities registrar services, and not its provision of other services (eg, corporate secretarial services). However, an ASR's provision of such other services will be relevant and of interest to the SFC if it affects or calls into question its ability or suitability to provide securities registrar services. To put this beyond doubt, we propose to:

    (a) amend section 1.2(a) of the ASR Code, delete the note under that section and add an expanded note at the end of section 1 of the ASR Code; and

(b) add a definition for "business and operations" in both the ASR Rules and ASR Code to mean an ASR's business and operations *as an ASR*.[46]

Use of "clients" to cover investors

152. One respondent raised concerns about the proposed use of the term "client" in the ASR Rules to cover both issuers and investors, noting the following.

(a) Share registrars are appointed by issuers to service investors. They are not appointed by investors directly and have no contractual relationship with them.

(b) Even where investors enter into terms and conditions with a share registrar (eg, when applying for IPO securities via an ePO channel), this is driven entirely by the share registrar's role as agent of the issuer.

153. We note the concerns raised. The term "client" was defined in the ASR Rules to bear a specific meaning and intended to be used in that manner. The term was not intended to imply or impose any relationship which did not in fact exist. To make this clear, we propose to replace the term "client" with two terms, ie, "issuer-client" which will refer to issuers who are clients of an ASR, and "securities holders" which will refer to investors who are current, previous or prospective registered holders of securities issued by an ASR's issuer-clients. Consistent with this, we also propose to replace the phrase "client money" with "third-party money".

Ensuring issuers' compliance

154. Respondents supported our proposals on General Principle 9 (on compliance), noting that they achieve an appropriate balance and represent a strategy to improve regulatory oversight and define expectations in the USM context.

155. However, one respondent raised concerns about the breadth of ASRs' compliance obligations under General Principle 9, particularly the requirement that ASRs provide securities registrar services in a manner which *enables* their issuer-clients to comply with *all* laws and regulatory requirements applicable to them. They noted that, as issuers' agents, ASRs can only assist or facilitate compliance by issuers rather than enable it. They also noted that this requirement should not extend to *all* laws and regulatory requirements but be confined to only cover the USM Rules and/or the Listing Rules.

156. We note the concerns raised. We have no objections to the suggestion to change "enables" to "assists or facilitates". However, we do not agree that the scope of obligations should be narrowed as suggested. This is because relevant obligations may be imposed under other legislation also (eg, the Companies Ordinance, Cap 622 (**CO**)), and it is not possible to set out an exhaustive list of all applicable laws and regulations. We also note that the requirement is already limited in that it is confined to circumstances where the ASR is performing its functions and obligations. We therefore do not see the need to further limit its scope.

New waiver power added

157. For flexibility, we propose to add a waiver power enabling the SFC to modify or waive any of the requirements under the ASR Rules in a particular instance. The provision is akin to

[46] See section 2(2) of the revised ASR Rules at Annex 3, and section 1.1 of the revised ASR Code at Annex 4.

the power to grant waiver and modifications to licensed persons under section 134 of the SFO.

Systems requirements

158. Given the critical role that ASRs' systems will play in the USM environment, our proposed regulation of ASRs is primarily systems-focused, with detailed requirements and expected standards set out in the ASR Rules and ASR Code.

159. There was general support for our proposals, but respondents also sought clarification and raised concerns on specific issues. These are summarised and responded to below.

System standards

160. Several respondents to the March 2023 Consultation raised concerns about the need to ensure systems and data integrity and security (including in particular from cyber risks and threats). Two respondents noted that the ASR Rules did not include any standards in this regard, and one respondent emphasised the need for ASRs to report on system integrity and cybersecurity incidents.

161. The proposed system standards were set out in the ASR Code attached to the October 2023 Consultation. These cover matters concerning systems capacity, systems integrity, systems and data security, cybersecurity, risk management and contingency arrangements. The proposed requirements include that ASRs:

(a) use appropriate encryption technology to ensure secure communication with issuer-clients and securities holders;

(b) monitor unauthorised or abnormal access by intrusion detection devices;

(c) implement effective fraud monitoring mechanisms to detect suspicious transactions and unusual activities in a timely manner to minimise fraud and forgery;

(d) implement updated security patches, hotfixes, anti-virus and anti-malware solutions;

(e) cover possible cyber-attack scenarios in contingency plans;

(f) define a cybersecurity risk management framework; and

(g) establish procedures for escalating and reporting cybersecurity incidents internally and externally.

162. Additionally, as noted in Annex 3 of the October 2023 Consultation, persons applying to become ASRs will need to provide an independent assessment on the adequacy of their computer systems and facilities for the purposes of their proposed business and operations as an ASR. The minimum areas to be covered by such assessment were also listed in Annex 3.

163. There was general support for the standards and requirements proposed in the ASR Code, with respondents agreeing that these are necessary for ensuring high standards in protecting personal data and privacy, and for preserving the integrity and security of the financial system.

Scope of standards

164. One respondent commented that the proposed standards and requirements relating to ASRs' computer systems and facilities were too prescriptive and onerous. In particular, they noted that:

(a) the term “computer systems and facilities” should *only* cover computer systems and facilities used by ASRs to operate their UNSRT system and maintain ROMs, ie, they should not cover computer systems and facilities for non-USM related services or activities (such as staff training);

(b) the audit log requirements are excessively broad and would require significant additional logging by ASRs;

(c) the requirements to review all audit logs for all computer systems and facilities are onerous, impractical, and not proportionate to the risk profiles of ASRs;

(d) the description of an ASR’s provision of critical services as including services affecting the smooth operation of CCASS is inappropriate as ASRs are not in a position to ensure the smooth operation of CCASS; and

(e) the requirements should be minimised to the extent possible taking into account the business nature and operations of ASRs.

165. We note the concerns raised and clarify that we only intend to regulate computer systems and facilities that are used in connection with, or that may otherwise impact, an ASR’s business and operations as an ASR. This is now made clear by our proposal to define and restrict the scope of an ASR’s “business and operations” as discussed under paragraph 151 above.

166. On the issue of the scope of audit logs, following discussions with the respondent concerned, we now propose to add a note under section 6.2(g) of the ASR Code to clarify that the scope of audit logs required are those necessary to demonstrate and safeguard the integrity of ROMs, and account for processes and transactions in prescribed securities and systems-related enhancements and activities.

167. We consider that the above changes should suffice to address the concerns raised. As for the description of an ASR’s critical services, we do not see any need for amendment. There is no question that a disruption in ASRs’ services may affect the smooth operation of CCASS. This is because such disruptions may prevent registered holders from transferring their securities to HKSCC-NOMS to settle trades executed on the SEHK. It is critical therefore that ASRs’ contingency arrangements provide for the resumption of such services as soon as reasonably practicable.

Remedial measures

168. Two respondents commented on remedial measures against cyber risks in the USM environment. One also suggested establishing a levy fund to cover cyber risks. They noted that, in the event of a cyber incident, there could be downtime leading to potential claims. A levy fund could help boost market confidence in USM and be conducive to investor protection.

169. While we appreciate the idea of establishing some sort of fund, we are also mindful that its set up, implementation and operation can be complex and not without controversy. Moreover, cyber risks are now a fact of life for all businesses and operations, and

therefore it is not unreasonable to expect market participants to factor this in when conducting their business or effecting transactions. This includes implementing appropriate and adequate internal controls, risk management policies and practices, and contingency arrangements. Similarly, ASRs will be required to take appropriate steps to guard against and manage cyber and other risks. Detailed requirements in this regard are set out in the ASR Rules and ASR Code, including that:

(a) their computer systems and facilities meet certain specified standards;

(b) backup sites and systems are operational in the event of systems failure;

(c) backup client and transaction databases are kept securely in offline media, and that data is accessible and retrievable in a timely manner;

(d) backup records of ROMs are kept and updated to no earlier than close of business of the immediately preceding business day (ie, that they are no more than 1-business day old at any time); and

(e) their insurance coverage provides reasonable protection against risks associated with their business and operations, including risks of loss or damage attributable to cyber events.

170. The above said, we will keep in mind the suggestion of establishing a fund, and revisit its suitability in due course as the market gains experience of operating in the USM environment.

Resources requirements

Financial resources requirements

171. One respondent commented on the proposed financial resources requirements. In general, they considered the requirements to be too onerous, noting that:

(a) concerns about the continuity of service to issuers and securities holders can be managed by the issuer appointing another ASR to whom ROM records can be passed within several weeks;

(b) the requirement to notify the SFC within 1 business day of becoming aware that it cannot comply with, or ascertain compliance with, the financial resources obligations, means ASRs will need to undertake daily monitoring which will be unduly onerous and costly for them;

(c) it is unclear if calculations of an ASR's financial resources will take into account assets arising from other business activities and the resources of other ASRs within the same group.

172. We note the concerns raised, but disagree that the requirements are onerous.

(a) It may not always be feasible for an issuer to change its ASR within several weeks, particularly if the ASR facing financial difficulties is one of the larger ones (ie, it was providing services in respect of a significant portion of issuers or prescribed securities in the market). In such cases, it may not always be feasible for other ASRs to absorb all of its business, or to do so within a matter of weeks. They may need more time to negotiate with all of the issuers involved, or to put in place necessary systems enhancements to absorb the additional volume of work, etc. In

contrast, regular monitoring of ASRs' financial status allows for issues to be flagged early on, and for remedial measures to be put in place promptly, thus limiting potential impact on the market.

(b) As regards concerns about daily monitoring, this will not be necessary if ASRs maintain their financial resources sufficiently above the required levels so that there is a reasonable buffer in place. It is only when their financial resources are very close to the required levels that daily monitoring will become necessary. In such cases, monitoring will be critical. ASRs can also consider putting in place controls and processes to help flag sudden or unexpected drops in resources levels. This may not only help reduce concerns about the requirements being too onerous, but also better protect ASRs' business and assets.

(c) In terms of the assets that will be taken into account when determining an ASR's financial resources levels and requirements, we clarify that we *will* take into account whether resources available to an ASR are ringfenced for its own use and in respect of its business as an ASR, or whether they are pooled and available for other businesses and/or entities within the same group. Where resources are pooled, it may be necessary to set requirements at higher levels or to impose additional requirements.

Requirement for independent auditor

173. The earlier consultations proposed that ASRs must appoint an independent auditor to audit their financial statements. This requirement was set out in the proposed ASR Rules and expanded in the proposed ASR Code (ie, to clarify what "independent" meant in this context). The proposed ASR Code also noted the need for the independent auditor to be Hong Kong qualified and expanded on what this means.

174. We did not receive any specific comments on these requirements. However, on reflection, we consider that the requirement for ASRs' auditors to be Hong Kong qualified should be set out in the ASR Rules rather than the ASR Code. We propose therefore to amend section 14 of the ASR Rules and section 2.5 of the ASR Code accordingly.

Other resources and capabilities requirements

175. We received mixed views on the proposed requirements relating to ASRs' non-financial resources and capabilities. In particular, respondents noted that:

(a) the requirements emphasise the need for ASRs' systems to be secure, robust, reliable and have the necessary business contingency arrangements in place to ensure smooth operation in the USM environment;

(b) the requirements offer clarification and direction on the SFC's expectations, but it is important to ensure that they do not place a significant financial burden on listed issuers;

(c) it is not appropriate (or necessary) to require ASRs to have internal controls and procedures to protect securities holders from financial loss, and doing so may unnecessarily elevate ASRs' risk profile; and

(d) some of the proposed requirements around contingency planning will no longer be relevant in the USM environment, such as the requirement for: (i) premises to be fire and water-proof; (ii) backup client and transaction databases to be kept in offline

media; and (iii) backup printing facilities or printers for the production of title instruments or other related documentation.

176. We note the concerns raised and clarify as follows.

(a) As regards concerns about the cost impact on issuers and ASRs, this is dealt with under paragraphs 50 to 54 above.

(b) On the matter of putting in place internal controls to protect securities holders, we clarify that we do not intend that ASRs should have specific controls to protect such holders from the acts or omissions of third parties. Rather, the aim is to ensure appropriate safeguards and risk management policies are in place to protect the ASR's own business and operations from various financial loss, including financial loss arising from third-party acts or omissions. As for controls to protect issuer-clients and securities holders, this should at least protect against misconduct or omissions by ASRs, their agents and employees. We propose to amend sections 4.1(c), 4.1(d) and 5.1(c) of the ASR Code to better reflect this.

(c) As for concerns about requirements on contingency planning:

(i) We clarify that, while full dematerialization is the ultimate goal, there will still be a transition period during which paper certificates will continue to exist and have to be issued (ie, in respect of prescribed securities that have not yet become participating securities). It is therefore necessary to retain requirements for printing facilities in the meantime.

(ii) As for requiring backup client and transaction databases to be kept in offline media, we do not agree that this is outdated. The objective is to ensure that sufficient backup data is available in a separate and unconnected environment to serve as the recovery point if and when necessary. We also clarify that the reference to "offline media" does not preclude the use of standalone database servers or other offline backup facilities.

(iii) In view of the above, we do not consider that the requirement for premises to be fire and water-proof is unreasonable or outdated. We also note that the requirement is in any event qualified, ie, it only applies "as necessary".

Insurance obligations

177. The March 2023 Consultation proposed that ASRs maintain sufficient and adequate insurance coverage, taking into account the size, structure and nature of their businesses and operations. The specific requirement in this regard was reflected in section 7 of the proposed ASR Rules. We received the following feedback.

Group coverage

178. One respondent noted that most securities registrars in Hong Kong function within a corporate group structure. As a result, the Hong Kong entities are often covered by a group insurance policy. In view of this, they requested that the requirement to "take out and maintain" insurance coverage be recast as an obligation to "have" such coverage. They noted also that this adjustment would enable ASRs to continue leveraging their group purchasing power for insurance coverage while maintaining appropriate coverage levels for the provision of securities registrar services.

179. In principle, we have no objections to this request. Accordingly, section 7(1) of the revised ASR Rules now requires an ASR to "ensure that it is covered" by the requisite insurance. We would add however that where insurance is arranged on a group basis, it will be important to demonstrate that the coverage still suffices, ie, that sufficient protections will remain in place notwithstanding any claims lodged by other entities within the group.

Insurance for third-party acts

180. One respondent commented that ASRs should only be liable for theft, fraud and other dishonest acts committed by their agents or employees, and not acts committed by third parties as that would significantly increase the litigation risk for ASRs and their compliance costs. In view of this, they urged that ASRs' insurance obligations be narrowed to only cover loss or damage attributable to the fraudulent or dishonest conduct of an officer or employee of the ASR.

181. We note the concerns raised and clarify that our focus is on the actions of ASRs and their agents and employees. However, to the extent that such actions facilitate fraud or misconduct by third parties, they should also be covered. To better reflect this, we propose to amend section 7(2) of the ASR Rules so that:

(a) section 7(2)(a) also covers gross negligence on the part of ASRs and their agents and employees;

(b) section 7(2)(c) and (d), which deal with certain actions relating to forgery and fraudulent actions, are:

(i) confined to those committed by the ASR or its agents and employees; and

(ii) moved to section 4.7 of the ASR Code on the basis that they would fall within the scope of section 7(2)(a); and

(c) in light of the many concerns raised about cyber risks, a further paragraph is added under section 7(2) to deal specifically with cyber risks.

ROM-related obligations and responsibilities

182. Respondents expressed mixed views on responsibility for ROM entries.

(a) One respondent commented that ASRs should have greater responsibility for the accuracy of ROMs that they update. They also asked if there would be any prohibition on sub-contracting by ASRs. However, another noted that as obligations relating to the keeping of ROMs are imposed on issuers, and ASRs are merely agents of issuers, investors should only be able to seek redress from issuers.

(b) One respondent suggested that the requirement to keep an offline backup copy of the ROM be removed where the services of an external electronic data storage provider (**EDSP**) are used to store data constituting or relating to a ROM.[47]

183. We clarify that, as is the case today, it is possible that both issuers and ASRs might have to bear responsibility for inaccuracies in the ROM. While investors might look to issuers for redress; issuers might, in turn, look to ASRs for redress (eg, if inaccuracies are due to acts or omissions of the ASR or its agents or employees). We also note that the allocation of responsibility for ROM accuracies, as well as any restriction on sub-contracting such

[47] The requirement for a backup copy is reflected in note (2) under section 4.6(b)(iii), and section 1.2(c) of Schedule 2, of the revised ASR Code at Annex 4.

responsibility, are matters that can be covered in the contractual arrangements between issuers and ASRs. We therefore do not consider it necessary or appropriate to legislate on this point.

184. As for removing the requirement for an offline backup copy, we strongly disagree. The keeping of a backup copy which is no more than 1-business day old is a crucial contingency measure for safeguarding investors' interest, and will be even more critical where the services of an EDSP are used. We therefore do not propose to remove this requirement.

Notification and reporting requirements

185. We received a range of comments on the notification and reporting requirements proposed in the March 2023 Consultation. We discuss these below.

Scope

186. One respondent sought further clarification on the list of changes to be notified to the SFC. They noted that the list under Part 2 of the Schedule to the proposed ASR Rules differed from the list at Annex 3 of the October 2023 Consultation, and that the latter was too detailed.

187. We clarify that the two lists should be aligned. We therefore propose to amend Part 2 of the Schedule accordingly. We also do not consider that the information sought is excessive. Much of the information sought covers the ASR/applicant's business and operations, financial affairs and systems-related information. Each of these will be critical to assessing a person's suitability to be or remain an ASR.

Change of auditor

188. One respondent requested that the timeframe for ASRs to notify the SFC of any removal, replacement or change of auditor be extended from within 1 business day following such event to within 7 business days. They noted that this was to permit adequate time for intra-corporate communication, given that the appointment, removal or replacement of auditors is undertaken at the group level for ASRs that operate within a broader corporate group.

189. We disagree that extension is needed or appropriate. We expect ASRs' senior management in Hong Kong to be apprised of such changes promptly. A change of auditor, even at group level, can be significant depending on the reasons for the change (eg, if the auditor has resigned due to concerns about any aspect of the group's affairs or operations). Also, the 1-business day requirement runs from the day:

(a) notice is given to the ASR's members of a motion to be moved at its general meeting regarding the change; or

(b) the day the auditor's appointment ceases (otherwise than by virtue of its term expiring or a motion to members).

190. In our view, if the group has completed necessary formalities to give notice to members to pass a motion on the change, there is no reason why it cannot also be in a position to give

notice to the SFC. On the other hand, if the auditor resigns before the expiry of its term, it would be imperative for the SFC to be notified as soon as possible.

Change in accounting policies

191. One respondent noted that the requirement to notify the SFC at least 5 business days before effecting any change in an ASR's accounting policies is unnecessary given that such policies will be: (i) formulated by qualified accountants and auditors according to applicable rules and standards; and (ii) disclosed and reported to the SFC in the ASR's annual financial statements.

192. We disagree. We would expect such changes to be rare, and for senior management to be aware of them well in advance. We therefore cannot see what hardship the requirement creates. Also, changes in accounting policies may affect calculations used to determine an ASR's financial resources requirements. In such cases, early notification will be crucial to ensuring that requirements imposed remain relevant and appropriate.

Change in senior employees

193. One respondent commented that changes in officers and senior employees are normal business events. So long as ASRs can fulfil the requirement to maintain competent personnel, notifying the SFC of such personnel changes should not be necessary.

194. We disagree. Given that: (i) ASRs and their systems will play a critical role in the USM environment; and (ii) the regulatory regime for ASRs does not require individuals within an ASR to be approved by the SFC as well, it is important that the SFC at least has some basic information about the ASR's officers and senior employees. This will also be important if it becomes necessary for the SFC to engage more specifically with the ASR on any aspect of its business and operations.

Change in bank account details

195. One respondent commented that the requirement for ASRs to notify the SFC of changes to its bank accounts is unnecessary given that ASRs act as agents of issuers and the provision of securities registrar services is less risky.

196. We disagree. Updated information about an ASR's bank accounts is important given that ASRs may sometimes hold monies belonging to third parties (eg, dividends pending distribution, subscription monies pending payment to the issuer, etc). In the event of misconduct, it may become necessary to take enforcement action in respect of any such monies held by the ASR. Information about the ASRs' bank accounts will then be crucial.

Changes in subsidiaries and related corporations

197. One respondent strongly opposed the requirement for ASRs to notify the SFC of changes in basic information regarding their subsidiaries and related corporations. They noted that the SFC's jurisdiction should be limited to securities registrar services provided by an ASR, and not expand into other non-regulated business lines within the ASR or its group.

198. We note the concerns raised and clarify that it is not our intention to regulate other businesses of an ASR or other entities within its group that do not carry on business as an ASR. However, the affairs and activities of such other business and entities will be of concern if they can impact the ASR's provision of securities registrar services (including

impacting its financial position or risk exposures generally). It is for this reason that we seek information about other businesses of an ASR and other entities within its group.

199. Nevertheless, and in light of the concerns raised, we propose to amend items 1(e) and (f) of Part 2 of the Schedule to the ASR Rules to better reflect that we only require information about an ASR's subsidiaries and related corporations if their business activities may have a material impact on the ASR's ability to provide securities registrar services.

Change in circumstances of premises

200. As reflected in the draft ASR Rules attached to the March 2023 Consultation, ASRs are expected to notify the SFC of not only changes in the *address* of an ASR's premises but also changes in the *circumstances* of such premises. In the case of the latter, the SFC will be particularly concerned to know if the premises remain suitable following the change in circumstances. To enable the SFC to follow up in this regard, we propose to amend section 19(2) of the ASR Rules to clarify that notifications must include such other information as the SFC may reasonably require.

Regular reporting

201. The March 2023 Consultation proposed that ASRs submit quarterly returns covering their financial position and operational matters.

202. One respondent raised several concerns in this regard, including that:

(a) the reporting period for financials should be changed to half-yearly to align with requirements under the CO;

(b) quarterly reporting of ASRs' business and operations may impose undue burden, lead to potential cost implications, and is unnecessary taking into account the risks involved; and

(c) the requirement to submit a capital expenses projection for the 12 months ahead of a financial year did not seem reasonable or proportionate as concerns about an ASR's liquidity and business continuity can be addressed by the auditors' reports submitted together with the financial statements.

203. We remain of the view that the submission of quarterly returns of an ASR's financial position and 12-month capital expense projections are crucial to the SFC's assessment of its continued financial viability. However, we agree that it would suffice to receive half-yearly returns of ASRs' business and operations. We propose to amend section 17 of the ASR Rules accordingly.

Incidents reporting

204. The earlier consultations proposed that ASRs report service facilities incidents and operational incidents, and that the timing of such reporting should depend on the severity of the incident concerned. In this regard, the proposed ASR Rules described such incidents as being "serious" or "significant", while the proposed ASR Code described them as being "major", "moderate" or "minor".

205. However, it is important that descriptions in the ASR Rules and ASR Code be aligned. We accordingly propose to amend section 18(3) of the ASR Rules and the note under section 10.5 of the ASR Code to align the terminology. Essentially, the revised versions will require immediate reporting of incidents that are “major” and “moderate”. Such incidents will also have to be covered in the half-yearly returns on ASRs’ business and operations. As for “minor” incidents, these will not need to be reported immediately but will need to be covered in the half-yearly returns.

Outsourcing by ASR

206. We received mixed views on our proposed requirements on outsourcing by ASRs. A few respondents expressed support, noting that the proposals:

(a) appear to be in line with IOSCO principles and prevailing global practices;

(b) demonstrate a sensible attitude to continuously recognising and managing potential risks thus contributing to the security and dependability of the securities market infrastructure; and

(c) align with established procedures and provide sufficient technical assistance to create a strong outsourcing structure that guarantees accountability and control.

207. However, concerns were also raised, including:

(a) that outsourcing requirements should only apply to tasks relating to an ASR’s securities registrar business, and only if they are material or critical;

(b) that as the assessment of what is material is often subjective, further guidance on the meaning of "critical" and "material" in the ASR Code would be helpful;

(c) that the ASR Code should also articulate the types of services that would not be captured by the outsourcing requirements;

(d) that the requirement for overseas outsourcing contracts to be governed by Hong Kong law as far as reasonably practicable is too onerous and may raise practical difficulties for ASRs; and

(e) that the requirement to ensure the SFC's access to data, systems, premises and staff of the service provider and its sub-contractors is too onerous (eg, where overseas cloud service providers are employed).

208. We note the concerns raised and clarify as follows.

(a) The requirements on outsourcing are intended to apply in respect of tasks relating to or affecting an ASR’s business and operations as an ASR. This is now made clear by our proposal to define and restrict the scope of an ASR’s “business and operations” as discussed under paragraph 151 above.

(b) To address concerns about the need for more clarity, we propose to add more notes at the end of section 5 of the ASR Code to: (i) clarify the scope of the requirements on outsourcing; and (ii) provide further guidance on how criticality and materiality are to be assessed. We believe these should suffice to address the concerns raised and hence do not propose to also list out the services that would not be captured.

(c) On the points about outsourcing overseas and access requirements, we do not consider that our requirements are unreasonable or onerous. As emphasised previously, ASRs and their systems will take on a more significant role in the USM

environment and form a critical part of the securities market infrastructure. It is therefore crucial to ensure adequate access and control over such systems and any data stored or processed through them. That said, where specific difficulties are encountered, we are open to discussing the matter further with the ASR concerned.

Conflicts of interest

209. We received mixed views on our proposed expansion of General Principle 7 (on conflicts of interest).

210. One respondent agreed with the proposal to expand General Principle 7 to cover conflicts with issuer-clients as well as securities holders, but considered that more guidance was needed. Another commented that the proposed amendments align with the expected demands of ASR obligations in the context of USM. They added that engaging in constructive dialogue with the industry will aid in improving these principles.

211. On the other hand, a third respondent opposed the proposed amendments, noting the following.

    (a) Services provided by ASRs to securities holders are provided in their capacity as agents of the issuer. As such, ASRs should be required to act in the best interest of their issuer-clients only and not securities holders.

    (b) ASRs maintain commercial relationships with issuer-clients and owe contractual duties to act in their best interest. Where conflicts arise between issuer-clients and securities holders, it may not be possible for ASRs to ensure a win-win situation.

    (c) The proposed requirements under General Principle 7 are inconsistent with those under General Principle 2 (on diligence) in that the former requires ASRs to act in the best interests of issuer-clients, securities holders and the integrity of the market, while the latter requires ASRs to act in the best interest of issuer-clients and the integrity of the market.

    (d) The expectation that ASRs endeavour, as far as reasonably practicable, to find alternative solutions where issuer-clients requests or directions might jeopardise the integrity of the market is too stringent and might not be possible in all circumstances.

212. We note the various different comments and suggestions, and clarify as follows.

    (a) We understand that, as agents of issuers, ASRs may not always be able to resolve conflicts between their issuer-clients and holders. However, as regulated entities playing a key role in the USM environment, we believe ASRs are in a position to at least attempt and facilitate resolution where conflicts arise.

    (b) On the issue of inconsistency in the language used under General Principle 2 and General Principle 7, we agree that it would be better for the two to be aligned. We propose to amend General Principle 7 so that it refers to the integrity of the market rather than securities holders. Ultimately, our objective in requiring ASRs to assist with resolving conflicts is to better safeguard the integrity of the market.

    (c) As for suggestions to provide more guidance to ASRs and engage in further dialogue with the industry, we agree that both would be useful. However, we propose that further guidance be developed over time as we gain experience in the

USM environment. Meanwhile, we will continue to maintain dialogue with ASRs as and when issues of conflict arise.

Disciplinary or other actions against ASRs

213. We received a few comments regarding our disciplinary and other regulatory powers in respect of ASRs. We deal with these below.

Facilitating breaches by issuers

214. The March 2023 Consultation noted that certain obligations imposed on issuers may in practice be handled by their ASRs. It also noted that where a breach of such obligations is aided or abetted by an ASR, the ASR may be held liable as well and its fitness and properness to remain approved may also be impugned.

215. One respondent commented that as ASRs are merely assisting issuers when performing obligations on their behalf, they should not be held liable unless the breach itself constitutes a criminal offence. We confirm that an ASR would only be liable as an aider or abetter in respect of breaches that constitute criminal offences. Where an ASR has assisted in breaches that do not constitute a criminal offence, its fitness and properness to remain an ASR may be impugned.

Disciplinary action against individuals

216. One respondent welcomed that the SFC can only take disciplinary or regulatory action against ASRs, but not individuals within the ASRs. For avoidance of doubt or misunderstanding, we clarify that, under Part IX of the SFO, disciplinary action can be taken against both an ASR and any person involved in the management of its business.

Senior employee

217. One respondent sought further clarification on the definition of “senior employee", which we propose to define as a person who “performs supervisory or managerial functions".

218. It is difficult to give a more specific definition for this term given that the nature and size of an ASR’s business and operations, as well as its internal organisational structure will need to be taken into account. As indicated by the definition, the intention is to identify individuals who perform supervisory or managerial functions in relation to an ASR’s business and operations. We therefore do not propose to make further amendments. We however welcome discussion with individual securities registrars who may be having difficulty identifying which of their officers or staff should be regarded as “senior employees”.

Orders under section 213 of the SFO

219. One respondent raised concerns about the SFC's power, under section 213 of the SFO, to apply to the Court for a wide range of orders (including restoration orders) for breaches of the USM Rules or ASR Rules. They noted that this exposes ASRs to an uncertain and unreasonable level of risk and urged that breaches of the USM Rules and ASR Rules be carved out from the scope of section 213.

220. We clarify that section 213 is a general provision that applies to a wide range of breaches across the SFO and subsidiary legislation under the SFO. It is not possible to carve out the USM Rules and ASR Rules specifically. To do so may have read across implications

for other provisions. It is also worth noting that any application under section 213 would have to be justified and reasonable in the circumstances. Moreover, ultimately, it will be the Court that determines whether an order should be granted in a particular instance taking into account the totality of the facts and circumstances. For all of these reasons, we do not consider it either necessary or appropriate to amend section 213.

Other matters

Record-keeping

221. One respondent sought clarification as to the form in which records must be kept.

222. We clarify that the proposed ASR Rules do not impose any specific requirement in this regard. It is therefore open to ASRs to use hard copy or electronic form as they see fit in a particular circumstance. That said, we expect that, for better efficiency and in keeping with the USM initiative and modern practices, ASRs will be inclined to use electronic forms wherever possible. We also note that submissions to the SFC are generally expected to be in electronic form. We propose to add a new section 31A to the ASR Rules to make this clear.

Provision of information to SFC

223. The March 2023 Consultation proposed that the SFC be able to require ASRs to provide such information and documents as it may reasonably require for the performance of its functions. One respondent agreed with the proposal, but sought clarification as to how the boundaries of information to be provided under this new requirement will differ from that under sections 181 and 182 of the SFO.

224. We clarify that the proposed requirement (set out in section 30 of the ASR Rules) is not intended for supervision and enforcement purposes. Rather, it is intended to facilitate the SFC's requests for information and documents for other purposes, such as to gather market trends or statistics relating to the ASRs' operations.

225. That said, we note that the purpose of the proposed section 30 may have been confused given that it is referred to in section 31 of the ASR Rules, which deals with the appointment of skilled persons to report on matters relating to an ASR. The latter provision is intended to enable the SFC to seek external assistance where it does not have the necessary in-house expertise or resources to look into a matter itself.

226. To better reflect the regulatory purpose of sections 30 and 31, we propose to delink them and to qualify section 31 as discussed in paragraphs 227 to 230 below.

Independent report by skilled persons

227. As mentioned above, section 31 is intended to enable the SFC to seek external assistance to look into a matter. We consider this necessary given the technical nature and significance of ASRs' systems and processes in the USM environment, and given the systems-focused nature of the proposed ASR regulation.

228. Respondents sought further clarification on this provision. One requested further explanation of the responsibilities, powers, reporting matters and other requirements of such skilled persons. Another expressed concerns about the breadth of the SFC's

discretion under section 31, and its ability to require the ASR to pay for such report. They noted the need for appointments of skilled persons to be subject to reasonably compelling grounds, and for costs to be payable by an ASR only if it has been found to be in material or significant breach of its obligations.

229. We appreciate the concerns raised. In light of these, and further to delinking sections 30 and 31 as discussed above, we propose to amend section 31 so that it only applies to matters relating to an ASR's computer systems and facilities. This would also be in keeping with the systems-focused nature of the proposed ASR regulation.

230. As for concerns about ASRs having to bear costs, we note that the provision already makes clear that the SFC may only seek to recover costs from an ASR if it is appropriate to do so having regard to the ASR's conduct. Moreover, decisions to require an ASR to pay costs will also be reviewable by the Securities and Futures Appeals Tribunal.

ASRs' provision of services relating to public offers

231. Respondents supported our proposal that ASRs' provision of services relating to public offers be regulated as "securities registrar services" under the ASR Rules, and carved out from the definition of "dealing in securities" under Schedule 5 to the SFO. They also supported our proposed consequential amendments to the ePO Guidelines to better reflect current market practices and remove the need for ASRs to work with a Type 1 intermediary when operating electronic platforms to provide such services.

232. However, clarification was sought on the following.

(a) One respondent asked if the definition of "public offer" under the proposed ASR Rules will also cover the international tranche of an IPO.

(b) Another noted that the current 1% brokerage fee for IPO applications should also be chargeable by ASRs where such applications are submitted through an ASR's electronic platform.

233. We clarify that the term "public offer" *will* cover the international tranche of an IPO as it is also available to professional investors in Hong Kong. However, the provision of public offer services in respect of such tranche will only come within the scope of securities registrar services if the services are provided by the issuer's securities registrar.

234. As for the 1% brokerage fee for IPO applications, we will take the suggestion under consideration and cover this point when we consult the market on fees generally as discussed under paragraph 63 above.

Information to be included in ASR applications

235. Annex 3 of the October 2023 Consultation set out a list of the information and documents to be submitted by persons applying to become ASRs.

236. One respondent commented that:

(a) the requirement to provide information about proposed fee models and structures should be limited to fees charged to securities holders and members of the public, ie, fees charged to issuer-clients should not be covered as these are commercially negotiated; and

(b) the requirement to provide addresses of premises used in connection with an ASR's business and operations is onerous in that it covers addresses where computer systems and facilities are located, and addresses of service providers (including EDSPs) that perform outsourced tasks.

237. We note the concerns about providing information on fees charged to issuers. We clarify that we are not looking to obtain detailed information of specific fees charged to each issuer-client. Rather, the aim is to obtain general information that will provide an overall view of an ASR's revenue model. This will be important to our assessment of its financial soundness, and ability to continue operations as a going concern. Such assessment is necessary given the potential impact on the market if an ASR were to cease operation.

238. As for the requirement to provide addresses, given the significant role that ASRs' computer systems and facilities will play, it will be important to know where they (including any related servers) are located. Similarly, where the services of an EDSP are used to store ROM-related data, the ASR will be required to conduct appropriate due diligence on the suitability of the EDSP for such purpose. In general, we would expect this to include obtaining sufficient information about the location of servers.

Grandfathering existing share registrars

239. One respondent noted that the ASRs must be given enough time to develop their systems and facilities. They suggested that a grandfathering period be introduced to allow current share registrars to continue operating in the USM environment until conclusion of their ASR approval process. They also requested the SFC to set out expectations for the timeline and transitional arrangements for approval well in advance of the launch of the USM regime to ensure continuity of services and facilitate proper planning.

240. We agree that arrangements for ASR approval need to be clearly communicated to ensure that applicants have sufficient time to prepare and test systems and facilities, and to prepare and submit their applications. To that end, we have engaged with the FSR, as well as individual share registrars, to explain in detail the application process and criteria, as well as related timelines. We will also continue to remain in close contact with them regarding their applications up till the time of approval.

241. We also agree that continuity of services to the market is crucial. To that end:

(a) We intend for the application process to be an interactive one, and to start well in advance of implementation. Our aim is to complete the review process and confirm approvals before USM is implemented.

(b) Additionally, where an applicant is unable to demonstrate readiness to provide USM-related services, we will consider whether they can nevertheless be approved to provide other services (ie, services provided currently). If yes, we will consider issuing conditional approvals so that they may at least continue their existing operations and services.

242. For completeness, we would add that we do not consider it appropriate to grandfather existing share registrars into the ASR regime given that their current status as "approved share registrars" under the SML Rules is solely by virtue of their being members of the FSR, and not by virtue of any review or approval of their systems, operations or personnel by the SFC.

Other issues raised

Legal issues

Explicit requirement for no title instrument

243. One respondent commented that neither the USM Amendment Ordinance nor the USM Rules make clear that one of the conditions for securities to be in uncertificated form is that no current title instruments should exist in respect of them.

244. We have considered whether the USM Rules should stipulate that one of the conditions for securities to be in uncertificated form is that no current title instruments exist in respect of them. Our view is that such a provision would be inappropriate because it would create inconsistency with section 1AB(a) of Part 1 of Schedule 1 to the SFO.[48]

245. We also note that the USM Rules make it sufficiently clear that no title instruments are expected to exist in respect of securities that are in uncertificated form. Specifically:

(a) in the case of securities that were originally issued in certificated form, the dematerialization process under the USM Rules requires any existing title instruments to be cancelled – see sections 20(5), 21(6) and 23(5) of the USM Rules; and

(b) in the case of newly issued securities, the process of issuing the securities in uncertificated form prohibits the issue of title instruments – see section 24(3) of the USM Rules.

Concerns about double jeopardy

246. One respondent asked us to consider making clear in the rules that companies incorporated in Hong Kong would not be penalised under both the CO and the USM Rules for comparable ROM-related breaches.

247. We clarify that there is no intention to impose double penalties for the same breach. We would add that both the protection against double jeopardy and the totality principle in sentencing are well enshrined in Hong Kong's criminal justice system.[49] Additionally, section 4(7) of the USM Rules expresses a clear legislative intent that the obligations under section 4 are intended to be comparable to, and may be fulfilled by complying with, similar obligations under applicable law. We therefore do not consider it necessary to provide further on this point in the rules.

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[48] To explain: If (for whatever reason) a title instrument were issued in respect of certain prescribed securities, but the register of holders indicates that those securities are held in uncertificated form, then, according to section 1AB, the units would nevertheless be regarded as being in uncertificated form. However, if the USM Rules were to include a requirement that no valid title instrument must exist in respect of securities in uncertificated form, then, according to those rules, the securities would be regarded as being in certificated form. An inconsistency would thus arise.

[49] See also paragraph 8.1 of the Department of Justice's Prosecution Code at https://www.doj.gov.hk/en/publications/pdf/pdcode1314e.pdf which says: *"When choosing charges to be prosecuted, the prosecution should attempt to reflect adequately the criminality of the conduct alleged, in a manner that is both efficient and that will enable the court to do justice between the community and the accused. The number of charges should be kept as low as reasonably possible. Where a large number of offences of a similar nature is alleged, the use of representative charges should be considered."*

Commencement of continuing offences

248. One respondent asked when certain continuing offences under the USM Rules[50] will be considered to have commenced given that the provisions do not stipulate precise timeframes for compliance.

249. Our understanding is that the exact time from when a continuing fine starts to run would be determined by the Court based on what it considers to be reasonable taking into account the particular facts and circumstances of the case. We also note that, under section 70 of the Interpretation and General Clauses Ordinance (Cap 1), where no time is prescribed within which something must be done, such thing must be done without unreasonable delay. That said, we are happy to add "as soon as reasonably practicable" in the relevant provisions for better clarity.[51]

Definitions

250. We received two enquiries regarding definitions.

(a) One respondent noted that the term "prescribed securities" is not defined in the USM Rules, nor incorporated by reference to the USM Amendment Ordinance. We clarify that the term will eventually be added to the definitions under section 1 of Part 1 of Schedule 1 to the SFO. Definitions under that section apply to all provisions of the SFO and subsidiary legislation made under it. Hence, specific definition under the USM Rules is not necessary.

(b) Two respondents sought clarification on the key differences between the term ASR and share registrar (which no longer appears in the ASR Code). We clarify that the term "ASR" (ie, "approved *securities* registrar") refers to persons approved under new section 101AAG(6) of the SFO.[52] The term replaces what is currently "approved *share* registrar" under the SML Rules, but essentially refers to the same group of persons. The word "securities" replaces "share" to better reflect the scope of the new ASR regime.

Other issues

Companies (Winding-up) Rules

251. One respondent noted that the proposed amendments to the Companies (Winding-up) Rules (Cap 32H) are technical amendments to enable the production of evidence other than a share certificate. They asked whether such other evidence may also be used in cases other than winding up. We consider that this would ultimately depend on the facts and circumstances of the particular case, and general principles of the law of evidence.

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[50] This question was raised in connection with sections 20, 23 and 24 of the draft USM Rules at Annex 2 of the March 2023 Consultation.

[51] See sections 20(5) and (6), 21(6) and (7), 23(5) and 24(3) of the revised USM Rules at Annex 2.

[52] Both new section 101AAG and the definition of ASR were introduced under the USM Amendment Ordinance – see sections 7 and 27(4) of that ordinance.

Editorial changes and improvements

252. We have also taken the opportunity to make editorial and drafting changes, as well as other improvements to the USM Rules, the ASR Rules and the ASR Code for better presentation and easier reading. These are also highlighted on the revised drafts at Annexes 2, 3 and 4 respectively.

Next steps and concluding remarks

253. The conclusion of the two earlier consultations marks another key milestone towards implementing USM in Hong Kong. In the coming months, we will continue to work with the Government, HKEX and the FSR to progress this initiative. Our efforts will focus on three key areas, ie: (i) laws and regulations; (ii) systems development and testing; and (iii) market engagement and education. We expand below.

Key areas of focus

Laws and regulation

254. In terms of legislation, the SFC is working with the Department of Justice to finalise the text of the various new items of subsidiary legislation, and amendments to existing legislation, discussed in the two earlier consultations.[53] Our current aim is to finalise these in time for submission to the Legislative Council within the fourth quarter of this year.

255. In terms of other regulation, apart from the ASR Code and ePO Guidelines discussed in the October 2023 Consultation, it will also be necessary to amend various non-statutory rules to cater for the new USM regime and environment. In particular, amendments will be needed to various rules, procedures and other guidance issued by HKSCC and the SEHK to complement and supplement the various legislation, and SFC codes and guidelines, and to facilitate implementation of the USM initiative.[54] We will work with HKEX on these.

256. In addition to the above, the SFC is currently working on guidelines for issuers regarding the participation of their securities in USM (**Issuer Guidelines**). These will include information on the preparatory steps needed for securities to become participating securities, and information about ongoing obligations thereafter. We also aim to include some sample provisions that issuers may refer to when considering how best to amend their articles/bye-laws to cater for USM.

Systems development and testing

257. On the systems side, the SFC will continue to work with HKEX and the FSR on developing and finalising: (i) the few remaining technical and operational details of the model for implementing USM; and (ii) the arrangements for facilitating stamp duty payment in the USM environment. We are also monitoring HKEX's and each FSR member's efforts in progressing their respective systems development work. Detailed systems testing and market rehearsals will be conducted in due course. More details in this regard will be provided at a later stage.

258. Separately, and as mentioned in paragraphs 240 and 241 above, we have started engaging with individual FSR members on the process, criteria and timelines for their

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[53] Further drafting or stylistic/editorial changes may therefore be made to the revised drafts at Annexes 2 and 3.

[54] Such amendments may cover (among other things) matters concerning: (i) transfer and registration services and fees; (ii) publication of announcements by issuers; (iii) establishment and maintenance of dedicated webpages; (iv) amendments to constitutional documents or terms of issue to ensure consistency with the USM regime; (v) inclusion of certain terms in the agreement between issuers and their ASRs; and (vi) mandatory use of electronic channels for sending and receiving corporate communications, and instructions relating to general meetings.

seeking approval to become ASRs. We will continue working with them in this regard with a view to completing the application process before USM is implemented.

Market engagement and education

259. We are mindful that success of the USM initiative will depend largely on participation from issuers and investors. While issuer participation can be compelled, we do not propose to compel investor participation for the reasons discussed in paragraph 78 above. Investor participation will therefore be largely dependent on putting in place suitable incentives/disincentives (eg, different fee levels, turnaround times, handling processes, etc). We will continue working with HKEX and FSR on these.

260. Publicity and marketing efforts will also be critical. To that end, the SFC will work with HKEX and the FSR to develop a detailed market communications plan so that a clear and consistent message is delivered to different market segments and stakeholders. The SFC is also in the process of setting up a dedicated webpage on the USM initiative to promote better understanding of its impact on different market participants, and facilitate their preparation ahead of implementation.

Implementation timetable

261. As mentioned above, we are working towards submitting the various items of legislation to the Legislative Council within the fourth quarter of this year. We therefore expect that the legislation will be enacted in the fourth quarter of this year or the first quarter of next year at the earliest. A number of matters can only proceed after the legislation is enacted, including the following.

    (a) finalisation and issue of the SFC's amended ASR Code, amended ePO Guidelines, Issuer Guidelines, and forms to be used when submitting information and documents to the SFC under the ASR Rules[55];

    (b) finalisation and approval of amendments to relevant rules, procedures and guidance issued by HKSCC and the SEHK;

    (c) completion of all systems testing and rehearsals;

    (d) finalisation and approval of ASR applications; and

    (e) subject to completing (a) and (b) above, finalisation and approval of amendments to issuer's articles/bye-laws (or other constitutional documents or terms of issue).

262. In view of the above, we propose to allow for about 9 to 12 months between enactment of the legislation and USM implementation. On that basis, we are now working towards implementing USM around the end of 2025.

Concluding remarks

263. We take this opportunity to thank all those who took the time and effort to respond to our two earlier consultations. Your comments and suggestions have helped refine the proposed subsidiary legislation and related code and guidelines. As we progress with

[55] These include forms for applications, notifications, statements, returns or other communications under Part IIIAA of the SFO or the ASR Rules, eg, application to become an ASR, notification of changes of various matters, quarterly returns, etc.

work on this initiative, we will continue to engage with different stakeholders and market participants as necessary. We also welcome the opportunity to further explain or discuss any aspect of the initiative or proposals with the market.

Glossary

ASR	an approved securities registrar, ie, a person approved by the SFC to provide securities registrar services under new section 101AAG of the SFO introduced under section 7 of the USM Amendment Ordinance
ASR Code	the SFC's *Code of Conduct for Approved Securities Registrars*, a proposed draft of which is at Annex 2 of the October 2023 Consultation and a revised draft at Annex 4 of this paper
ASR Rules	the Securities and Futures (Approved Securities Registrars) Rules, a proposed draft of which is at Annex 3 of the March 2023 Consultation and a revised draft at Annex 3 of this paper
authenticated message	an electronic message that meets certain criteria and can thus be relied upon for the purposes of effecting transactions in the USM environment – see paragraph 54 of the March 2023 Consultation
CCASS	the Central Clearing and Settlement System operated by HKSCC
certificated form	prescribed securities are in certificated form if they are not in uncertificated form – see paragraphs 47 to 49 of the March 2023 Consultation
CO	the Companies Ordinance (Cap 622)
dematerialize/ dematerialization	the conversion of prescribed securities from certificated form to uncertificated form
ePO channel	any electronic channel or facility used to display or provide access to prospectuses, and collect applications from the public during an IPO, or follow-on public offer, of prescribed securities
ePO Guidelines	the SFC's *Guidelines for Electronic Public Offers*, a proposed draft of which is at Annex 5 of the October 2023 Consultation
FSR	the Federation of Share Registrars Limited
General Principle	a General Principle under the ASR Code
HKEX	Hong Kong Exchanges and Clearing Limited, a recognized exchange controller under the SFO
HKSCC	Hong Kong Securities Clearing Company Limited, a recognized clearing house under the SFO and wholly owned subsidiary of HKEX
HKSCC-NOMS	HKSCC Nominees Limited, the central nominee that is the registered holder of all securities held in CCASS
Information Papers	the information papers to be issued by HKEX and the FSR later this year, and that will provide more specific information on various operational processes under USM
IPO	an initial public offer of securities

listed	listed, or approved for listing, on the SEHK (and "unlisted" and "delisted" are to be construed accordingly)
Listing Rules	the Rules Governing the Listing of Securities on the SEHK
March 2023 Consultation	the SFC's March 2023 *Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong*
October 2023 Consultation	the SFC's October 2023 *Consultation paper on proposed code and guidelines for implementing an uncertificated securities market in Hong Kong*
OFC	an open-ended fund company (as defined in the SFO)
OFC Rules	the Securities and Futures (Open-ended Fund Companies) Rules (Cap 571AQ)
participating securities	prescribed securities that are USM-enabled in the sense that all relevant procedures and formalities for legal title to the securities to be evidenced and transferred without paper have been completed – see paragraph 50 of the March 2023 Consultation and paragraphs 29 and 30 above
prescribed securities	the six categories of securities that are: (i) listed on the SEHK; and (ii) may participate in the USM regime – see paragraph 23(a) of the March 2023 Consultation and paragraph 25 above
provisional system-member	a registered holder of prescribed securities in respect of whom an ASR has set up a temporary or provisional USI facility to enable such holder to hold (but not otherwise manage) the securities electronically through a UNSRT system operated by that ASR – see paragraphs 41 to 46 of the March 2023 Consultation
RCH	a recognized clearing house (as defined in the SFO)
registered holder	means any person who is registered in a ROM as a holder of prescribed securities
rematerialize/ rematerialization	the conversion of prescribed securities from uncertificated form to certificated form
ROM	the register of members (in the case of shares) or register of holders (in the case of other prescribed securities)
SDO	the Stamp Duty Ordinance (Cap 117)
securities holder	means any person who: (i) is the current registered holder of any prescribed securities**;** (ii) was previously registered as such a holder; or (iii) is a subscriber or transferee of prescribed securities and seeking to be registered as such a holder
securities registrar	a person who maintains in Hong Kong the ROM for any prescribed securities

securities registrar services	services that may only be provided by ASRs – see paragraphs 102 to 105 of the March 2023 Consultation
SEHK	the Stock Exchange of Hong Kong Limited, a recognized exchange company under the SFO and wholly owned subsidiary of HKEX
service facilities	the electronic facilities used to provide securities registrar services, and includes any UNSRT system and ePO channel
SFC	the Securities and Futures Commission
SFO	the Securities and Futures Ordinance (Cap 571)
SML Rules	the Securities and Futures (Stock Market Listing) Rules (Cap 571V)
specified request	the arrangement for transferring prescribed securities in the USM environment which will replace the traditional instrument of transfer– see paragraphs 51 to 53 of the March 2023 Consultation
system-member	a registered holder of prescribed securities who has set up a USI facility with an ASR, and is able to hold and manage those securities electronically through a UNSRT system operated by that ASR – see paragraphs 41 to 46 of the March 2023 Consultation
title instrument	the paper certificate or other document issued as evidence of title to any prescribed securities
Type 1 intermediary	an intermediary that is licensed or registered under the SFO to carry on business in dealing in securities
uncertificated form	prescribed securities are in uncertificated form if they are recorded in the ROM as being held in uncertificated form – see paragraphs 47 to 49 of the March 2023 Consultation and paragraphs 244 and 245 above
underlying securities	in relation to any subscription warrants or rights under a rights issue, the securities that can be acquired upon exercising such warrants or rights
UNSRT system	a computer-based system, together with procedures and other facilities, that: (a) enables title to prescribed securities to be evidenced and transferred without paper instruments; and (b) facilitates supplementary and incidental matters – see new section 101AAB of the SFO introduced under section 7 of the USM Amendment Ordinance
USI facility	a facility for managing prescribed securities that are in uncertificated form, and which requires the holder of the securities to manage those securities directly – see paragraph 23(d)(i) of the March 2023 Consultation
USI holder	a registered holder of prescribed securities (other than HKSCC-NOMS) who holds those securities in uncertificated form through

	a USI facility
USM	the initiative or regime for implementing an uncertificated securities market in Hong Kong
USM Amendment Ordinance	the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021
USM Rules	the Securities and Futures (Uncertificated Securities Market) Rules, a proposed draft of which is at Annex 2 of the March 2023 Consultation and a revised draft at Annex 2 of this paper
USS facility	a facility for managing prescribed securities that are in uncertificated form, and which requires the holder of the securities to manage those securities via a clearing or custodian participant in CCASS, and through CCASS – see paragraph 23(d)(ii) of the March 2023 Consultation

Annex 1 – List of respondents

March 2023 Consultation

(in alphabetical order)

Asia Securities Industry & Financial Markets Association

Federation of Share Registrars Limited

Hong Kong Securities & Futures Professionals Association

Hong Kong Trustees' Association Limited

The Chamber of Hong Kong Listed Companies

The Hong Kong Association of Banks

The Hong Kong Chartered Governance Institute

The Law Society of Hong Kong

2 respondents who requested that their names be withheld from publication

2 respondents who requested that both their names and submissions be withheld from publication

October 2023 Consultation

(in alphabetical order)

Federation of Share Registrars Limited

Li & Partners

The Hong Kong Chartered Governance Institute

The Hong Kong Association of Banks

1 respondent who requested that their name be withheld from publication

Annex 2 – Further amendments to the USM Rules

Securities and Futures (Uncertificated Securities Market) Rules

Part 1

Preliminary

Part 2

Register of Holders

Part 3

Registration of ŧTransfer

Part 4

Authenticated Message

Division 1—Requirement for Authenticated Message

Division 2—Effect of Authenticated Message

Part 5

Dematerialization on Request

Part 6

Issuer's Authority on Dematerialization etc.

Part 7

Transition to Full Dematerialization

Schedule

~~**Specified Securities and Dates for Full Dematerialization**~~

Places Specified for Specified Prescribed Securities

Securities and Futures (Uncertificated Securities Market) Rules

(Made by the Securities and Futures Commission under section 101AAM of the Securities and Futures Ordinance (Cap. 571))

Part 1

Preliminary

1. Commencement

These Rules come into operation on ~~[*a specified date*]~~ the day on which Part IIIAA of the Ordinance comes into operation.

2. Interpretation

(1) In these Rules—

addressee (收訊者), in relation to an authenticated message, has the meaning given by section 15(1);

attributable (歸因於), in relation to an authenticated message, has the meaning given by section 14(1);

authenticated message (經認證訊息) has the meaning given by section 13(1);

authorized CIS (認可集體投資計劃) means a collective investment scheme authorized by the Commission under section 104 of the Ordinance;

corresponding clearing house (相應結算所), in relation to any prescribed securities, means the recognized clearing house providing services and facilities through which transactions in those securities are or may be novated, cleared, settled or guaranteed;[56]

corresponding exchange company (相應交易所), in relation to any prescribed securities, has the meaning given by section 12 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V);[57]

corresponding registrar (相應登記機構), in relation to any prescribed securities, means the approved securities registrar acting as the securities registrar (as defined by section 12 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V)) for those securities;[58]

corresponding UNSRT system (相應無紙證券登記及轉讓系統), in relation to any prescribed securities that are participating securities, means the UNSRT system ~~operated pursuant to the arrangement maintained for those securities to be participating securities~~ through which title to those securities may be evidenced and transferred without an instrument;[59]

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[56] Drafting amendment – new term introduced and defined for better clarity and easier reading.

[57] Drafting amendment – definition moved to section 2 as the term is now used in multiple provisions.

[58] Drafting amendment – new term introduced and defined for better clarity and easier reading.

[59] Drafting amendment – definition amended consequential to amending definition of “participating securities”.

dematerialization request (去實物化請求), in relation to any number of units of prescribed securities, means a request to dematerialize that number of units of those securities;

dematerialize (去實物化), in relation to any number of units of prescribed securities, means converting that number of units of those securities from certificated form to uncertificated form;

governing provisions (管限條文), in relation to any prescribed securities, means—

(a) for shares in a corporation—

(i) the provisions of the constitution of the corporation; and

(ii) the terms of issue of the shares; and

(b) for any other prescribed securities—the terms of issue of those securities;

issuer (發行人), in relation to any prescribed securities, means—

(a) for shares, other than shares that constitute interests in an authorized CIS—the corporation the share capital of which is constituted by such shares;

(b) for depositary receipts—

(i) the person who issues the receipts; and

(ii) the person who issues the securities represented by the receipts;

(c) for stapled securities—the person who issues the securities constituted by the stapling;

(d) for interests in an authorized CIS—

(i) the person who operates the authorized CIS; and

(ii) the person who manages the property in respect of which the authorized CIS is operated;

(e) for subscription warrants—the person who issues the warrants; and

(f) for rights ~~in~~ under a rights issue—the person who issues the rights;

message (訊息) means a message to instruct, elect, accept, confirm, notify or otherwise give information of any kind on a matter relating to prescribed securities;

messaging facilities (訊息傳遞設施), in relation to any prescribed securities, means any electronic facilities provided for communicating messages relating to those securities;

participating securities (參與證券) ~~means any prescribed securities the issuer of which maintains an arrangement with an approved securities registrar for enabling title to those securities to be evidenced and transferred without an instrument using a UNSRT system operated by the registrar—~~see section 3A;[60]

provisional system-member (臨時系統成員), in relation to a UNSRT system operated by an approved securities registrar, means—

(a) a person who, having yet to complete the registrar's procedures for using the system, is permitted by the registrar to use the system for evidencing (but not transferring) title to prescribed securities held, or to be held, by the person without an instrument; or

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[60] Drafting amendment – definition amended as the term is now defined in section 3A.

(b) two or more such persons who are so permitted in respect of prescribed securities held, or to be held, by them jointly;

register of holders (持有人登記冊), in relation to any prescribed securities—

(a) means the register of holders of those securities kept under section 4; and

(b) includes a register kept under any applicable law or governing provisions that is, by virtue of section 4(7), taken as kept under section 4;

registered holder (登記持有人), in relation to any prescribed securities, means a person entered in the register of holders of those securities as a holder of those securities;

Example—

(a) for shares in a company—a person entered in the register of members of the company as a member of the company;

(b) for shares in an open-ended fund company—a person entered in the register of shareholders of the company as a shareholder of the company; and

(c) for units in a unit trust scheme—a person entered in the register of the holders of registered units under the scheme as a holder of any such unit.

rematerialize (重新實物化), in relation to any number of units of prescribed securities, means converting that number of units of those securities from uncertificated form to certificated form;

specified request (指明請求), in relation to any prescribed securities, means a request for registration of the transfer of those securities that consists of authenticated messages or, to the extent permitted by the issuer of those securities under section 11(3), written instructions;

system-member (系統成員), in relation to a UNSRT system operated by an approved securities registrar, means—

(a) a person who, having completed the registrar's procedures for using the system, is permitted by the registrar to use the system for evidencing and transferring title to prescribed securities held, or to be held, by the person without an instrument; or

(b) ~~two~~ 2 or more such persons who are so permitted in respect of prescribed securities held, or to be held, by them jointly;

terms of issue (發行條款), in relation to any prescribed securities, has the meaning given by section 101AAD(3) of the Ordinance;

title instrument (所有權文書), in relation to any prescribed securities, means a certificate or other instrument issued by the issuer of those securities for evidencing title to those securities;

unit (單位), in relation to any prescribed securities, means the smallest possible transferable unit of those securities.

Example—

(a) a share in a corporation; and

(b) a unit in a unit trust scheme.

(2) For the purposes of these Rules, prescribed securities are in the process of delisting if the corresponding exchange company for those securities —[61]

(a) ~~the recognized exchange company operating the recognized stock market on which those securities are listed (***corresponding exchange company***)~~ has received an application for those securities to cease to be listed;~~ or~~

[61] Drafting amendment – the provision is cast more generally and the drafting simplified.

(b) has been directed by the Commission–~~has under section 9(3)(d) of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V) directed the corresponding exchange company~~ to cancel the listing of those securities; or

(c) ~~the corresponding exchange company~~ has decided to cancel the listing of those securities, whether pursuant to an application or direction mentioned in paragraph (a) or (b) or otherwise.

(3) For the purposes of these Rules, where more than one person is the issuer of any prescribed securities—

(a) a power conferred on the issuer of those securities may be exercised by any one or more such persons;

(b) a duty imposed on the issuer of those securities is regarded as performed by all such persons so long as any one or more of them perform the duty; and

(c) a prohibition imposed on the issuer of those securities is regarded as contravened by all such persons if any one or more of them contravene the prohibition.

3. Evidence and transfer of title without instrument

(1) For the purposes of section 101AAC(1) of the Ordinance, title to prescribed securities may be evidenced without an instrument by a record in the register of holders of those securities as described in section 9(2).

(2) For the purposes of section 101AAC(2)(b) of the Ordinance, title to prescribed securities may be transferred without an instrument by a specified request that complies with section 11(2) or 12(3).

3A. Participating securities[62]

(1) For the purposes of these Rules—

(a) prescribed securities become participating securities on their participation date; and

(b) such securities cease to be participating securities only at the time when they cease to be listed.

(2) For the purposes of subsection (1)(a)—

(a) the issuer of any prescribed securities may, in accordance with the rules of the corresponding exchange company for those securities, publish a date (or any revised date) as the date on which the securities are to become participating securities; and

(b) the participation date must not be earlier than—

(i) the date on which the issuer has taken all necessary steps for enabling title to those securities to be evidenced and transferred without an instrument using a UNSRT system operated by an approved securities registrar; and

[62] See paragraphs 29 to 30 of this conclusions paper which explain the addition of this new section 3A.

(ii) the date confirmed by the approved securities registrar as the date starting from which the UNSRT system may be used for evidencing and transferring title to those securities without an instrument.

(3) In this section—

participation date (參與日期), in relation to any prescribed securities, means the date (or, if such a date is revised, the date last revised) published under subsection (2)(a) in relation to those securities.

Part 2

Register of Holders

4. Issuer must keep register of holders

(1) The issuer of any prescribed securities must keep in the English or Chinese language a register of holders of those securities.

(2) The register of holders must contain—

(a) the name and address of each holder of the prescribed securities;

(b) the date on which each person was entered in the register as a holder of those securities; and

(c) the date on which any person ceased to be a holder of those securities.

(3) The register of holders must also contain, for each person entered as a holder of the prescribed securities, a record indicating—

(a) the number of units of those securities held by the person; and

(b) subject to subsection (4), the number of any such units held in uncertificated form (***uncertificated holding***).

Note—

For the purposes of ~~this~~ the Ordinance (see section 1AB of Part 1 of Schedule 1 to this Ordinance), the Stamp Duty Ordinance (Cap. 117) (see section 2(7) of that Ordinance) and the Companies Ordinance (Cap. 622) (see section 2(3A) of that Ordinance)—

(a) any units of prescribed securities that are recorded under subsection (3)(b) as being held in uncertificated form are "in uncertificated form"; and

(b) any units that are not so recorded are "in certificated form".

(4) Without limiting any circumstances requiring rectification of the register of holders, a record indicating the uncertificated holding of a person may be added, amended or removed only if that is necessary to reflect—

(a) ~~reflect a change as required under section 20(5)(b), 21(6)(c), 23(5)(b), 24(3)(b) or 26(2)(b)~~ a dematerialization or rematerialization of any units of the prescribed securities, or the issue of any new units of the prescribed securities in uncertificated form, in accordance with these Rules; ~~or~~[63]

(b) ~~reflect~~ a transfer, transmission or cancellation of any units of the prescribed securities that are in uncertificated form; or

(c) an action taken by the issuer of those securities that relates to any right or interest in or arising from any units of the prescribed securities[64].

~~**Note—**~~

~~Sections 20(5)(b), 21(6)(c), 23(5)(b) and 24(3)(b) concern dematerialization, while section 26(2)(b) concerns rematerialization, of units of prescribed securities.~~

(5) The issuer must enter in the register of holders the particulars required under subsections (2) and (3) as soon as reasonably practicable after receiving sufficient information and documents to do so.

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[63] Drafting amendment – the note at the end of subsection 4(4) is deleted and its contents incorporated into this provision for easier reading.

[64] New paragraph (c) added to allow for the possibility that changes to records relating to uncertificated holdings may be necessitated by corporate actions (eg, a split or consolidation of the securities).

(6) For a person mentioned in subsection (2)(c), all entries in the register of holders relating to the person on the date on which the person ceased to be a holder of the prescribed securities may be destroyed after the end of 10 years from that date.

(7) For the purposes of these Rules, a register kept under any applicable law or governing provisions of any prescribed securities may be taken as a register of holders kept under this section by the issuer of those securities if the register contains particulars in respect of those securities that are equivalent to the particulars specified in subsections (2) and (3).

Note—

The following are examples of a register kept under applicable law or governing provisions—

(a) for shares in a company—the register of members of the company kept under section 627 of the Companies Ordinance (Cap. 622);

(b) for shares in an open-ended fund company—the register of shareholders of the company kept under rule 67 of the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ);

(c) for units in a unit trust scheme—the register of the holders of registered units under the scheme kept under section 33 of the Stamp Duty Ordinance (Cap. 117); and

(d) for depositary receipts—a register of depositary receipt holders kept under the governing provisions of the receipts (if so provided).

(8) An issuer that contravenes subsection (1) or (5) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

4A. Issuer must give notice of change in register of holders where uncertificated holding is involved[65]

(1) This section applies if—

(a) the issuer of any prescribed securities effects a change to an entry in the register of holders of those securities; and

(b) the entry relates to—

(i) any uncertificated holding (within the meaning of section 4(3)(b)) of a person; or

(ii) any other particular (except any number of units of securities held in certificated form) of such a person.

(2) The issuer must, as soon as reasonably practicable, and in any event within the time specified in subsection (3), after effecting the change, give a notice containing the information specified in subsection (4) to the person, without fee, by—

(a) sending the notice in electronic form to an electronic address specified by the person; or

(b) sending the notice in hard copy form by post to the last known address of the person.

(3) The time specified for subsection (2) is—

(a) if the notice is sent in electronic form—1 business day; or

(b) if the notice is sent in hard copy form—3 business days.[66]

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[65] See paragraphs 99 to 101 of this conclusions paper which explain the addition of this new section 4A.

[66] Provision is made for confirmations being sent in paper form even though the securities are in uncertificated form. This is to cater for holdings of provisional system-members, ie, persons who have securities in uncertificated form but who have not yet completed the processes for accessing and managing those securities electronically. (See paragraphs 41 to 44 of the March 2023 Consultation for more details.)

(4) The information specified for subsection (2) is—

(a) a confirmation that the change has been effected;

(b) the details of the change effected; and

(c) the date on which the change was effected.

(5) An issuer that, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and, in the case of a continuing offence, to a further fine of $700 for each day during which the offence continues.

(6) In this section—

change (變更), in relation to an entry in a register of holders, includes any revision, addition or deletion of the entry or of any particular in the entry.

5. Inspection of entries in register of holders

(1) A person is entitled, on request and without charge, to—

(a) inspect any entry made in relation to that person in the register of holders of any prescribed securities; and

(b) during the course of the inspection, make a copy of any such entries.

(2) Subject to subsection (3), the issuer of any prescribed securities must, during business hours, make the register of holders of those securities available for a person's inspection of their entries under subsection (1)(a).

(3) For the purposes of subsection (2), the issuer—

(a) is not required to make available for inspection any part of the register of holders that is closed in accordance with any applicable law or governing provisions of the prescribed securities; and

(b) may impose any reasonable restrictions regarding how the register is made available for inspection, so long as the register is so available for at least 2 hours per day.

(4) If the issuer makes the register of holders available for a person's inspection of their entries under subsection (1)(a), the issuer—

(a) must permit the person to make a copy of any such entries under subsection (1)(b); but

(b) is not required to assist the person to make any such copy.

(5) An issuer that, without reasonable excuse, contravenes subsection (2) or (4) commits an offence and is liable on conviction to a fine at level 4.

6. Request for copy of entries in register of holders

(1) A person is entitled, on request and payment of a specified fee, to be provided with a copy of—

(a) any entry made in relation to that person in the register of holders of any prescribed securities; and

(b) subject to subsection (2), any entry made in relation to that person that was—

(i) previously included in the register; but

(ii) subsequently amended or removed.

(2) Subsection (1)(b) does not apply to an entry made in relation to a person if—

(a) the request made by the person does not contain sufficient particulars to enable identification of the entry; or

(b) the entry has been destroyed without contravening any applicable law or governing provisions of those securities.

(3) The issuer of any prescribed securities must, within 10 business days after receiving a request made by a person under subsection (1) and the specified fee, provide a copy of the entry to which the request relates to the person in the following form—

(a) if the person requests the copy to be in hard copy form—in hard copy form; or

(b) if the person requests the copy to be in electronic form—in any electronic form that the issuer ~~thinks fit~~ considers appropriate.

(4) An issuer that, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 4.

(5) In this section—

in electronic form (電子形式) includes in the form of an electronic record as defined by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

in hard copy form (印本形式) means in a paper form or similar form capable of being read;

specified fee (指明費用), in relation to a request made under subsection (1) to an issuer, means a fee specified by the issuer, which must not exceed the aggregate of—

(a) $5 for each 10 entries (or any part of those 10 entries) to which the request relates; and

(b) any reasonable costs incurred by the issuer in delivering a copy of the entries to the person requesting it.

7. Limit on closure period of register of holders

(1) This section applies if—

(a) the register of holders of any prescribed securities may be closed under any applicable law or governing provisions of those securities; and

(b) the securities are participating securities.

Example—

(a) the register of members of a company may be closed under section 632 of the Companies Ordinance (Cap. ~~32~~ 622); and

(b) the register of shareholders of an open-ended fund company may be closed under rule 70 of the Securities and Futures (Open-ended Fund) Rules (Cap. 571 sub. leg. AQ).

(2) Subject to subsection (2A), ~~T~~the register of holders may be closed each time only for a period of not more than—

(a) 2 consecutive business days; or

(b) any longer period during which trading in the prescribed securities is suspended.

(2A) The Commission may, by notice in writing served on the issuer of any prescribed securities—[67]

[67] See paragraph 105 of this conclusions paper which explains the addition of this new subsection (2A).

(a) exempt the securities from subsection (2) for a period specified in the exemption if the Commission is satisfied that—

(i) none of the units of those securities is in uncertificated form; and

(ii) it would not be in the interest of the investing public or in the public interest to apply that subsection to the closure of the register of holders of those securities;

(b) impose any condition the Commission considers appropriate in relation to the exemption; and

(c) amend or revoke—

(i) the exemption; or

(ii) any condition imposed in relation to the exemption.

(3) In this section, a reference to the closure of a register of holders includes a closure of any part of it.

8. Power of court to rectify register of holders

(1) A person specified in subsection (2) may apply to the Court of First Instance for rectification of the register of holders of any prescribed securities in respect of any of the following matters—

(a) that the name of any person is, without sufficient cause, entered in or omitted from the register;

(b) that default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a holder of those securities; ~~or~~

(c) that a record indicating any ~~unit of those securities~~ of the following matters is, without sufficient cause, entered in or omitted from the register—[68]

(i) ~~recorded in the register as being~~ that a number of units of those securities are held by any person; ~~or~~

(ii) ~~omitted from a record in the register of the units~~ that a number of units of those securities held by any person are held in uncertificated form.

(2) The person~~s~~ specified for subsection (1) ~~are~~ is—

(a) any person aggrieved;

(b) any registered holder of the prescribed securities; or

(c) the issuer of those securities.

(3) On an application made under subsection (1), the Court of First Instance may—

(a) refuse the application; or

(b) make any of the following orders—

(i) an order to rectify the register of holders;

(ii) an order on the issuer to pay damages for any loss sustained by any party aggrieved.

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[68] Paragraph (c) is amended to make clear that applications to the Court for rectification of the ROM can be to rectify not only any entry or omission of a record indicating the number of prescribed securities held by a person, but also any entry or omission of a record indicating the number of securities held in uncertificated form.

(4) In determining the application under subsection (3), the Court of First Instance may—

(a) if the application is made in respect of a matter specified in subsection (1)(a) or (c), decide any question relating to the title of any person who is a party to the application, whether the question arises—

(i) between holders or alleged holders of the prescribed securities; or

(ii) between holders or alleged holders on the one hand and the issuer of those securities on the other hand; and

(b) generally decide any question necessary or expedient to be decided for rectification of the register of holders.

(5) This section applies to the extent to which the application is neither prohibited under nor in conflict or inconsistent with any other enactment governing the rectification of the register of holders of any prescribed securities.

Example—

(a) for rectification of the register of members of a company—see section 633 of the Companies Ordinance (Cap. 622); and

(b) for rectification of the register of shareholders of an open-ended fund company—see rule 71 of the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ).

9. Effect of entries on register of holders

(1) In the absence of evidence to the contrary, the register of holders of any prescribed securities is proof of any matters that are by these Rules required or authorized to be entered in it.

(2) Without limiting subsection (1), a record in the register of holders indicating that any number of units of the prescribed securities are held by a person in uncertificated form is, in the absence of evidence to the contrary, proof of the person's title to that number of units of those securities.

Part 3

Registration of tTransfer

10. Registration of transfer on basis of instrument of transfer

(1) The issuer of any prescribed securities may refuse to register a transfer of any number of units of those securities (***subject units***) on the basis of an instrument of transfer if—

(a) the instrument does not comply with subsection (2); or

(b) ~~the securities are participating securities and~~ [69] the subject units are in uncertificated form.

(2) For subsection (1)(a), an instrument of transfer must specify any particulars reasonably required by the issuer for—

(a) updating the register of holders of the prescribed securities to reflect the transfer; or

(b) any other purpose relating to—

(i) the transfer; or

(ii) any right, benefit or privilege attaching to, or arising from, the subject units being transferred.

(3) Subsection (1) does not limit or otherwise affect any other ground on which the issuer may refuse to register a transfer of the prescribed securities.

Note—

See also the following provisions, which refer to an instrument of transfer as required under these Rules—

(a) for the registration of a transfer of shares in a company—sections 150 and 151 of the Companies Ordinance (Cap. 622);

(b) for the registration of a transfer of shares in an open-ended fund company—rules 60 and 61 of the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ); and

(c) for the registration of a transfer of units in a unit trust scheme—section 36 of the Stamp Duty Ordinance (Cap. 117).

11. Registration of transfer on basis of specified request

(1) The issuer of any prescribed securities may refuse to register a transfer of any number of units of those securities (***subject units***) on the basis of a specified request if—

(a) the request does not comply with subsection (2);

(b) the subject units are in certificated form;

(c) the securities are in the process of delisting; or

(d) it is not reasonably practicable for the transfer to be registered on the basis of a specified request.

(2) For subsection (1)(a), a specified request must—

(a) subject to subsection (3), consist of—

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[69] Drafting amendment – in light of the more specific definition of participating securities, securities in uncertificated form will necessarily be participating securities, and so there is no need to mention this.

(i) an authenticated message attributable to the transferor; and

(ii) an authenticated message attributable to the transferee; and

(b) specify any particulars reasonably required by the issuer for—

(i) updating the register of holders of the prescribed securities to reflect the transfer; or

(ii) any other purpose relating to—

(A) the transfer; or

(B) any right, benefit or privilege attaching to, or arising from, the subject units being transferred.

(3) The issuer may permit a specified request to consist of a written instruction in place of an authenticated message mentioned in subsection (2)(a)(i) or (ii) if the issuer is satisfied that—

(a) it is not reasonably practicable in the circumstances for such an authenticated message to be sent; and

(b) the written instruction is given by, or with the authority of, the transferor or transferee (as the case may be).

(4) Subsection (1) does not limit or otherwise affect any other ground on which the issuer may refuse to register a transfer of the prescribed securities.

Note—

See also the following provisions, which refer to a specified request as required under these Rules—

(a) for the registration of a transfer of shares in a company—sections 150 and 151 of the Companies Ordinance (Cap. 622);

(b) for the registration of a transfer of shares in an open-ended fund company—rules 60 and 61 of the Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571 sub. leg. AQ); and

(c) for the registration of a transfer of units in a unit trust scheme—section 36 of the Stamp Duty Ordinance (Cap. 117).

12. Acquisition of shares on buying out of minority shareholders[70]

(1) This section applies in relation to an offeror ~~(***transferee***)~~ who is, by virtue of section 695(2) of the Companies Ordinance (Cap. 622), entitled and bound to acquire any shares in a company that are prescribed securities from the holder of those shares (~~***transferor***~~ ***shareholder***).

(2) An instrument of transfer of shares sent under section 696(3A)(a) of the Companies Ordinance (Cap. 622) must—

(a) be executed on behalf of the shareholder by ~~an appointee~~ a person appointed by the offeror; and

(b) specify any particulars reasonably required by the company for—

(i) updating the register of members of the company to reflect the acquisition; or

(ii) any other purpose relating to—

(A) the acquisition; or

(B) any right, benefit or privilege attaching to, or arising from, the shares being acquired.

[70] Drafting amendment – section amended for better clarity and easier reading.

(3) A specified request in relation to shares sent under section 696(3A)(b) of the Companies Ordinance (Cap. 622) must—

(a) consist of—

(i) an authenticated message attributable to ~~an appointee~~ a person acting on behalf of the shareholder and appointed by the offeror; and

(ii) an authenticated message attributable to the ~~transferee~~ offeror; and

(b) specify any particulars reasonably required by the company for—

(i) updating the register of members of the company to reflect the acquisition; or

(ii) any other purpose relating to—

(A) the acquisition; or

(B) any right, benefit or privilege attaching to, or arising from, the shares being acquired.

~~(4) In this section—~~

~~***appointee*** (獲委任人) means a person appointed by the transferee to act on behalf of the transferor.~~

Part 4

Authenticated Message

Division 1—Requirement for Authenticated Message

13. What is authenticated message

(1) A message is an authenticated message if—

(a) the message relates to prescribed securities that are participating securities;

(b) the message is sent using messaging facilities provided by—

(i) ~~a recognized~~ the corresponding clearing house for those securities; or

(ii) ~~an approved securities registrar with whom the issuer maintains an arrangement for enabling authenticated messages relating to those securities to be sent~~ the corresponding registrar for those securities[71];

(c) the message is sent in accordance with the operating rules of those facilities; and

(d) the message is, in accordance with the operating rules of those facilities, expressed or otherwise identifiable as a communication between—

(i) the issuer and a registered holder;

(ii) the issuer and a transferee; or

(iii) an offeror and a registered holder.

(2) In this section—

issuer (發行人), in relation to a message relating to any prescribed securities, means the issuer of those securities;

offeror (要約人), in relation to a message relating to any prescribed securities, means a person who makes an offer in relation to those securities that is regulated by, and made in accordance with—

(a) a code published under section 399(2) of the Ordinance; or

(b) any applicable law or other regulatory requirement of a jurisdiction outside Hong Kong on matters of a nature similar to those mentioned in that section;

operating rules (運作規則), in relation to any messaging facilities, means—

(a) if the facilities are operated by a recognized clearing house—any rules of the recognized clearing house that govern the communication of messages using those facilities; or

(b) if the facilities are operated by an approved securities registrar—any rules, procedures, terms of use or any other specifications adopted by the registrar that govern the communication of messages using those facilities;

registered holder (登記持有人), in relation to a message relating to any prescribed securities, means a registered holder of those securities;

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[71] Drafting amendment – paragraph (b)(ii) amended consequential to amending the definition of "participating securities" and introducing a definition for "corresponding registrar".

transferee (受讓人), in relation to a message relating to any prescribed securities, means a person to whom the securities are, according to the message, to be transferred.

14. Attribution of authenticated message

(1) An authenticated message relating to prescribed securities is attributable to a person if the message is, in accordance with the operating rules (as defined by section 13(2)) of the messaging facilities used to send the message, expressed or otherwise identifiable as being sent by or on behalf of the person.

(2) To avoid doubt—

(a) an authenticated message may be attributable to more than one person; and

(b) if an authenticated message is expressed or otherwise identifiable as being sent by a person on behalf of another person, the message is attributable to both persons.

15. Addressee of authenticated message

(1) A person is an addressee of an authenticated message relating to prescribed securities if the message is, in accordance with the operating rules (as defined by section 13(2)) of the messaging facilities used to send the message, expressed or otherwise identifiable as being addressed to the person, whether as an agent of another person or not.

(2) To avoid doubt—

(a) an authenticated message may have more than one addressee; and

(b) if an authenticated message is expressed or otherwise identifiable as being addressed to a person as an agent of another person, both persons are the addressees of the message.

Division 2—Effect of Authenticated Message

16. Application of this Division

(1) This Division applies in relation to an authenticated message relating to—

(a) a right, benefit or privilege attaching to, or arising from, the prescribed securities to which the message relates; or

(b) the particulars of a registered holder of those securities (whether such particulars are required to be entered into the register of holders of those securities or not).

(2) Subject to section 19(4), this Division has effect without prejudice to the liability of any person for causing or permitting a message—

(a) to contain information that is incorrect;

(b) to be expressed or otherwise identifiable as being sent by a person who did not send the message; or

(c) to be sent without authority.

17. Authenticated message sent by oneself

(1) This section applies if—

(a) an authenticated message is attributable to a person because the message is expressed or otherwise identifiable as being sent by the person; and

(b) the message is not expressed or otherwise identifiable as being sent on behalf of another person.

(2) The person mentioned in subsection (1)(a) is not entitled to deny to the addressee any of the following—

(a) that the information contained in the authenticated message is correct;

(b) that the person has sent the message.

18. Authenticated message sent on behalf of another person

(1) This section applies if an authenticated message ~~is attributable to a person (***principal***) because the message~~ is expressed or otherwise identifiable as being sent on behalf of ~~the principal~~ a person (***principal***) by another person (***agent***) and, accordingly, ~~also~~ attributable to both the principal and the agent.[72]

(2) The principal is not entitled to deny to the addressee any of the following—

(a) that the authenticated message was sent with the principal's authority;

(b) that the information contained in the message is correct.

(3) The agent is not entitled to deny to the addressee any of the following—

(a) that the agent has authority to send the authenticated message;

(b) that the agent has sent the message.

19. Right of addressee to rely on authenticated message

(1) An addressee who receives an authenticated message may, subject to subsection (2), accept that at the time when the message was sent and at any time after that—

(a) the information contained in the message was correct; and

(b) the following applies in respect of any person to whom the message is attributable—

(i) if the message is attributable to a person as described in section 17—the person has sent the message; or

(ii) if the message is attributable to a principal and an agent as described in section 18—

(A) the message was sent with the principal's authority; and

(B) the agent has sent the message.

(2) Subject to subsection (3), an addressee may not accept any of the matters specified in subsection (1) in respect of an authenticated message if, at the time when the addressee received the message or at any time after that, the addressee had actual notice that—

(a) any information contained in the message was incorrect; or

(b) the following applies in respect of any person to whom the message is attributable—

(i) if the message is attributable to a person as described in section 17—the person did not send the message; or

[72] Drafting amendment – subsection (1) amended for better clarity and easier reading.

(ii) if the message is attributable to a principal and an agent as described in section 18—

(A) the message was not sent with the principal's authority; or

(B) the agent did not send the message.

(3) Despite an addressee having actual notice of a matter mentioned in subsection (2) in respect of an authenticated message (***known matter***), the addressee may accept the matters specified in subsection (1) if, at the time when the known matter came to the addressee's actual notice, it was not reasonably practicable for the addressee to stop processing the message.

(4) A person who is permitted by this section to accept any matter is not liable in damages or otherwise to any person by reason of relying on the matter.

Part 5

Dematerialization on Request

20. Dematerialization at request of registered holder

(1) This section applies if—

(a) any prescribed securities are participating securities; and

(b) any units of those securities held by a registered holder of those securities are in certificated form (***certificated units***).

(2) The issuer of the prescribed securities may, at the request of the registered holder, dematerialize any number of the certificated units (***subject units***) if—

(a) the registered holder is a system-member of the corresponding UNSRT system for those securities; and

(b) the issuer has received—

(i) a dematerialization request made by the registered holder in relation to the subject units; and

(ii) subject to subsection (3), a valid title instrument issued to the registered holder covering the subject units.

(3) The issuer is not required to have received a valid title instrument mentioned in subsection (2)(b)(ii) if—

(a) in accordance with the governing provisions of the prescribed securities, no such title instrument has been issued; or

(b) the issuer is satisfied that the valid title instrument is lost or damaged.

(4) On receiving the dematerialization request and, if applicable, the title instrument mentioned in subsection (2)(b), the issuer must, as soon as reasonably practicable, decide whether to accept or refuse the request.

(5) If the issuer decides to accept the dematerialization request, the issuer must, as soon as reasonably practicable[73]—

~~(a) give the registered holder a notice of the decision;~~[74]

(b) ~~reflect~~ dematerialize the subject units by recording[75] in the register of holders of the prescribed securities that the subject units are held by the registered holder in uncertificated form; and

(c) if applicable—[76]

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[73] Added in response to comments received. (See paragraphs 248 to 249 of this conclusions paper).

[74] Deleted given the addition of new section 4A. (The dematerialization of securities will require an amendment to the ROM, ie, to note that the securities are now in uncertificated form. A confirmation will thus have to be sent under section 4A regarding the dematerialization. In view of this, there is no need for this section to also require the sending of a notice regarding the dematerialization.)

[75] Drafting amendment – paragraph (b) amended for better consistency with section 1AB(a) of Part 1 of Schedule 1 to the SFO, which defines the concepts of "certificated form" and "uncertificated form" by reference only to entries in the ROM.

[76] The phrase "if applicable" is used here but "to the extent applicable" is used in section 21(6)(d). This is because requests under section 20 are on a per title instrument basis, ie, each request is in respect of a particular title instrument. The phrase "if applicable" acknowledges that the particular instrument in question may not be produced. However, requests under section 21 are on a per transfer basis, ie, each request is in

(i) cancel the title instrument received in relation to the request or that is lost or damaged; and

(ii) record the cancellation of the title instrument in the register.

(6) If the issuer decides to refuse the dematerialization request, the issuer must, as soon as reasonably practicable,[77] ~~—~~

~~(a) give the registered holder a notice of the decision with reasons; and~~

~~(b) return any title instrument received in relation to the request to the registered holder~~.[78]

(7) An issuer that, without reasonable excuse, contravenes subsection (4), (5) or (6) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

21. Dematerialization at request of transferee

(1) This section applies if—

(a) any prescribed securities are participating securities;

(b) any units of those securities held by a person (~~transferor~~ ***transferor***) are in certificated form (***certificated units***); and

(c) the issuer of those securities is requested to register a transfer of ~~those securities involving~~ any number of the certificated units from the transferor to another person (***transferee***).

(2) The issuer of the prescribed securities may, at the request of the transferee, dematerialize ~~the~~ any number of the certificated units being transferred (***subject units***) if—

(a) the transferee is a system-member of the corresponding UNSRT system for those securities;

(b) the issuer has received—

(i) a dematerialization request made by the transferee in respect of the subject units; and

(ii) subject to subsection (3), valid title instruments issued to transferor that are sufficient to cover the subject units; and

(c) the issuer is satisfied that the transfer may be registered.

(3) The issuer is not required to have received a valid title instrument mentioned subsection (2)(b)(ii) that covers a number of the subject units if—

(a) in accordance with the governing provisions of the prescribed securities, no such title instrument has been issued; or

(b) the issuer is satisfied that the valid title instrument is lost or damaged.

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respect of a particular transfer, and may therefore cover more than one title instruments. The phrase "to the extent applicable" reflects that only some of the title instruments may be produced.

[77] See footnote 73 above.

[78] Deleted so as not to affect an issuer's ability to retain a title instrument (and without dematerializing the securities covered by it) if it considers that it is necessary and appropriate to do so, eg, if the instrument submitted is a forgery.

(4) Subsection (3) does not affect the operation of subsection (2)(b)(ii) in respect of any other valid title instruments required for covering any number of the subject units other than those covered by subsection (3).

(5) On receiving the dematerialization request and, to the extent applicable, the title instruments mentioned in subsection (2)(b), the issuer must, as soon as reasonably practicable, decide whether to accept or refuse the request.

(6) If the issuer decides to accept the dematerialization request, the issuer must, as soon as reasonably practicable[79]—

~~(a) give the transferee a notice of the decision;~~[80]

(b) register the transfer;

(c) ~~reflect~~ dematerialize the subject units by recording[81] in the register of holders of the prescribed securities that the subject units are held by the transferee in uncertificated form; and

(d) to the extent applicable—[82]

(i) cancel the title instruments received in relation to the request or that are lost or damaged; and

(ii) record the cancellation of the title instruments in the register.

(7) If the issuer decides to refuse the dematerialization request, the issuer must, as soon as reasonably practicable[83]—

(a) give the transferee a notice of the decision with reasons; and

(b) refuse to register the transfer~~; and~~

~~(c) return any title instruments received in relation to the request to the person from whom they are received~~.[84]

(8) An issuer that, without reasonable excuse, contravenes subsection (5), (6) or (7) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

22. Form etc. for dematerialization request

(1) The issuer of any prescribed securities may specify—

~~(a)~~ the form and manner in which a dematerialization request relating to those securities is to be made~~; and~~

~~(b) the fee, if any, to accompany such a request, which must not exceed […]~~.[85]

(2) Without limiting any other ground on which a dematerialization request relating to the prescribed securities may be refused, the issuer may refuse such a request if the request—

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[79] See footnote 73 above.

[80] Deleted given the addition of new section 4A. (See footnote 74 above.)

[81] See footnote 75 above.

[82] See footnote 76 above.

[83] Added in response to comments received. (See paragraphs 248 to 249 of this conclusions paper.)

[84] See footnote 78 above.

[85] Deleted given that any limits on fees to be charged will now be set out in the ASR Code rather than the ASR Rules. (See paragraphs 60 to 64 of this conclusions paper.)

(a) is not made in the form or manner specified under subsection (1)~~(a)~~; or

(b) is not accompanied by the fee~~ specified under subsection (1)(b)~~, if any, charged by the corresponding registrar for those securities in relation to the request.

Part 6

Issuer's Authority on Dematerialization etc.

23. Dematerialization without request

(1) This section applies if—

(a) any prescribed securities are participating securities; and

(b) any units of those securities that are held, or to be held, by~~, or to be transferred to,~~[86] a person (***subject person***) are in certificated form (***certificated units***).

(2) The issuer of the prescribed securities may, on its own initiative and without a dematerialization request, dematerialize any number of the certificated units (***subject units***) if—

(a) the subject person is a system-member or provisional system-member of the corresponding UNSRT system for those securities; and

(b) subject to subsection (3), the issuer has received a valid title instrument covering the subject units that was issued to—

(i) the subject person; or

(ii) the person from whom the subject person will receive[87] the subject units ~~are to be transferred to the subject person~~.

(3) The issuer is not required to have received a valid title instrument mentioned in subsection (2)(b) if—

(a) in accordance with the governing provisions of the prescribed securities, no such title instrument has been issued; or

(b) the issuer is satisfied that the valid title instrument is lost or damaged.

(4) Without limiting subsection (2), the issuer may dematerialize the subject units under that subsection in any of the following circumstances—[88]

(a) where the issuer is requested to register a transfer of—

(i) ~~the prescribed securities involving~~ the subject units; or

(ii) any ~~related~~ other units of the prescribed securities that are covered by the same valid title instrument as the subject units;

(b) where the issuer is requested to issue a title instrument ~~to cover the subject units or any related units~~ in replacement of a lost or damaged one that covers the subject units;

(c) where an event occurs that, but for ~~this section~~ these Rules, would require or entitle the issuer to issue a title instrument to cover the subject units~~ or any related units~~.

(5) If the issuer decides to dematerialize the subject units, the issuer must, as soon as reasonably practicable[89]—

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[86] Amended to widen the scope of section 23 so that it covers not only holders and transferees but also other persons to whom title may pass (eg, transmittees to whom title may pass by operation of law).

[87] Drafting amendment – paragraph (b)(ii) amended consequential to amending section 23(1)(b). (See footnote 86 above.)

[88] Drafting amendment – subsection (4) amended for better clarity and easier reading.

~~(a) give the subject person a notice of the decision;~~[90]

(b) ~~reflect~~ dematerialize the subject units by recording[91] in the register of holders of the prescribed securities that the subject units are held by the subject person in uncertificated form; and

(c) if applicable—

(i) cancel the title instrument received or that is lost or damaged; and

(ii) record the cancellation of the title instrument in the register.

(6) An issuer that, without reasonable excuse, contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

~~(7) In this section—~~

~~***related units*** (相關單位), in relation to any subject units, means any other units of the prescribed securities covered by the same valid title instrument as the subject units.~~[92]

24. Issue of new units in uncertificated form

(1) This section applies if—

(a) any prescribed securities are participating securities; and

(b) any units of those securities (***new units***) are to be issued to a person.

(2) The issuer of the prescribed securities may issue the new units to the person mentioned in subsection (1)(b) as units in uncertificated form if the person is a system-member or provisional system-member of the corresponding UNSRT system for those securities.

(3) If the issuer decides to issue any new units to a person as units in uncertificated form under subsection (2), the issuer—

~~(a) must, unless the person has previously been notified of the issuer's intention to do so, give the person a notice of the decision;~~

(b) must ~~reflect~~, as soon as reasonably practicable[93], record in the register of holders of the prescribed securities that the new units are held by the person in uncertificated form; and

(c) must not issue any title instrument to cover the new units.

~~(4) The issuer must not issue both units in certificated form and units in uncertificated form on the same occasion, regardless of whether those units are issued to one or more persons.~~[94]

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[89] See footnote 73 above.

[90] See footnote 74 above.

[91] See footnote 75 above.

[92] Drafting amendment – definition deleted consequential to amending subsection (4).

[93] See footnote 73 above.

[94] Deleted in light of the revised section 28 which now prohibits new units of participating securities from being issued in certificated form.

(5) An issuer that, without reasonable excuse, contravenes subsection (3) ~~or (4)~~ commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

~~**25. No duty to issue title instrument for uncertificated units**~~[95]

~~(1) This section applies if—~~

~~(a) any prescribed securities are participating securities; and~~

~~(b) any units of those securities held by a registered holder of those securities are in uncertificated form (***uncertificated units***).~~

~~(2) The issuer of the prescribed securities is not required to issue any title instrument to the registered holder to cover any number of the uncertificated units, regardless of whether the registered holder—~~

~~(a) would, but for this section, be entitled to be issued a title instrument in respect of the subject units; or~~

~~(b) agrees to not being issued such a title instrument.~~

26. Rematerialization in contemplation of delisting[96]

(1) ~~If~~ This section applies if—

(a) any prescribed securities are in the process of delisting~~,~~; and

(b) ~~the issuer of those securities may, on its own initiative, rematerialize~~ any ~~number of~~ units of those securities held by a registered holder of those securities ~~that~~ are in uncertificated form (***subject units***).

(2) ~~If the issuer decides to rematerialize the subject units under subsection (1), t~~The issuer of the prescribed securities must, ~~before the prescribed securities cease to be listed~~—

~~(a) give the registered holder a notice of the decision;~~[97]

(b) ~~amend~~ before the securities cease to be listed, rematerialize the subject units by removing from[98] the register of holders of those securities ~~to reflect~~ all records that ~~the registered holder no longer holds~~ the subject units are held by the registered holder in uncertificated form; and

(c) if the governing provisions of those securities so require, issue to the registered holder ~~a~~ one or more title instruments covering the subject units as soon as reasonably practicable after the rematerialization.

(2A) For the purposes of subsection (2)(c), if the registered holder is a recognized clearing house or its nominee and so specifies, the title instruments must be in the number, and each in the denomination, specified by the clearing house or nominee.

(2B) The issuer must also, in the notice it gives under section 4A(2) in respect of the removal of records under subsection (2)(b), state—

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[95] See paragraph 48 of this conclusions paper which explains the deletion of section 25.

[96] See paragraphs 131 to 140 of this consultation paper which explain the amendments to section 26.

[97] Deleted given the addition of new section 4A. (The rematerialization of securities will require an amendment to the ROM, ie, to note that the securities are now in certificated form. A confirmation will thus have to be sent under section 4A regarding the rematerialization. In view of this, there is no need for this section to also require the sending of a notice regarding the rematerialization.)

[98] See footnote 75.

(a) whether the registered holder is entitled to be issued any title instrument in relation to the subject units; and

(b) if so, when and how such title instrument may be obtained.

(3) An issuer that, without reasonable excuse, contravenes subsection (2), (2A) or (2B) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

Part 7[99]

Transition to Full Dematerialization

27. Prescribed securities to become ~~and remain~~ participating securities

~~(1) Subject to section 32, the issuer of any specified securities must ensure that those securities—~~

~~(a) become participating securities before the specified date for those securities; and~~

~~(b) remain to be participating securities on and after that date.~~

(1A) The issuer of any specified prescribed securities (except subscription warrants or rights under a rights issue) the listing date of which falls on or before the implementation date must ensure that those securities become participating securities on or before the earlier of—

(a) the specified date for those securities; and

(b) the participation deadline.

(1B) The issuer of any specified prescribed securities (except subscription warrants or rights under a rights issue) the listing date of which falls after the implementation date must ensure that those securities become participating securities on or before—

(a) the listing date; or

(b) if a notice is given under subsection (1E) in respect of those securities— the earlier of—

(i) the specified date for those securities; and

(ii) the participation deadline.

(1C) The issuer of any prescribed securities that are subscription warrants or rights under a rights issue must, if their underlying securities are participating securities at the time when the warrants or rights are issued, ensure that the warrants or rights become participating securities on or before the listing date of those warrants or rights.

(1D) For the purposes of subsection (1A)(a)—

(a) a date must be specified for any specified prescribed securities to which that subsection applies as the date by which those securities must become participating securities; and

(b) such a date must be specified, by notice in writing served on the issuer of those securities—

(i) by the corresponding parties for those securities; or

(ii) if the corresponding parties notify the Commission that they are unable to agree on such a date—by the Commission

(1E) For the purposes of subsection (1B)(b), within 1 year after the implementation date and before the listing date of any specified prescribed securities to which that subsection applies, the corresponding exchange company for those securities may,

[99] See paragraphs 44 to 47 of this conclusions paper which explain in detail the changes to Part 7.

if it is satisfied of the matters specified in subsection (1F), by notice in writing served on the issuer of those securities—

(a) allow those securities to become participating securities on a date later than the listing date of those securities; and

(b) specify a date as the date by which those securities must become participating securities.

(1F) The matters specified for subsection (1E) are—

(a) that there are exceptional circumstances justifying the securities becoming participating securities after the listing date; and

(b) that requiring the securities to become participating securities on the listing date would cause unreasonable delay to the intended listing date.

(1G) A person who specifies a date under subsection (1D) or (1E) in relation to any specified prescribed securities may, in addition to any other matter the person considers appropriate, have regard to—

(a) the number of title instruments that are issued in respect of those securities and still in circulation;

(b) the number of registered holders of those securities;

(c) any time reasonably needed for amending the governing provisions of those securities to allow those securities to become participating securities;

(d) any impact an intended specified date may have on the proper and orderly completion of any pending event (such as an entitlement distribution, consolidation or subdivision) concerning those securities; and

(e) any factor relevant to arranging for all specified prescribed securities to become participating securities on or before the participation deadline in an orderly manner.

(1H) A date specified under subsection (1D) or (1E) in respect of any specified prescribed securities may be revised or cancelled in the same manner as it was specified.

(2) An issuer that, without reasonable excuse, contravenes subsection (1A), (1B) or (1C) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

(3) In this section—

corresponding parties (相應人士), in relation to any prescribed securities, means—

(a) the corresponding registrar for those securities;

(b) the corresponding clearing house for those securities; and

(c) the corresponding exchange company for those securities;

implementation date (實施日期) means the date on which these Rules come into operation;

listing date (上市日期), in relation to any prescribed securities, means the first date on which dealings in those securities on the recognized stock market operated by the corresponding exchange company for those securities is allowed to take place;

participation deadline (參與期限) means the expiry of 5 years after the implementation date;

specified date (指明日期), in relation to any ~~specified~~ prescribed securities~~, means, subject to section 31, the date specified in column 4 of item 1 of the Schedule against the class or description to which those securities belong;~~ to which subsection (1A) or (1B) applies, means—

(a) the date specified under subsection (1D) or (1E) in respect of those securities; or

(b) if such a date is revised under subsection (1H)—the date as revised;

specified prescribed securities (指明訂明證券) mean—

(a) prescribed securities that are shares in a body corporate incorporated in a place specified in the Schedule; or

(b) any other prescribed securities that are constituted under the law of a place specified in the Schedule;

~~***specified securities*** (指明證券) means any prescribed securities that fall within a class or description specified in column 3 of item 1 of the Schedule.~~

underlying securities (相關證券), in relation to any prescribed securities that are subscription warrants or rights under a rights issue, means the securities that the holder of those warrants or rights is entitled to subscribe for or be issued.

28. New units not to be issued in certificated form

(1) ~~Subject to section 32, t~~The issuer of any ~~specified~~ prescribed securities that are participating securities must not issue any ~~number of~~ units of those securities ~~(***new units***)~~ as units in certificated form ~~if the new units are issued on or after the specified date for those securities~~.

(2) An issuer that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

~~(3) In this section—~~

~~***specified date*** (指明日期), in relation to any specified securities, means, subject to section 31, the date specified in column 4 of item 2 of the Schedule against the class or description to which those securities belong;~~

~~***specified securities*** (指明證券) means any prescribed securities that fall within a class or description specified in column 3 of item 2 of the Schedule.~~

29. No issue of title instrument

(1) ~~Subject to section 32, t~~The issuer of any ~~specified~~ prescribed securities that are participating securities must not issue any title instrument to cover any ~~number of~~ units of those securities. ~~(***subject units***) on or after the specified date for those securities if—~~

~~(a) the securities are participating securities; or~~

~~(b) the subject units are in uncertificated form.~~

(2) An issuer that, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

~~(3) In this section—~~

~~***specified date*** (指明日期), in relation to any specified securities, means, subject to section 31, the date specified in column 4 of item 3 of the Schedule against the class or description to which those securities belong;~~

~~***specified securities*** (指明證券) means any prescribed securities that fall within a class or description specified in column 3 of item 3 of the Schedule.~~

30. Dematerialization of securities held by recognized clearing house

(1) This section applies to units of ~~specified~~ prescribed securities—

(a) the registered holder of which is a recognized clearing house or its nominee; and

(b) covered by a valid title instrument held in the custody of the recognized clearing house in accordance with its rules.

(2) ~~Subject to section 32, e~~Each of the following persons must ensure that the units of ~~specified~~ prescribed securities mentioned in subsection (1) (***target units***) are dematerialized ~~before the specified date for those securities~~ within 6 months after the date on which those securities become participating securities—

(a) the issuer of those securities; and

(b) the recognized clearing house which is, or the nominee of which is, the registered holder of the target units.

(3) An issuer or a recognized clearing house that, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and in the case of a continuing offence, to a further fine of $700 during each day that the offence continues.

~~(4) In this section—~~

~~***specified date*** (指明日期), in relation to any specified securities, means, subject to section 31, the date specified in column 4 of item 4 of the Schedule against the class or description to which those securities belong;~~

~~***specified securities*** (指明證券) means any prescribed securities that fall within a class or description specified in column 3 of item 4 of the Schedule.~~

~~**31. Deferral of specified date**~~

~~(1) For the purposes of facilitating the orderly transition to full dematerialization of all prescribed securities, the Commission may, in respect of any specified securities mentioned in a provision in this Part (***subject securities***), defer the date that has effect as the specified date mentioned in that provision (***effective specified date***).~~

~~(2) A deferral under subsection (1) may—~~

~~(a) specify the subject securities by reference to any class or description; and~~

~~(b) specify any circumstances in relation to which the deferral has effect.~~

~~(3) A deferral under subsection (1)—~~

~~(a) must be made by notice published in the Gazette before the date that would, but for the deferral, be the effective specified date for the subject securities (***original date***); and~~

~~(b) may state that the effective specified date for the subject securities is deferred until—~~

(i) the date specified in the deferral (***deferred date***), which must be a date later than the original date; or

(ii) the deferral is revoked.

(4) A deferral under subsection (1) has the following effect—

(a) if it contains a statement under subsection (3)(b)(i)—the deferred date is taken as the effective specified date for the subject securities; or

(b) if it contains a statement under subsection (3)(b)(ii)—the subject securities are taken as having no effective specified date.

(5) The Commission may, by notice published in the Gazette, amend or revoke a deferral under subsection (1) before the effective specified date for the subject securities or, if there is no such date, at any time.

(6) A revocation under subsection (5) has the effect that the date on which the revocation takes effect is taken as the effective specified date for the subject securities.

32. Exemptions

(1) This Part does not apply in relation to any prescribed securities that are in the process of delisting.

(2) The Commission may also, on application of a specified person and being satisfied of the matters specified in subsection (2A), exempt any specified prescribed securities mentioned in a provision in this Part (***subject securities***) from that a provision for a period specified in the exemption in this Part.

(2A) The matters specified for subsection (2) are—

(a) that there are exceptional circumstances justifying the exemption; and

(b) that the exemption would prejudice neither the interest of the investing public nor the public interest.

(3) An exemption under subsection (2)—

(a) must be given by a written notice in writing served on the specified person applying for the exemption; and

(b) may be subject to any conditions the Commission considers appropriate as specified in the exemption.; and

(c) may, where the provision requires an act to be done by a particular time, take the form of a deferral of such a time, either to another time or until the exemption is revoked.

(4) The Commission may, by a written notice in writing served on the specified person to whom an exemption under subsection (2) is given, amend or revoke—

(a) the exemption; or

(b) any conditions imposed in relation to the exemption.

(5) In this section—

specified person (指明人士), in relation to any specified securities, means—

(a) for section 27, 28 or 29—the issuer of those securities; or

(b) for section 30—

(i) the issuer of those securities; or

(ii) the recognized clearing house mentioned in that section in relation to those securities.

Schedule

[ss. 27~~, 28, 29, 30, 31 & 32~~]

~~Specified Securities and Dates for Full Dematerialization~~[100]

~~Column 1~~	~~Column 2~~	~~Column 3~~	~~Column 4~~
~~Item~~	~~Provision in Part 7~~	~~Specified Securities~~	~~Specified Date~~
~~1.~~	~~Section 27 (prescribed securities to become and remain participating securities)~~	~~*[This item is deliberately left blank]*~~	~~*[This item is deliberately left blank]*~~
~~2.~~	~~Section 28 (new units not to be issued in certificated form)~~	~~*[This item is deliberately left blank]*~~	~~*[This item is deliberately left blank]*~~
~~3.~~	~~Section 29 (no issue of title instrument)~~	~~*[This item is deliberately left blank]*~~	~~*[This item is deliberately left blank]*~~
~~4.~~	~~Section 30 (dematerialization of securities held by recognized clearing house)~~	~~*[This item is deliberately left blank]*~~	~~*[This item is deliberately left blank]*~~

Places Specified for Specified Prescribed Securities[101]

1. [Bermuda
2. Cayman Islands
3. Hong Kong
4. Mainland of China]

[100] Drafting amendment – table deleted consequential to amending Part 7 as discussed in paragraphs 44 to 47 of this conclusions paper.

[101] See paragraph 46(a) of this conclusions paper which explains why these jurisdictions are listed.

Annex 3 – Further amendments to the ASR Rules

Securities and Futures (Approved Securities Registrars) Rules

Part 1
Preliminary

Part 2
General Requirements

Part 3
Financial Resources

Part 4
Keeping of Records

Part 5
Audit and Reporting

Securities and Futures (Approved Securities Registrars) Rules

(Made by the Securities and Futures Commission under sections 101AAM and 397 of the Securities and Futures Ordinance (Cap. 571))

Part 1

Preliminary

1. Commencement

These Rules come into operation on ~~[*a specified date*]~~ the day on which Part IIIAA of the Ordinance comes into operation.

2. Interpretation

(1) In these Rules—

available liquidity (可動用流動資金), in relation to an approved securities registrar, means the aggregate of—

(a) its cash and cash equivalents; and

(b) any sums receivable by it in the ordinary course of business within 90 days;

capital (資本), in relation to an approved securities registrar, includes the issued share capital and retained earnings of the registrar;[102]

~~***client*** (客戶), in relation to an approved securities registrar—~~

~~(a) means a person to whom the registrar provides a securities registrar service; and~~

~~(b) includes a current, former or prospective holder of the prescribed securities in respect of which such a service is provided;~~[103]

~~***client money*** (客戶款項), in relation to an approved securities registrar, means any money—~~

~~(a) received by or on behalf of the registrar that is so received from or on behalf of a client of the registrar; or~~

~~(b) held by or on behalf of the registrar that is so held on behalf of a client of the registrar;~~[104]

corresponding exchange company (相應交易所), in relation to any prescribed securities, has the meaning given by section 12 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V);

external borrowings (外部借貸), in relation to an approved securities registrar, means the amount calculated in accordance with the following formula—

A – B

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[102] Drafting amendment – new term introduced and defined for better clarity and easier reading.

[103] The term “client” is deleted and replaced by “issuer-client” and “securities holder” in response to comments received. (See paragraphs 152 to 153 of this conclusions paper.)

[104] The term “client money” is deleted and replaced by “third party money” in response to comments received. (See paragraphs 152 to 153 of this conclusions paper.)

where—

A = the amount of the registrar's total outstanding borrowings; and

B = the amount of the registrar's outstanding borrowings from its members;

gearing ratio (槓桿比率), in relation to an approved securities registrar, means the ratio, expressed as a percentage, calculated in accordance with the following formula—

$$\frac{A}{B}$$

where—

A = the amount of the registrar's external borrowings; and

B = the amount of the registrar's total equity;

issuer (發行人), in relation to any prescribed securities, has the meaning given by section 2(1) of the Securities and Futures (Uncertificated Securities Market) Rules ~~(Cap. 571 sub. leg. [ ])~~;

issuer-client (發行人客戶), in relation to an approved securities registrar, means an issuer of any prescribed securities in respect of which the registrar provides a securities registrar service;[105]

maximum gearing ratio (槓桿比率上限), in relation to an approved securities registrar, means the percentage mentioned in section 8(3)(c) as specified or amended by the Commission in respect of the registrar;

minimum capital level (資本水平下限), in relation to an approved securities registrar, means the amount mentioned in section 8(3)(a) as specified or amended by the Commission in respect of the registrar;

minimum liquidity level (流動資金水平下限), in relation to an approved securities registrar, means the amount mentioned in section 8(3)(b) as computed by reference to the number of months specified or amended by the Commission in respect of the registrar;

securities holder (證券持有人), in relation to an approved securities registrar, means a person who is or was entered, or is seeking to be entered, in the register of holders of any prescribed securities in respect of which the registrar provides a securities registrar service as a holder of those securities;[106]

securities registrar (證券登記機構), in relation to any prescribed securities, has the meaning given by section 12 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V);

senior employee (高級僱員), in relation to an approved securities registrar, has the meaning given by section 101AAG(8) of the Ordinance;[107]

service facilities (服務設施), in relation to an approved securities registrar, means any electronic facilities, including a UNSRT system, used in the registrar's provision of securities registrar services, whether or not the facilities are owned or used by the registrar;

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[105] See footnote 103 above.

[106] See footnote 103 above.

[107] Drafting amendment – definition moved to section 2 as the term is now used in multiple places.

~~***SRS business*** (證券登記業務), in relation to an approved securities registrar, means its business and operations relating to the provision of securities registrar services;~~[108]

surplus liquidity (流動資金盈餘), in relation to an approved securities registrar, means the amount calculated in accordance with the following formula—

$$A - B$$

where—

A = the amount of the registrar's available liquidity; and

B = the amount of the registrar's minimum liquidity level;

~~***client***~~ ***third party money*** (~~客戶~~第三方款項), in relation to an approved securities registrar, means any money—

(a) received by or on behalf of the registrar that is so received from or on behalf of ~~a client~~ an issuer-client or securities holder of the registrar; or

(b) held by or on behalf of the registrar that is so held on behalf of ~~a client~~ an issuer-client or securities holder of the registrar;[109]

total operating expenses (營運開支總額), in relation to an approved securities registrar, means the aggregate of—

(a) its operating expenses (excluding depreciation and amortization); and

(b) its financing costs, if any~~;~~.

~~***unit*** (單位), in relation to any prescribed securities, has the meaning given by section 2(1) of the Securities and Futures (Uncertificated Securities Market) Rules (Cap. 571 sub. leg. [ ]).~~[110]

(2) In these Rules, a reference to an approved securities registrar's business and operations is, except in section 7(1)(b), a reference to the registrar's business and operations as an approved securities registrar.[111]

3. Specification of securities registrar service

(1) For the purposes of paragraph (c) of the definition of ***securities registrar service*** in section 1 of Part 1 of Schedule 1 to the Ordinance, each of the following is specified as a securities registrar service—

(a) any service in connection with a public offer of prescribed securities, where the service is provided—

(i) by the securities registrar for those securities; and

(ii) to the issuer of those securities or to any other person as an agent of the issuer;

(b) any service in connection with a corporate action in respect of prescribed securities, where the service is provided—

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[108] Drafting amendment – the term "SRS business" is deleted consequential to addition of section 2(2) to explain how "business and operation" is to be interpreted. (See paragraphs 150 to 151 of this conclusions paper and new definition "business and operations" under section 1.1 of the amended ASR Code.)

[109] See footnote 104 above.

[110] Drafting amendment – definition moved to section 25 as the term is used in that section only.

[111] Section 2(2) added to address concerns about the scope of services to be regulated. (See paragraphs 150 to 151 of this conclusions paper and new definition "business and operations" under section 1.1 of the amended ASR Code.)

(i) by the securities registrar for those securities; and

(ii) to the issuer of those securities or to any other person as an agent of the issuer.

(2) For subsection (1), a person (***provider***) may be taken as providing a service to another person (***recipient***) regardless of—

(a) whether the service is provided pursuant to an arrangement between the provider and the recipient; and

(b) whether any fee is payable by the recipient to the provider for the service.

(3) In this section—

corporate action (公司行動), in relation to any prescribed securities, means an action taken, or to be taken, by the issuer of those securities that relates to any right or interest in or arising from those securities;

public offer (公開發售), in relation to any prescribed securities, means—

(a) an offer of those securities to the public for purchase; or

(b) an invitation to the public to make offers to purchase those securities.

Part 2

General Requirements

4. Premises

(1) An approved securities registrar must not use any premises for any of the following purposes unless the premises are suitable for being used for that purpose—

(a) providing securities registrar services;

(b) processing or storing information or data relating to its ~~SRS~~ business and operations~~;~~.

~~(c) keeping records or documents required under these Rules.~~[112]

(2) An approved securities registrar must ensure that—

(a) any premises at which it provides securities registrar services are at all times adequate and properly equipped for the smooth operation of its ~~SRS~~ business and operations; and

(b) any premises at which it processes or stores information or data relating to its ~~SRS~~ business and operations are at all times adequate and properly equipped for maintaining the security, integrity and ready accessibility of such information or data.

5. Service facilities

An approved securities registrar must ensure that its service facilities are equipped with the following for providing securities registrar services—

(a) adequate capacity;

(b) facilities to meet contingencies or emergencies;

(c) security arrangements; and

(d) technical support.

6. Management and governance

(1) An approved securities registrar must ensure that there are at all times—

(a) competent personnel for managing and supervising its ~~SRS~~ business and operations;

(b) effective internal control procedures, as well as risk management systems and policies, for ensuring that risks associated with its ~~SRS~~ business and operations are managed prudently; and

(c) effective contingency measures and business continuity arrangements for minimizing disruption to its ~~SRS~~ business and operations.

(2) An approved securities registrar must—

(a) establish suitable standards and practices regarding the governance, management and conduct of its provision of securities registrar services; and

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[112] Drafting amendment – paragraph (c) deleted for better consistency with new section 101AAK(1)(b)(ii) of the SFO that was introduced under section 7 of the USM Amendment Ordinance. (The contents of paragraph (c) are already covered by paragraph (b). For avoidance of doubt, a note is also added at the end of section 4.3 of the ASR Code to make this clear.)

(b) maintain adequate arrangements to monitor and enforce compliance with such standards and practices.

7. Insurance coverage

(1) An approved securities registrar must ~~take out and maintain~~ ensure that it is covered by[113] insurance that is—

(a) necessary to provide reasonable protection against risks associated with its ~~SRS~~ business and operations; and

(b) adequate having regard to the size, structure and nature of all of its businesses and operations, whether as an approved securities registrar or not.[114]

(2)[115] Without limiting subsection (1), the risks to be insured against under that subsection include risks of loss or damage attributable to any of the following—

(a) fraudulent or dishonest conduct, or gross negligence, by an officer or employee (including a former officer or employee) of—

(i) the approved securities registrar; or

(ii) any other person engaged by the registrar to assist in its provision of securities registrar services;

(b) robbery ~~or~~, theft or leakage of any property or information ~~received from, or~~ held ~~on behalf of, a client of~~ by the registrar;

~~(c) forgery or fraudulent alteration of—~~

~~(i) a cheque or other negotiable instrument;~~

~~(ii) a register of holders of prescribed securities for which the registrar acts as the securities registrar;~~

~~(iii) a certificate or other document evidencing title to, or other interests in, prescribed securities; or~~

~~(iv) an instrument or other document relating to the transfer of prescribed securities;~~

~~(d) forgery or fraudulent alteration of an instruction or request (whether electronic or otherwise) relating to—~~

~~(i) the holding, transfer or any other disposal of prescribed securities;~~

~~(ii) the making, distribution, receipt or any other disposal of any payment relating to prescribed securities; or~~

~~(iii) the exercise of rights relating to prescribed securities;~~

(e) ~~fraudulent use of~~ unauthorized or fraudulent access to, or use of, the service facilities of the registrar~~.~~;

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[113] Amendment to address concerns about insurance being taken out by someone other than the ASR itself. (See paragraphs 178 to 179 of this conclusions paper.)

[114] Drafting amendment – amended to clarify that an ASR's insurance coverage should take into account various aspects of all of its businesses and operations. (The amendment is consequential to "business and operations" taking on a specific meaning under section 2(2)).

[115] Subsection (2) amended to address concerns about cyber risks and threats, and to clarify the coverage expected in relation to third party acts and omissions. (See paragraphs 168 to 169 and 180 to 181 of this conclusions paper.)

(f) any incident or attempt at compromising the normal functioning of the service facilities of the registrar.

Part 3

Financial Resources

8. Financial resources

(1) An approved securities registrar must at all times maintain financial resources that comply with the requirements specified or amended under this section in respect of it.

(2) For the purposes of subsection (1), the Commission may, by notice in writing served on an approved securities registrar, specify—

(a) requirements as to the amount of financial resources to be maintained by the registrar; and

(b) any other requirements in accordance with which such financial resources are to be maintained.

(3) Without limiting subsection (2), the Commission may, in relation to an approved securities registrar, specify all or any of the following as a requirement under that subsection—

(a) that its capital must not fall below a specified amount;

(b) that its available liquidity must not fall below an amount equivalent to its total operating expenses projected for a specified number of months;

(c) that its gearing ratio must not exceed a specified percentage.

(4) The Commission may, by notice in writing served on an approved securities registrar, amend or revoke any requirement specified under subsection (2) in respect of the registrar.

(5) A requirement specified under subsection (2), or an amendment or revocation of a requirement under subsection (4), takes effect at the later of—

(a) the time at which the notice is served on the approved securities registrar; and

(b) the time specified in the notice.

9. Notification regarding financial resources

(1) If an approved securities registrar becomes aware of its inability to comply with, or ascertain whether it complies with, section 8(1), it must, as soon as reasonably practicable and in any event within 1 business day after becoming aware of that matter, notify the Commission in writing of that matter.

(2) If an approved securities registrar becomes aware of any of the following matters, it must, as soon as reasonably practicable and in any event within 1 business day after becoming aware of that matter, notify the Commission in writing of that matter—

(a) its capital falls below 110% of its minimum capital level;

(b) its available liquidity falls below 120% of its minimum liquidity level;

(c) its gearing ratio exceeds 50%;

(d) its surplus liquidity falls below 50% of the level as at the end of the immediately preceding month;

(e) the aggregate of the amounts it has drawn down on any loan, advance, credit facility or other financial accommodation provided to it by banks exceeds the aggregate of the credit limits of such financial accommodations;

(f) it has been or will be unable, for 3 consecutive business days, to meet in whole or in part any calls or demands for payment or repayment (as the case may be), from any of its lenders, credit providers or financial accommodation providers;

(g) any of its lenders or any person who has provided credit or financial accommodation to it has exercised, or has informed it that the person will exercise, the right to liquidate security provided by it to the person in order to reduce its liability or indebtedness to the person under any outstanding loan, advance, credit facility balance or other financial accommodation provided to it by the person;

(h) the aggregate of the maximum amounts that can be drawn down against it under any guarantee, indemnity or any other similar financial commitment provided by it—

(i) exceeds its minimum capital level; or

(ii) would, if deducted from its available liquidity, cause its available liquidity to fall below 120% of its minimum liquidity level;

(i) the aggregate of amounts of any outstanding claim made in writing by it or against it (whether disputed or not) exceeds or is likely to exceed its minimum capital level;

(j) the aggregate of amounts of any outstanding claim made in writing by it or against it (whether disputed or not) would, if deducted from its available liquidity, cause its available liquidity to fall below 120% of its minimum liquidity level;

(k) any claim is made by it under any professional indemnity or other insurance policy that it maintains in respect of any of its businesses;

(l) any information contained in any of its financial statements or returns submitted to the Commission under section 16(1) or (2) or 17(1A) has become false or misleading in a material particular.

(3) If an approved securities registrar intends to change any of its accounting policies in a way that may materially affect any of the following, it must notify the Commission in writing of the intended change not less than 5 business days prior to effecting the change—

(a) its total equity;

(b) its available liquidity;

(c) its minimum liquidity level;

(d) its gearing ratio;

(e) its total operating expenses.

10. Requirements regarding notification under section 9

(1) An approved securities registrar that is required under section 9 to notify the Commission of a matter must include in the notification (***required notification***) full details of the matter and the reasons for it.

(2) If the required notification relates to one of the following matters, the approved securities registrar must also include in the notification full details of any steps it is taking, or has taken or proposes to take, to—

(a) for a matter mentioned in section 9(1)—redress the inability concerned;

(b) for a matter mentioned in section 9(2)(a)—prevent its capital from falling below its minimum capital level;

(c) for a matter mentioned in section 9(2)(b), (d), (e), (f) or (g)—prevent its available liquidity from falling below its minimum liquidity level or to improve its liquidity; or

(d) for a matter mentioned in section 9(2)(c)—prevent its gearing ratio from exceeding its maximum gearing ratio.

(3) After giving a required notification, an approved securities registrar must also—

(a) provide the Commission with any additional information or document it reasonably requires in connection with the matter to which the notification relates; and

(b) provide such information or document in the form and manner, and within the time, specified by the Commission.

Part 4

Keeping of Records

11. Keeping of records

(1) An approved securities registrar must, in relation to its ~~SRS~~ business and operations, keep ~~the~~ accounting and other records ~~specified in subsection (2).~~

~~(2) The records specified for subsection (1) are accounting and other records~~ that are sufficient to—

(a) explain, and reflect the financial position and operation of, the ~~SRS~~ business and operations of the approved securities registrar;

(b) enable financial statements that comply with section 16 to be prepared from time to time;

(c) account for all information required to be contained in a return under section 17(1A);

(d) demonstrate compliance by it with Parts 3 and 6;

(e) account for all property and information received from, or held on behalf of, the ~~clients~~ issuer-clients and securities holders of the registrar;

(f) enable all movements of such property and information to be traced through its accounting systems and, where applicable, service facilities;

(g) enable all activities, transactions, communications, instructions and other things in respect of prescribed securities that are carried out, executed or processed by or through its service facilities to be traced; and

(h) account for all entries, including changes effected to such entries, in the registers of holders of prescribed securities for which the registrar acts as the securities registrar.

(3) An approved securities registrar must retain the records that it is required to keep under this section—

(a) for a period of not less than 7 years; or

(b) for any such record that is, before the expiry of that period, required under section 28(1) to be transferred—until the record is so transferred.

(4) An approved securities registrar must adopt all reasonably necessary procedures to—

(a) guard against falsification of any of the records that it is required to keep under this section; and

(b) facilitate discovery of any such falsification.

(5) An entry in the records of an approved securities registrar is, in the absence of evidence to the contrary, deemed to have been made by or with the authority of the registrar.

(6) In this section—

change (變更), in relation to an entry in a register of holders, means any revision, addition or deletion of the entry or of any particular in the entry.

12. Manner in which records are to be kept

(1) An approved securities registrar must—

(a) keep the records that it is required to keep under section 11 (***required records***) in a manner that will enable an audit to be conveniently and properly carried out; and

(b) where applicable, make entries in those records in accordance with generally accepted accounting principles.

(2) An approved securities registrar must keep the required records—

(a) in writing in the Chinese or English language; or

(b) in a manner that enables them to be readily accessible and readily convertible into written form in the Chinese or English language.

13. Falsification, destruction, etc. of records

(1) A person commits an offence if the person, with intent to defraud—

(a) enters, records or stores, or causes to be entered, recorded or stored, in any records kept in compliance with, or in purported compliance with, section 11, any matter that the person knows to be false or misleading in a material particular;

(b) deletes, destroys, removes or falsifies, or causes to be deleted, destroyed, removed or falsified, any matter that has been entered, recorded or stored in any records kept in compliance with, or in purported compliance with, section 11; or

(c) fails to enter, record or store in any records kept in compliance with, or in purported compliance with, section 11, as soon as reasonably practicable, any matter that should be so entered, recorded or stored.

(2) A person who commits an offence under subsection (1) 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.

Part 5

Audit and Reporting

14. Appointment of auditor and notification of change of auditor

(1) An approved securities registrar must, within 1 month after each of the following events, appoint a practice unit (as defined by section 2(1) of the Accounting and Financial Reporting Council Ordinance (Cap. 588))[116] that is ~~an~~ independent from the registrar as an auditor to audit its financial statements—

(a) it is approved to provide securities registrar services;

(b) an auditor appointed under this subsection ceases to be its auditor.

(2) An approved securities registrar must, within 7 business days after it appoints an auditor under subsection (1), notify the Commission in writing of the name and address of the auditor.

(3) An approved securities registrar must, within 1 business day after each of the following events, notify the Commission in writing of that event—

(a) it gives notice to its members of a motion, to be moved at its general meeting—

(i) to remove an auditor appointed under subsection (1) before the auditor's term of office expires; or

(ii) to replace with another auditor, or not to reappoint, an auditor appointed under subsection (1) when the auditor's term of office expires;

(b) an auditor appointed under subsection (1) ceases to be its auditor before the auditor's term of office expires, otherwise than in consequence of a motion mentioned in paragraph (a).

15. Approval regarding financial year

(1) An approved securities registrar must not, without the approval of the Commission under subsection (2)—

(a) alter the date on which its financial year ends; or

(b) adopt any period that exceeds 12 months as its financial year.

(2) On application made in writing by an approved securities registrar, the Commission may approve, subject to any condition it considers appropriate—

(a) the alteration of the date on which the financial year of the registrar ends; or

(b) the adoption of any period that exceeds 12 months as the financial year of the registrar.

16. Audited financial statements etc.

(1) An approved securities registrar must, in respect of each financial year (except a financial year mentioned in subsection (2)), submit to the Commission within 4 months after the last day of that financial year financial statements that—

(a) are prepared in accordance with generally accepted accounting principles;

(b) are made up to and including the last day of that financial year; and

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[116] Requirement moved from section 2.5 of the amended ASR Code and amended to broaden the scope of auditors who may qualify. (See paragraphs 173 to 174 of this conclusions paper.)

(c) give a true and fair view of—

(i) the financial position of the registrar as at the end of that financial year; and

(ii) the financial performance and cash flows of the registrar for that financial year.

(2) An approved securities registrar that ceases to provide securities registrar services must, in respect of the financial year during which the cessation occurs, submit to the Commission within 4 months after the date of the cessation financial statements that—

(a) are prepared in accordance with generally accepted accounting principles;

(b) are made up to and including the date of the cessation; and

(c) give a true and fair view of—

(i) the financial position of the registrar as at the date of the cessation; and

(ii) the financial performance and cash flows of the registrar for that financial year.

(3) An approved securities registrar must submit to the Commission, together with the financial statements required under subsection (1) or (2), an auditor's report that includes a statement by the auditor as to whether, in the auditor's opinion, the financial statements—

(a) are in accordance with the records kept by the registrar under section 11; and

(b) comply with subsection (1) or (2) (as the case may be).

(4) An approved securities registrar must also submit to the Commission, together with the financial statements required under subsection (1)—

(a) the registrar's total capital expenses projected for the 12 months beginning after the last day of the financial year to which the statements relate, together with a breakdown of such expenses; and

(b) a description of the registrar's plan to finance the expenses mentioned in paragraph (a), together with—

(i) details of any capital injection, or borrowing, obtained or to be obtained for that purpose; and

(ii) documentation evidencing the plan.

(5) The Commission may, on application in writing by an approved securities registrar and being satisfied that there are special reasons for doing so—

(a) extend the time by which the matters mentioned in subsection (1), (2), (3) or (4) must be submitted for any period it considers appropriate; and

(b) impose any condition it considers appropriate in respect of the extension.

17. ~~Quarterly~~ Periodic returns[117]

~~(1) An approved securities registrar must, in respect of each quarter at the end of which it remains approved, submit in accordance with subsection (2) to the Commission a return that—~~

~~(a) contains the information specified in subsection (3); and~~

[117] Section 17 amended to address concerns about frequency of returns required and consequential costs implications. (See paragraphs 201 to 203 of this conclusions paper.)

~~(b) is signed on behalf of the registrar by 2 of its designated signatories.~~

(1A) An approved securities registrar must—

(a) in respect of each quarter at the end of which it remains approved—submit to the Commission a return that contains the information specified in subsection (3); and

(b) in respect of each half-year at the end of which it remains approved—submit to the Commission a return that contains the information specified in subsection (3A).

~~(2) A return under subsection (1) must be submitted—~~

~~(a) within 3 weeks after the end of the quarter to which the return relates; and~~

~~(b) in the form and manner specified by the Commission.~~

(3) The information specified for subsection (1A)(a) is—

(a) the approved securities registrar's available liquidity as at the end of the quarter to which the return relates;

(b) the registrar's total operating expenses for that quarter;

(c) the registrar's minimum liquidity level as at the end of that quarter;

(d) the registrar's total equity as at the end of that quarter; and

(e) the registrar's external borrowings as at the end of that quarter~~; and~~.

~~(f)~~(3A) The information specified for subsection (1A)(b) is information concerning—

(~~i~~a) ~~the clients~~ issuer-clients and securities holders of the approved securities registrar during that ~~quarter~~ half-year;

(~~ii~~b) ~~the~~ activities, transactions, communications, instructions or other things in respect of prescribed securities that were carried out, executed or processed in the course of the registrar's provision of securities registrar services during that half-year, whether by or through the registrar's service facilities ~~during that quarter~~ or otherwise;

(~~iii~~c) ~~any~~ enquiries and complaints in relation to the registrar's provision of securities registrar services that are relevant to that ~~quarter~~ half-year;

(~~iv~~d) ~~any~~ service facilities incidents that are relevant to that ~~quarter~~ half-year;

(~~v~~e) ~~any~~ operational incidents that are relevant to that ~~quarter~~ half-year; and

(~~vi~~f) ~~any~~ cases ~~during that quarter~~ where the registration of a transfer of prescribed securities was refused during that half-year while the registrar was acting as the securities registrar for those securities.

(3B) A return under subsection (1A)(a) or (b) must be—

(a) signed on behalf of the approved securities registrar by 2 of its designated signatories; and

(b) submitted—

(i) within 3 weeks after the end of the quarter or half-year to which the return relates; and

(ii) in the form and manner specified by the Commission.

(4) In ~~this~~ subsection (3A), a reference to enquiries, complaints or incidents that are relevant to a ~~quarter~~ half-year includes enquiries, complaints or incidents arising, outstanding or resolved during that ~~quarter~~ half-year.

(5) In this section—

designated signatory (指定簽署人), in relation to an approved securities registrar, means a person who is—

(a) an officer or senior employee ~~(as defined by section 101AAG(8) of the Ordinance)~~ of the registrar;

(b) involved in the management of the registrar's ~~SRS~~ business and operations; and

(c) designated by the registrar, and notified to the Commission, as ~~the~~ a person responsible for signing a return under subsection (1A)(a) or (b);

half-year (半年度) means a period of 6 consecutive months ending on the last day of June or December of a year;

operational incident (營運事故), in relation to an approved securities registrar, means any matter (including an unplanned interruption or emerging event) that has caused, or could cause, an adverse effect on any part of the normal provision of securities registrar services by the registrar, whether resulting from malicious activity or not;

quarter (季度) means a period of 3 consecutive months ending on the last day of March, June, September or December of a year;

service facilities incident (服務設施事故), in relation to an approved securities registrar, means any matter (including an unplanned interruption or emerging event) that has caused, or could cause, an adverse effect on—

(a) the normal functioning of any part of its service facilities, whether resulting from malicious activity or not; or

(b) the availability, security, confidentiality, authenticity or integrity of—

(i) any activity, transaction, communication, instruction or other thing in respect of prescribed securities that is carried out, executed or processed by or through its service facilities; or

(ii) any information or data processed, transmitted or stored by or through its service facilities.

18. Reportable matter

(1) An approved securities registrar must—

(a) notify the Commission of a reportable matter immediately after becoming aware of the matter; and

(b) submit in accordance with subsection (2) to the Commission any report ~~required by~~ the Commission reasonably requires explaining the matter.

(2) A report under subsection (1)(b) must—

(a) contain the information specified by the Commission; and

(b) be submitted in the form and manner, and within the time, specified by the Commission.

(3) In this section—

reportable matter (須報告事項), in relation to an approved securities registrar, means any of the following incidents other than one the adverse effect of which is ~~serious or significant~~ technical and can be easily and promptly rectified[118]—

(a) a service facilities incident (as defined by section 17(5));

(b) an operational incident (as defined by section 17(5)).

19. Notification of ~~C~~ change

(1) This section applies if—

(a) an approved securities registrar becomes aware of a change specified in Part 2 of the Schedule in relation to it; and

(b) the registrar has previously provided the information that is the subject of the change to the Commission under Part IIIAA of the Ordinance or these Rules.

(2) The approved securities registrar must, within 7 business days after becoming aware of the change mentioned in subsection (1)(a)~~,~~—

(a) notify the Commission in writing of the change ~~by notice in writing containing~~; and

(b) include in the notification—

(i) a full description of the change; and

(ii) any other information the Commission reasonably requires in relation to the change.[119]

(3) For the purposes of item 6 of Part 2 of the Schedule—

(a) that item does not require disclosure of information concerning an ongoing criminal investigation by a regulatory body or criminal investigatory body if such disclosure is prohibited by any statutory provision in Hong Kong or elsewhere; but

(b) the approved securities registrar must notify the Commission of the results of the investigation within 7 business days after the registrar becomes aware of the completion of the investigation.

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[118] Amended for consistency with Note under section 10.5(b) of the amended ASR Code. (See paragraphs 204 to 205 of this conclusions paper.)

[119] The addition here is to cater for circumstances where further information may be needed apart from the change itself. (See paragraph 200 of this conclusions paper.)

Part 6

Handling of ~~Client~~ Third Party Money

20. Application of Part 6

(1) Subject to subsections (2) and (3), this Part applies to ~~client~~ third party money of an approved securities registrar that is received or held by or on behalf of the registrar in the course of its provision of securities registrar services.

(2) This Part does not apply to ~~client~~ third party money held outside Hong Kong, except any such money that was received in Hong Kong and transferred outside Hong Kong in contravention of this Part.

(3) This Part does not apply to ~~client~~ third party money of an approved securities registrar that is in a bank account established and maintained by ~~a client of~~ an issuer-client of the registrar and in that client's name.

21. Segregation of ~~client~~ third party money

(1) An approved securities registrar must—

(a) establish and maintain in Hong Kong with an authorized financial institution one or more segregated accounts for ~~client~~ third party money; and

(b) designate each such account as a trust account or ~~client~~ third party account.

(2) An approved securities registrar must, within 1 business day after any ~~client~~ third party money is received in ~~respect~~ the course of its provision of a securities registrar service ~~provided by the registrar~~, pay the amount specified in subsection (3)—

(a) into a segregated account established and maintained under subsection (1)(a);

(b) to the ~~client~~ issuer-client or securities holder from whom or on whose behalf it has been received; or

(c) subject to subsection (4), in accordance with a written direction.

(3) The amount specified for subsection (2) is the amount of ~~client~~ third party money that is received from or on behalf of ~~a client~~ an issuer-client or securities holder in ~~respect~~ the course of the provision of the securities registrar service ~~provided~~, less the amount of any fee that may be lawfully charged by the approved securities registrar from the client or holder for that service.

(4) An approved securities registrar must not pay, or permit to be paid, under subsection (2)(c) any amount of its ~~client~~ third party money to a connected person unless that person is the ~~client~~ issuer-client or securities holder of the registrar on whose behalf such ~~client~~ third party money is being held.

(5) In this section—

connected person (有關連人士), in relation to an approved securities registrar, means —

(a) an officer or employee of the registrar; or

(b) an officer or employee of a corporation that is a member of a group of companies to which the registrar belongs;

written direction (書面指示), in relation to an amount of ~~client~~ third party money of an approved securities registrar, means a written notice that—

(a) is given to the registrar by the ~~client~~ issuer-client or securities holder of the registrar—

(i) from whom or on whose behalf that amount of ~~client~~ third party money was received; or

(ii) on whose behalf that amount of ~~client~~ third party money is being held; and

(b) directs the registrar to pay that amount of ~~client~~ third party money in a particular manner.

22. Payment of money out of segregated account

(1) An approved securities registrar that holds any amount of ~~client~~ third party money in a segregated account established and maintained under section 21(1)(a) (***segregated account***) must retain it there until it is—

(a) paid to the ~~client~~ issuer-client or securities holder on whose behalf it is held; or

(b) subject to subsection (2), paid in accordance with a written direction (as defined by section 21(5)).

(2) An approved securities registrar must not pay, or permit to be paid, under subsection (1)(b) any amount of its ~~client~~ third party money to a connected person (as defined by section 21(5)) unless that person is the ~~client~~ issuer-client or securities holder of the registrar on whose behalf such ~~client~~ third party money is being held.

(3) If an approved securities registrar becomes aware that it is holding an amount of money in a segregated account that is not ~~client~~ third party money of the registrar, it must, within 1 business day of becoming so aware, pay that amount of money out of the segregated account.

23. Reporting of non-compliance

An approved securities registrar must, within 1 business day after becoming aware that it does not comply with section 21 or 22, notify the Commission of that fact in writing.

Part 7

Communication in respect of Prescribed Securities in Uncertificated Form

~~[120]24. Confirmation of change in register of holders in respect of uncertificated holding~~

~~(1) This section applies if—~~

~~(a) an approved securities registrar is acting as the securities registrar for any prescribed securities;~~

~~(b) the registrar effects a change (as defined by section 11(6)) to an entry in the register of holders of those securities; and~~

~~(c) the entry relates to any units of those securities that are or, after the change is effected, will be in uncertificated form (***uncertificated units***).~~

~~(2) The approved securities registrar must, as soon as reasonably practicable and in any event within 1 business day after effecting the change mentioned in subsection (1)(b), send a statement containing the information specified in subsection (3) to the person who holds or will hold the uncertificated units.~~

~~(3) The information specified for subsection (2) is—~~

~~(a) a confirmation that the change mentioned in subsection (1)(b) has been effected;~~

~~(b) the details of the change effected; and~~

~~(c) the date on which the change was effected.~~

25. Annual statement of uncertificated holding

(1) This section applies if—

(a) an approved securities registrar is acting or has acted[121] as the securities registrar for any prescribed securities; and

(b) a person holds or has held during an annual reporting period any units of those securities that are or were in uncertificated form (***uncertificated units***).

(2) The approved securities registrar must send to the person mentioned in subsection (1)(b) (***recipient***) a statement ~~containing~~ that contains the following information ~~specified in subsection (3)~~ within 7 business days after the end of the annual reporting period~~.—~~

~~(3) The information specified for subsection (2) is—~~

(a) the name under which the ~~approved securities~~ registrar acts as the securities registrar for the prescribed securities;

(b) the address of the registrar's principal place of business in Hong Kong for acting as the securities registrar for those securities;

(c) the name and address of the recipient that are or were entered on the register of holders of those securities;

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[120] Deleted as the obligation to send confirmations will be imposed on issuers. (See paragraphs 99 to 101 of this conclusions paper.)

[121] Added for better clarity that this requirement covers an outgoing ASR where an issuer has changed its ASR during a year.

(d) a unique identification number assigned to the recipient by the registrar for maintaining the register of holders;

(e) the date on which the statement is prepared;

(f) the annual reporting period to which the statement relates (including a description of the start or end date if the period does not start on the first day of a year or end on the last day of a year)[122]; and

(g) the number of uncertificated units held by the recipient as at the beginning and as at the end of that period.

[123](4) In this section—

annual reporting period (年度申報期), in relation to a recipient, means—

(a) a period not exceeding 12 months that—

(i) begins on the date on which the recipient first holds any uncertificated units while the approved securities registrar is acting as the securities registrar for the prescribed securities; and

(ii) ends on a date selected by the registrar; or

(b) any subsequent period of 12 months that begins on—

(i) the date immediately following the end of the period mentioned in paragraph (a); or

(ii) an anniversary of the date mentioned in subparagraph (i).

26. Mode of communication[124]

(15) An The approved securities registrar that is required under section 24(2) or 25(2) to must send a the statement required under subsection (2) to a recipient (***required statement***) to a person must send it—

(a) in electronic form by—

(i) making it available for access by the person recipient electronically and notifying the recipient accordingly;[125] or

(ii) sending it to an electronic address specified by the person recipient; or

(b) if the person recipient so requests—in hard copy form by post to the address specified by the person recipient.

(26) An approved securities registrar must not charge a recipient person to whom a required statement is sent—[126]

(a) for a required statement sent in electronic form—any fee; or

(b) for a required statement sent in hard copy form—any fee that is more than necessary for—

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[122] Amended to clarify that confirmations should include sufficient information to help recipients better understand why they are receiving an annual statement.

[123] Drafting amendment – subsection (4) is moved to new subsection (7) below.

[124] Drafting amendment – section 26 is amended and incorporated into section 25 consequential to deleting section 24.

[125] Amended to clarify that where annual statements are made available electronically, ASRs should notify recipients of their availability and of how to access them – see new section 7.4A of the amended ASR Code.

[126] Amended to address concerns about the scope of the prohibition. (See paragraphs 55 to 57 of this conclusions paper.)

(i) recovering the cost of sending the statement in hard copy form; and

(ii) providing a reasonable disincentive for using paper documents.

(7) In this section—

annual reporting period (年度申報期), in relation to an approved securities registrar, means a period that—

(a) begins on—

(i) the first day of a year; or

(ii) if the registrar begins to act as the securities registrar for the prescribed securities during that year—the day on which the registrar so begins to act; and

(b) ends on—

(i) the last day of that year; or

(ii) if the registrar ceases to act as the securities registrar for the prescribed securities during that year—the day on which the registrar so ceases to act;

Note—

Examples of when an approved securities registrar ceases to act—

(a) when the registrar's appointment as the securities registrar is terminated; or

(b) when the prescribed securities cease to be listed.

unit (單位) has the meaning given by section 2(1) of the Securities and Futures (Uncertificated Securities Market) Rules.

Part 8

Duties in respect of Change in Securities Registrar

27. Duty not to cease to act as securities registrar

(1) Subject to subsection (4), an approved securities registrar that is the securities registrar for any prescribed securities must not cease to act as the securities registrar for those securities unless it does so—

(a) with the issuer's consent and after completing the transfer specified in section 28(2);

(b) in accordance with a permission given by the Commission under subsection (2); or

(c) to avoid contravening a requirement of, or imposed under, the Ordinance.

(2) For the purposes of subsection (1)(b), the Commission may, on application in writing by an approved securities registrar, permit the registrar to cease to act as the securities registrar for any prescribed securities if the Commission is satisfied that it would be impracticable, unreasonable or unduly burdensome for the registrar to continue to act as the securities registrar for those securities.

(3) A permission under subsection (2)—

(a) must be given by notice in writing served on the approved securities registrar;

(b) may be subject to any condition specified in the notice; and

(c) takes effect at the time specified in the notice (***specified time***) or, if any condition is specified in the notice, the later of the specified time and the time at which all such conditions are fulfilled.

(4) An approved securities registrar is not to be regarded as contravening subsection (1) if the registrar ceases to act as the securities registrar for any prescribed securities only because the securities are no longer prescribed securities.

(5) In this section—

issuer's consent (發行人的同意), in relation to an approved securities registrar ceasing to act as the securities registrar for any prescribed securities, includes the termination (otherwise than by the registrar), or the expiry, of the registrar's appointment as the securities registrar.

28. Duty to transfer records etc. on change of securities registrar

(1) Subject to subsection (4), an approved securities registrar ceasing to act as the securities registrar for any prescribed securities (***outgoing registrar***) must take all reasonable steps to—

(a) complete the transfer specified in subsection (2) before the cessation; and

(b) if the transfer is not completed before the cessation—complete the transfer as soon as reasonably practicable.

(2) The transfer specified for subsection (1) is the transfer of the records specified in subsection (3) to—

(a) the approved securities registrar that is to succeed the outgoing registrar in acting as the securities registrar for the prescribed securities (***incoming registrar***); or

(b) if there is no incoming registrar—

(i) the issuer of those securities; or

(ii) any other person specified by the issuer.

(3) The records specified for subsection (2) (***specified records***) are—

(a) the register of holders of the prescribed securities; and

(b) any other records kept by the outgoing registrar in respect of—

(i) the current and former holders of those securities; and

(ii) any subscription warrants or rights under a rights issue that have lapsed or expired and that, prior to such lapse or expiry—

(A) entitled their holders to subscribe for the prescribed securities mentioned in paragraph (a); and

(B) were prescribed securities.

(4) Subsection (1) does not apply to an outgoing registrar that ceases to act as described in section 27(4) if—

(a) the registrar—

(i) continues to maintain the register of holders of the securities concerned after they cease to be prescribed securities; and

(ii) has included a statement to that effect in its notification given under section 29(1)(a) to the Commission in respect of the cessation; or

(b) the securities are subscription warrants or rights under a rights issue, and the registrar—

(i) ceases to act as the securities registrar for those warrants or rights by reason of their having lapsed or expired; and

(ii) maintains, and continues to maintain, the register of holders of the securities that the holders of those warrants or rights are entitled to subscribe for.

(5) Within 1 business day after the transfer specified in subsection (2) is completed—

(a) the outgoing registrar must give the Commission and the corresponding exchange company a notification in writing containing the information specified in subsection (6); and

(b) if applicable, the incoming registrar must give the Commission and the corresponding exchange company a notification in writing containing the information specified in subsection (7).

(6) A notification under subsection (5)(a) must specify—

(a) the prescribed securities to which the notification relates;

(b) the name and address of the outgoing registrar;

(c) the date on which the outgoing registrar ceased or will cease to act as the securities registrar for those securities;

(d) that all specified records have been transferred in accordance with subsection (2);

(e) the name and address of the person to whom the records were transferred; and

(f) the date on which the transfer was completed.

(7) A notification under subsection (5)(b) must specify—

(a) the prescribed securities to which the notification relates;

(b) the name and address of the incoming registrar;

(c) the date on which the incoming registrar began or will begin to act as the securities registrar for those securities;

(d) that the incoming registrar has received all specified records from the outgoing registrar;

(e) the name and address of the outgoing registrar; and

(f) the date on which the transfer was completed.

29. Duty to notify change of status as securities registrar

(1) Subject to subsection (6), an approved securities registrar must notify the Commission and the corresponding exchange company in writing of each of the following changes in accordance with subsection (2)—

(a) the registrar's ceasing to act as the securities registrar for any prescribed securities;

(b) the registrar's beginning to act as the securities registrar for any prescribed securities.

(2) A notification under subsection (1) must—

(a) be given no later than 3 months before the change takes effect or as soon as reasonably practicable after the approved securities registrar becomes aware of the change, whichever is the later; and

(b) specify—

(i) the prescribed securities to which the change relates;

(ii) the date on which the change takes effect; and

(iii) the name and address of the registrar.

(3) An approved securities registrar must notify the Commission and the corresponding exchange company in writing of any change in the information specified in a notification given by the registrar under subsection (1) as soon as reasonably practicable, and in any event within 1 business day, after becoming aware of the change.

(4) The Commission may, by notice in writing, require an approved securities registrar to provide any information relating to a change notified under subsection (1) or (3) it reasonably requires for performing its functions.

(5) For the purposes of this section, if an approved securities registrar ceases to act pursuant to section 27(1)(b), the application made for the permission mentioned in that section is taken to be a notification given under subsection (1)(a) by the registrar to the Commission in respect of the cessation.

(6) An approved securities registrar that ceases to act as described in section 27(4)—

(a) is not required to notify the corresponding exchange company of the cessation; and

(b) where the prescribed securities are subscription warrants or rights under a rights issue, is also not required to notify the Commission of the cessation if—[127]

[127] Drafting amendment – subsection (6) amended for consistency with section 28(4)(b).

(i) it ceases to act as the securities registrar for those warrants or rights by reason of their having lapsed or expired; and

~~(ii) the securities that the holders of those warrants or rights are entitled to subscribe for (***underlying securities***) are prescribed securities; and~~

(iii) the registrar is, and continues to be, the securities registrar for the ~~underlying~~ securities that the holders of those warrants or rights are entitled to subscribe for.

Note—

See section 15 of the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V) for the requirement on the issuer of prescribed securities to give notification of a change in the securities registrar for those securities.

Part 9

Supervision of Approved Securities Registrars

30. Provision of information or document on request

(1) The Commission may, by notice in writing served on an approved securities registrar, require the registrar to provide the Commission with any information or document the Commission reasonably requires for performing any function of the Commission.

(2) Without limiting subsection (1), the Commission may require from an approved securities registrar under that subsection—

(a) any information or document relating to—

(i) the registrar's provision of securities registrar services or service facilities; or

(ii) a matter notified (whether in the form of a notification, statement, return, report or otherwise) by the registrar to the Commission under Part IIIAA of the Ordinance or these Rules; or

(b) any records kept by the registrar under section 11 or otherwise in connection with, or for the purposes of, its ~~SRS~~ business and operations.

(3) An approved securities registrar must provide to the Commission the information or document required in a notice under subsection (1) in the form and manner, and within the time, specified in the notice.

31. Reports by skilled person

(1) The Commission may, by notice in writing served on an approved securities registrar, require the registrar to—

(a) appoint a skilled person to make a report on any applicable matter of the registrar; and

(b) submit the report in the form and manner, and within the time, specified in the notice to the Commission.

(2) The Commission may also appoint a skilled person to make a report on any applicable matter of an approved securities registrar.

(3) If a person is appointed under subsection (2) to make a report on an applicable matter of an approved securities registrar, the Commission—

(a) must give notice of that appointment to the registrar; and

(b) may, after the report is made, by notice in writing served on the registrar, require the registrar to pay, in the manner and within the time specified in the notice, the whole or a part of the costs and expenses incurred in making the report if—

(i) the Commission is of the opinion that it is appropriate to do so having regard to the conduct (whether before or after the appointment) of the registrar; and

(ii) the registrar has been given a reasonable opportunity of being heard.

(4) An approved securities registrar must—

(a) comply with a notice served on it under subsection (1) or (3)(b); and

(b) give a person appointed under subsection (1)(a) or (2) to make a report in relation to it all assistance the person reasonably requires to make the report.

(5) The Commission may recover any outstanding sum that an approved securities registrar fails to pay in accordance with a notice served on it under subsection (3)(b) as a civil debt due to it.

(6) In this section—

applicable matter (適用事宜), in relation to an approved securities registrar, means a matter relating to—

~~(a) relating to the registrar; and~~

~~(b) for which any information or document may be required to be provided by the registrar under section 30(1);~~

(c) the service facilities of the registrar; or

(d) any other computer system or facilities used in connection with the registrar's business and operations;[128]

skilled person (具相關技能人士), means a person who—

(a) in the opinion of the Commission, has the skills necessary to make a report on the applicable matter; and

(b) if the person is to be appointed by an approved securities registrar—is nominated or approved by the Commission.

[128] Amended in light of the delinking of sections 30 and 31. (See paragraphs 224 to 230 of this conclusions paper.)

Part 10

Miscellaneous

31A.[129] Communication by means of electronic transmission system

(1) A specified communication is, unless otherwise accepted by the Commission, regarded as duly made to the Commission only if it is made —

(a) by means of an electronic transmission system approved under subsection (2)(a); and

(b) in accordance with the directions and instructions for the use of that system published under subsection (2)(b).

(2) The Commission—

(a) may, for the purposes of subsection (1)(a), approve an electronic transmission system; and

(b) must, as soon as reasonably practicable after approving an electronic transmission system under paragraph (a), publish directions and instructions for the use of that system in a manner it considers appropriate.

(3) In this section—

Specified communication (指明通訊) means any application, notification, statements, return or other communication under Part IIIAA of the Ordinance or these Rules.

31B. Modification or waiver of requirements[130]

(1) The Commission may, by notice in writing served on an approved securities registrar, modify or waive, subject to any condition it considers appropriate, any requirement of these Rules if the Commission is of the opinion that—

(a) the requirement has no relevance to the circumstances of the registrar; and

(b) the modification or waiver would prejudice neither of the following—

(i) the interests of any holder of the prescribed securities in respect of which the registrar provides a securities registrar service;

(ii) the interest of the investing public.

(2) The Commission may, by notice in writing served on an approved securities registrar to whom a modification or waiver under subsection (1) is given, amend or revoke—

(a) the modification or waiver; or

(b) any condition imposed in relation to the modification or waiver.

32. Offence to destroy, conceal or alter accounts, records or documents, etc.

(1) A person commits an offence if the person, with intent to prevent, delay or obstruct the making of a report on a matter by a person appointed under section 31(1)(a) or (2)—

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[129] New section 31A added to require ASRs to submit applications, notices and reports to the SFC electronically. (See paragraph 222 of this conclusions paper.)

[130] New section 31B added to allow flexibility for the SFC to modify or waive any of the requirements under these rules. (See paragraph 157 of this conclusions paper.)

(a) deletes, destroys, mutilates, falsifies, conceals, alters or otherwise makes unavailable any accounts, records or documents related to that matter;

(b) disposes or procures the disposal, in any manner and by any means, of any property related to that matter; or

(c) leaves, or attempts to leave, Hong Kong.

(2) A person who commits an offence under subsection (1) 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

[s. 19]

Notification of Change

Part 1

Interpretation

1. Interpretation

In this Schedule—

basic information (基本資料)—see section 2 of this Schedule;

criminal investigatory body (刑事調查機構) means—

(a) the Hong Kong Police Force;

(b) the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204); and

(c) any public body in Hong Kong or elsewhere carrying out criminal investigations;

minor offence (輕微罪行) means—

(a) an offence punishable by a fixed penalty under any enactment; or

(b) an offence of a similar nature committed in a place outside Hong Kong;

permanent identity card (永久性居民身分證) has the meaning given by section 1A of the Registration of Persons Ordinance (Cap. 177);

regulatory body (規管機構) includes—

(a) the Commission;

(b) the Monetary Authority;

(c) a recognized exchange company;

(d) a recognized clearing house;

(e) a professional body or association;

(f) an inspector appointed under any enactment; and

(g) any other equivalent body or person in Hong Kong or elsewhere;

relevant information (有關資料)—see section 3 of this Schedule;

valid business registration certificate (有效商業登記證) has the meaning given by section 2(1) of the Business Registration Ordinance (Cap. 310).

2. Meaning of *basic information*

(1) A reference to the basic information of an individual is a reference to the following particulars, in so far as applicable, of the individual—

(a) title and full personal name and surname in Chinese and English;

(b) date and place of birth;

(c) gender;

(d) the following information of the individual's identification document—

(i) the Chinese commercial code and the number on the individual's identity card issued under the Registration of Persons Ordinance (Cap. 177); and

(ii) if the individual is not the holder of a permanent identity card—the number, the name of the issuing agency and the date of expiry, of the individual's passport, travel or other document issued by a competent government agency providing proof of identity;

(e) nationality;

(f) business, residential and correspondence addresses; and

(g) contact telephone and fax numbers and email address.

(2) A reference to the basic information of a corporation is a reference to the following particulars, in so far as applicable, of the corporation—

(a) corporate name and business name in Chinese and English;

(b) former names and periods during which those names were used;

(c) date and place of incorporation;

(d) the number of its valid business registration certificate;

(e) for a corporation incorporated outside Hong Kong—the date of the certificate of registration issued in respect of the corporation under—

(i) Part XI of the relevant Ordinance; or

(ii) section 777 of Part 16 of the Companies Ordinance (Cap. 622);

(f) address of its registered office;

(g) addresses of its places of business;

(h) correspondence address; and

(i) telephone and fax numbers, email address and website address.

3. Meaning of *relevant information*

(1) A reference to the relevant information of an individual is a reference to information on whether or not the individual is or has been, in Hong Kong or elsewhere—

(a) convicted of or charged with any criminal offence (other than a minor offence) whether or not evidence of such conviction is admissible in proceedings in Hong Kong or elsewhere;

(b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be);

(c) subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance;

(d) a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be), or involved in the management of such corporation or business;

(e) a substantial shareholder or director of a corporation or business that is or has been subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance, or involved in the management of such corporation or business;

(f) engaged in any judicial or other proceedings;

(g) a party to a scheme of arrangement, or any form of compromise, with the individual's creditors;

(h) in default of compliance with any judgement or court order;

(i) a substantial shareholder or director of a corporation or business that was wound up otherwise than by way of a members' voluntary winding up, or involved in the management of such corporation or business;

(j) a partner of a firm that was dissolved other than with the consent of all the partners;

(k) bankrupt or aware of the existence of any matters that might render the individual insolvent or lead to the appointment of a provisional trustee of the individual's property under the Bankruptcy Ordinance (Cap. 6);

(l) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law;

(m) a substantial shareholder or director of a corporation that has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law, or involved in the management of such corporation; and

(n) disqualified from holding the office of director.

(2) A reference to the relevant information of a corporation is a reference to information on whether or not the corporation is or has been, in Hong Kong or elsewhere—

(a) convicted of or charged with any criminal offence (other than a minor offence) whether or not evidence of such conviction is admissible in proceedings in Hong Kong or elsewhere;

(b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be);

(c) subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance;

(d) a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be), or involved in the management of such corporation or business;

(e) a substantial shareholder or director of a corporation or business that is or has been subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance, or involved in the management of such corporation or business;

(f) engaged in any judicial or other proceedings;

(g) a party to a scheme of arrangement, or any form of compromise, with its creditors;

(h) in default of compliance with any judgement or court order;

(i) a substantial shareholder or director of a corporation or business that was wound up otherwise than by way of a members' voluntary winding up, or involved in the management of such corporation or business;

(j) a partner of a firm that was dissolved other than with the consent of all the partners;

(k) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator;

(l) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law; and

(m) a substantial shareholder or director of a corporation that has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law, or involved in the management of such corporation.

Part 2

Changes to be Notified

Item	Description of change

1. Any change in the basic information in respect of—
   - (a) the approved securities registrar;
   - (b) an officer or senior employee appointed or employed by the registrar;
   - (c) a person with whom the registrar is associated in the course of providing securities registrar services;
   - (d) a director or substantial shareholder of—
     - (i) the registrar; or
     - (ii) a substantial shareholder of the registrar that is a corporation;
   - (da) a person in accordance with whose directions or instructions the registrar is, or its officers or senior employees are, accustomed or obliged to act; or[131]
   - (e) a subsidiary or related corporation of the registrar ~~that carries on any business activity that~~ the business or operations of which may have a material impact on the registrar's fitness and properness to provide any securities registrar service.~~is related to the registrar's provision of securities registrar services (***related business activity***); or~~[132]
   - ~~(f) a related corporation of the registrar that carries on any related business activity.~~[133]
2. Any change in the persons mentioned in item 1(b), (c), (d), (da) and (e).
3. Any change in the name, correspondence address, contact telephone or fax number or email address of—

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[131] Drafting amendment – new item 1(da) replaces deleted item 11(b) below.

[132] In light of concerns raised, items 11(e) and (f) are merged and their scope narrowed to only cover subsidiaries and related corporations whose businesses and operations may impact the ASR's fitness and properness, eg, because they have access to the same pool of financial or other resources, are covered by the same insurance, etc. (See paragraphs 197 to 199 of this conclusions paper.)

[133] See footnote 132 above.

(a) a contact person appointed by the approved securities registrar as the person whom the Commission may contact in the event of a market emergency or any other urgent need; ~~and~~

(b) a person appointed by the registrar to handle complaints made to the registrar~~.~~; or

(c) a designated signatory (as defined by section 17(5)) of the registrar.[134]

4. Any change in the status of any authorization (however described) to provide services similar to securities registrar services by an authority or regulatory organization outside Hong Kong in respect of a person mentioned in item 1.

5. Any change in the status of the membership (however described) of a clearing house, central securities depository, stock exchange or futures exchange in Hong Kong or elsewhere in respect of a person mentioned in item 1.

6. Any change in the relevant information in respect of a person mentioned in item 1.

~~7. Any change in the designated signatories (as defined by section 17(5)) of the approved securities registrar.[135]~~

8. Any significant change in—

(a) the nature of ~~the~~ any business carried on, or to be carried on, by the approved securities registrar; ~~or~~

(b) the types of services and facilities provided, or to be provided, by the registrar~~.~~;

~~9.~~(c) ~~Any significant change in~~ the business plan of the ~~approved securities~~ registrar covering human and technical resources, operational procedures, internal controls, risk management processes, organizational structure, contingency measures, business continuity plans and related matters~~.~~;[136] or

(d) any outsourcing arrangement entered into by the registrar.[137]

~~10. Any significant change in the services facilities of the approved securities registrar, including its operations, functions, capabilities, performance, availability and security.[138]~~

11. Any change in~~—(a)~~ the share capital and shareholding structure of the approved securities registrar.~~; or~~

~~(b) the basic information in respect of a person in accordance with whose directions or instructions the registrar is, or its directors are, accustomed or obliged to act.[139]~~

11A. Any change relating to the fees charged by the approved securities registrar in relation to its provision of securities registrar services (except a fee payable by an issuer-client).[140]

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[134] Drafting amendment – new item 3(c) replaces deleted item 7 below.

[135] Drafting amendment – item 7 is moved up as new item 3(c).

[136] Drafting amendment – item 9 is renumbered as new item 8(c).

[137] Item 9(d) added for better alignment and consistency with Annex 3 to the October Consultation Paper. (See paragraphs 186 to 187 of this conclusions paper.)

[138] Drafting amendment – item 10 is moved down as new item 12A.

[139] Drafting amendment – item 11(b) is moved up as new item 1(da) above.

[140] Item 11A added for better alignment and consistency with Annex 3 to the October Consultation Paper. (See paragraphs 186 to 187 of this conclusions paper.)

12. For an approved securities registrar that is a member of a group of companies—any change in the group structure.

12A. Any significant change in the service facilities of the approved securities registrar, or any other computer system or facilities used in connection with the registrar's business and operations, including—

(a) their operations, functions, capabilities, performance, availability and security; and

(b) the registrar's policies and procedures in relation to such facilities or system.[141]

12B. Any change in the information in respect of any assets of the approved securities registrar that are subject to any charge (including pledge, lien or encumbrance).[142]

13. Any change relating to a bank account used by the approved securities registrar in relation to its provision of securities registrar services and concerning—

(a) whether the account has been opened or closed or has become dormant or ordered to be frozen by a competent authority;

(b) the name of the bank with which the account has been opened or closed or has become dormant or ordered to be frozen by a competent authority;

(c) the number of the account;

(d) the date of opening or closing of the account; ~~and~~ or

(e) whether the account is or was a trust account.

14. Any change in—

(a) the ~~circumstances concerning any~~ premises used by the approved securities registrar for a purpose mentioned in section 4; or

(b) the circumstances concerning such premises that are relevant to the ~~approved securities~~ registrar's compliance with that section.[143]

~~15. Any change in the address of any premises used by the approved securities registrar for keeping records or documents under these Rules.~~[144]

16. Any change in any insurance ~~maintained or previously maintained by~~ covering the approved securities registrar ~~in accordance with these Rules~~ as required by section 7.[145]

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[141] Item 12A added for better alignment and consistency with Annex 3 to the October Consultation Paper. (See paragraphs 186 to 187 of this conclusions paper.)

[142] Item 12B added for better alignment and consistency with Annex 3 to the October Consultation Paper. (See paragraphs 186 to 187 of this conclusions paper.)

[143] Drafting amendment – item 14 amended to clarify that it covers both changes in an ASR's premises and changes in the circumstances of such premises.

[144] Drafting amendment – deleted consequential to deleting section 4(1)(c) and amending item 14 to cover changes in an ASR's premises.

[145] Drafting amendment – amended consequential to amending section 7(1). (See footnote 113 above.)

Annex 4 – Further amendments to the ASR Code

Code of Conduct for Approved Securities Registrars

[*Date*]

Table of Contents

Explanatory notes

This Code of Conduct for Approved Securities Registrar ~~(**Code**)~~ is published under section 399 of the ~~Securities and Futures Ordinance (Cap 571) (**SFO**)~~ SFO. The Commission will be guided by this Code in considering whether a person is fit and proper to be or remain an ~~approved securities registrar (**ASR**)~~ ASR. In this context, the Commission will have regard to the general principles, as well as the letter, of the Code. This Code also, among other matters, provides guidance in relation to the operation of particular statutory provisions. The Code has been published in the Gazette.

Where the Commission has information which suggests that an ASR is not a fit and proper person to remain approved, it may conduct an investigation under section 182(1)(e) of the ~~Securities and Futures Ordinance (**SFO**)~~ SFO. This information may refer to how the ASR conducts its business and operations, or it may refer to other matters. The Commission places great importance on ASRs being fit and proper, particularly in light of the significant role that their systems, processes and facilities play in the uncertificated securities market environment.

This Code is to be interpreted sensibly and in accordance with its spirit. When considering whether an ASR has failed to attain any of the standards prescribed in this Code, the Commission will adopt a pragmatic approach, taking into account all relevant circumstances, including whether the ASR has taken any compensatory measures, the nature and scope of its business and operations, as well as its legal and organisational structure.

ASRs should note the various Schedules to this Code. These are part of the Code and provide, among other things, limits on certain fees and charges that are payable by ~~registered~~ securities holders[146], and ASRs' obligations when performing certain functions. ASRs are also expected, under section 10.1(a) below, to comply with the rules of any clearing house of which they are participants.

Unless otherwise specified, or the context otherwise requires, words and phrases in this Code (including these explanatory notes) shall be interpreted in accordance with section 1 below.

This Code does not have the force of law and should not be interpreted in a way that would override the provision of any law.

This Code supersedes the *Code of Conduct for Share Registrars* published by the Commission in April 2003.

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[146] **Note for the purpose of this conclusions paper only**: Drafting amendment – amended consequential to replacing the term "registered holder" with "securities holder" to better reflect that it also covers previous and prospective holders.

General principles

GP1 Honesty and fairness

In conducting its business and operations, an ASR should act honestly, fairly, and in the best interests of its issuer-clients and the integrity of the market.

GP2 Diligence

In conducting its business and operations, an ASR should act with due skill, care and diligence, in the best interests of its issuer-clients and the integrity of the market.

GP3 Capabilities

An ASR should have and employ effectively the resources and procedures which are needed for the proper performance of its functions and obligations as an ASR.

GP4 Outsourcing[147]

When outsourcing tasks, an ASR should take into account the degree of materiality or criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that ~~material risks are properly identified and managed, and that the interests of the ASR, issuer-clients and registered holders~~ the ASR's business and operations, and all property and information relating to such business and operations, are properly protected.

GP5 Computer systems and facilities

An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.

GP6 Information for issuer-clients and ~~registered~~ securities holders

An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and ~~registered~~ securities holders.

GP7 Conflicts of interest

An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that issuer-clients ~~and registered holders~~ are treated fairly while also safeguarding the integrity of the market.[148]

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[147] **Note for the purpose of this conclusions paper only**: Amended to address concerns about the need for more clarity on the outsourcing requirements. (See paragraphs 206 to 208 of this conclusions paper.)

[148] **Note for the purpose of this conclusions paper only**: Amended to address concerns about inconsistency with General Principle 2. (See paragraphs 211 to 212 of this conclusions paper.)

GP8 Safeguarding of third-party assets

An ASR should ensure that third-party assets are promptly and properly accounted for and adequately safeguarded.

GP9 Compliance

An ASR should comply with all regulatory requirements applicable to the conduct of its business and operations so as to promote the best interests of its issuer-clients and the integrity of the market. In addition, an ASR should provide securities registrar services in a manner which ~~enables~~ assists or facilitates[149] its issuer-clients to comply with their obligations under applicable laws and regulations.

GP10 Responsibilities of senior management

The senior management of an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ASR.

[149] **Note for the purpose of this conclusions paper only**: Added to better reflect that the obligation to comply with the requirements concerned remains with the issuer-client, and that the ASR's obligation is to ensure that its actions do not conflict with such requirements. (See also paragraphs 154 to 156 of this conclusions paper.)

1. Interpretation and Application

1.1 Definitions

In this Code, unless otherwise specified, or the context otherwise requires:

annual statement	means the statement that an ASR, who is acting or has acted as the securities registrar for any prescribed securities, is required to send under section 25 of the ASR Rules;[150]
applicable laws and regulations	in relation to a person, means any laws, rules or regulations (whether statutory or otherwise) applicable to the person, and includes any codes and guidelines issued by the Commission (including this Code) and the rules of any exchange or clearing house applicable to the person;
approved securities registrar / ASR	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
ASR Rules	means the Securities and Futures (Approved Securities Registrars) Rules (Cap 571, sub leg [ ]);
authenticated message	bears the meaning given by section 2 of the USM Rules;
business and operations	in relation to an ASR, means its business and operations as an ASR;[151]
CCASS	means the Central Clearing and Settlement System operated by HKSCC, and includes any other system that may replace it;
this Code	means this Code of Conduct for Approved Securities Registrars;
Commission	means the Securities and Futures Commission;
Companies Ordinance	means the Companies Ordinance (Cap 622);

[150] **Note for the purpose of this conclusions paper only**: New term added for better alignment and consistency with the revised ASR Rules – see paragraphs 99 to 101 of this conclusions paper.

[151] **Note for the purpose of this conclusions paper only**: New term added for better alignment and consistency with the revised ASR Rules – see paragraphs 150 to 151 of this conclusions paper.

computer systems and facilities	in relation to an ASR, means the computer systems and facilities used in connection with the ASR's business and operations, irrespective of whether such systems or facilities are provided or operated by the ASR or a service provider, and includes any service facilities, and any interface or other connections to the systems or facilities of another person; ***Note**:* *The scope here includes, for example:* *(1) all interface connections between the ASR and other parties (eg, HKSCC, the Stamp Office, other companies within the same group as the ASR, etc); and* *(2) all computer systems and facilities used in connection with the handling of matters and processes relating to prescribed securities (eg, transfers, dematerializations, corporate actions, public offer applications, updating of registers of holders, pre-registration for the use of service facilities, etc).*
EDSP	means an external electronic data storage provider;
ePO channel	means any electronic channel or facility used to display or provide access to prospectuses and collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities; ***Note**:* *See also the Commission's Guidelines for Electronic Public Offers, which deal with the provision and operation of ePO channels.*
HKSCC	means Hong Kong Securities Clearing Company Limited;
issuer	bears the meaning given by section 2 of the USM Rules;
issuer-client	~~in relation to an ASR, means an issuer of prescribed securities to which, or as agent of which, the ASR provides securities registrar services;~~ bears the meaning given by section 2 of the ASR Rules;
operational incident	bears the meaning given by section 17(5) of the ASR Rules;
outsourcing	in relation to an ASR, means a business practice in which the ASR engages another person (the service provider) to perform tasks that would otherwise be undertaken by the ASR itself, and ***outsource*** is to be construed accordingly;
prescribed securities	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;

~~***registered holder***~~	~~means any person who is the registered holder of prescribed securities and includes any person who: (i) was previously registered as such a holder; or (ii) is a subscriber or transferee of such securities and is seeking to be registered as such a holder;~~
register of holders	bears the meaning given by section 2 of the USM Rules;
securities	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;
securities holder	bears the meaning given by section 2 of the ASR Rules; ***Note***: *The term "securities holder" refers to current registered holders and includes (where the context so permits) former registered holders, as well as persons who are seeking to become registered holders (eg, transferees, subscribers, transmittees).*
securities registrar service	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO and section 3 of the ASR Rules; ***Note***: *The provision of securities registrar services includes the provision and/or operation of any related service facilities, such as any UNSRT system and any ePO channel.*
senior management	in relation to an ASR, means persons involved in the management of the business of the ASR; ***Note***: *(1) In considering whether a person should be regarded as a member of an ASR's senior management, the Commission will look at all relevant facts and circumstances, including the following:* ▪ *the ASR's organisation and control structure (including its group organisation and control structures where it is part of a group);* ▪ *the person's seniority and role within such organisation and control structures, including whether the person is a member of the ASR's governing body; and* ▪ *the level of actual or apparent control, oversight, authority or influence held by the person in respect of the ASR's business and operations~~, including in particular its provision of securities registrar services~~*[152]*.* *(2) The fact that a person is not a member of an ASR's governing body, or is based outside Hong Kong, will not of itself exclude*

[152] **Note for the purpose of this conclusions paper only**: Deleted because "business and operations" is now defined and would necessarily cover the provision of such services.

them from being regarded as a member of the ASR's senior management. The Commission's focus will be on the extent of the person's control, authority and influence vis-à-vis the ASR's business and operations.

(3) Under Part IX of the SFO, the Commission may take disciplinary action against persons who are involved in the management of the business of an ASR, i.e. the senior management of an ASR.

service facilities	bears the meaning given by section 2 of the ASR Rules; ***Note**:* *An ASR's service facilities include any UNSRT system and ePO channel used in connection with the ASR's provision of securities registrar services.*
service facilities incident	bears the meaning given by section 17(5) of the ASR Rules;
service provider	in relation to an ASR, means the person to whom the ASR outsources any of its tasks;
SFO	means the Securities and Futures Ordinance (Cap 571);
task	means any task, function, process, service or activity;
third-party assets	in relation to an ASR, means any information, documents or other property (including any securities, seals and impressions, blank title instruments, cheques, stationery or money) received, retained or kept by the ASR for or on behalf of an issuer-client, and includes any information, documents or other property (including any securities, title documents, cheques or money) relating, belonging or payable to a ~~registered~~ securities holder and received, retained or kept by the ASR as agent for an issuer-client; ***Note**:* *The term "third-party assets" includes any "~~client~~ third party money"[153], as defined in section 2 of the ASR Rules.*
title instrument	bears the meaning given by section 2 of the USM Rules;
uncertificated form	is to be interpreted in accordance with section 1AB of Part 1 of Schedule 1 to the SFO;
UNSRT system	bears the meaning given by section 1 of Part 1 of Schedule 1 to the SFO;

[153] **Note for the purpose of this conclusions paper only**: Drafting amendment – amended consequential to the term "third party money" replacing "client money" in the revised ASR Rules.

USI facility means an electronic facility set up with an ASR for the purposes of holding legal title to prescribed securities without title instruments, effecting transfers of legal title to prescribed securities without instruments of transfer, and effecting other transactions and communications relating to prescribed securities electronically;

USM Rules means the Securities and Futures (Uncertificated Securities Market) Rules (Cap 571, sub leg [ ]).

1.2 Persons to whom this Code applies

(a) This Code applies to all ASRs in respect of their provision of~~:~~

~~(i) securities registrar services that they are approved to provide. ; and~~

~~(ii) other related services provided to an issuer-client or registered holder.~~

~~***Note:***~~

~~*Examples of related services include: arranging and coordinating general meetings of the issuer-client; providing corporate action services in respect of non-prescribed securities issued to registered holders of prescribed securities; assisting registered holders to establish trust arrangements for their prescribed securities; providing probate services; etc.*~~ [154]

(b) This Code also applies to all persons who are members of the senior management of an ASR. In applying this Code to any such person, the Commission will consider the person's level of responsibility within the ASR, any supervisory duties they may perform, and the levels of control and knowledge they may have concerning any failure by the ASR, or by any persons under their supervision, to follow this Code.

1.3 Effects of breaches of this Code

(a) In the absence of extenuating circumstances, breaches of this Code may:

(i) reflect adversely on an ASR's fitness and properness to provide securities registrar services, and/or on any other person's fitness and properness to be involved in the management of ~~an ASR's~~ the business of an ASR[155]; and

(ii) result in disciplinary action under Part IX of the SFO.

(b) A failure by an ASR or any other person to comply with any provision of this Code that applies to them will not by itself render the ASR or such other person liable to any judicial or other proceedings. However, in any

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[154] **Note for the purpose of this conclusions paper only**: Drafting amendment – This note is now expanded and incorporated into the end of this section 1. (See paragraphs 150 to 151 of this conclusions paper.)

[155] **Note for the purpose of this conclusions paper only**: Amended for better consistency with the definition of "senior management".

proceedings under the SFO before any court, this Code will be admissible in evidence, and if any provision set out in this Code appears to the court to be relevant to any question arising in the proceedings, it will be taken into account in determining the question.

***Note**:*

(1) While this Code does not apply in relation to an ASR's provision of services other than securities registrar services, or to its business and operations otherwise than as an ASR, the Commission may take into account, among others, any matter concerning the ASR's actual or proposed provision of such other services or conduct of such other business and operations when determining its fitness and properness to provide securities registrar services. Such other services may include related services such as:

- *providing corporate action services in respect of non-prescribed securities issued to securities holders of prescribed securities; and*
- *assisting securities holders to establish trust arrangements for their prescribed securities.*

(2) For avoidance of doubt:

- *the provision of probate services (in so far as it relates to the registration of transmissions) is regarded as falling within paragraph (a) of the definition of "securities registrar services" in section 1 of Part 1 of Schedule 1 to the SFO;*
- *the provision of services in connection with general meetings of an issuer-client's is regarded as falling within the definition of "corporate action" under section 3(3) of the ASR Rules.*[156]

[156] **Note for the purpose of this conclusions paper only**: See footnote 154 above.

2. GP 1 Honesty and Fairness

In conducting its business and operations, an ASR should act honestly, fairly, and in the best interests of its issuer-clients and the integrity of the market.

2.1 Accurate representations and information

An ASR should ensure that any representations made by it, or information provided by it, to its issuer-clients or to ~~registered~~ securities holders are accurate and not misleading.

2.2 Fair and reasonable charges

An ASR's fees and charges, particularly if payable by ~~registered~~ securities holders, should be transparent, fair and reasonable in the circumstances, commensurate with the services provided and work done, and comply with applicable laws and regulations. Additionally, fees and charges for services listed in Schedule 1 to this Code should not exceed the levels set out in that schedule.

***Note**:*

ASRs are expected to make public its fees and charges. However, fees and charges payable by issuer-clients need only be disclosed to the issuer-client concerned.[157]

2.3 Marketing and operation of services

An ASR should market, promote and carry out its services in a proper, appropriate and fair manner that complies with all applicable laws and regulations.

2.4 Anti-bribery guidelines

An ASR should be familiar with the Prevention of Bribery Ordinance (Cap 201) and follow related guidance issued by the Independent Commission Against Corruption. The Prevention of Bribery Ordinance may prohibit an agent (normally an employee) from soliciting or accepting an advantage without the permission of the principal (normally the employer) when conducting the principal's business. A person who offers the advantage may also commit an offence.

2.5 Financial auditor

~~(a)~~ Under the ASR Rules, an ASR must appoint an independent auditor, within 1 month after it is approved to provide securities registrar services or an auditor ceases to be so appointed, to audit its financial statements. In assessing the independence of an ASR's auditor, the Commission will take into account all relevant facts and circumstances. In general, the following persons will not be regarded as independent:

(a) ~~(i)~~ any person who is an officer, employee or agent of the ASR;

(b) ~~(ii)~~ any person who is engaged by the ASR to provide services (other than services as an independent auditor);

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[157] **Note for the purpose of this conclusions paper only**: New note added to address concerns about making public fees charged to issuers. (See paragraphs 236 to 237 of this conclusions paper.)

(c) ~~(iii)~~ any person who is engaged in any work, or subject to any obligation, control or influence that will or may present a conflict (actual or perceived) with the person's obligations as the ASR's auditor.

~~(b) In addition, the auditor appointed should be Hong Kong-qualified. An auditor will be regarded as Hong Kong-qualified only if he or she is a "certified public accountant (practising)", as defined in section 2 of the Accounting and Financial Reporting Council Ordinance (Cap 588).~~[158]

[158] **Note for the purpose of this conclusions paper only**: Drafting amendment – deleted as the contents of section 2.5(b) are now moved to section 14(1) of the revised ASR Rules. (See paragraphs 173 to 174 of this conclusions paper.)

3. GP 2 Diligence

In conducting its business and operations, an ASR should act with due skill, care and diligence, in the best interests of its issuer-clients and the integrity of the market.

3.1 Performance of services: due skill, care and diligence

(a) An ASR should perform services for its issuer-clients in accordance with the terms and conditions upon which the ASR is appointed by the respective issuer-clients. An ASR should also take all reasonable steps to carry out instructions from its issuer-clients diligently and with reasonable skill and care.

***Note**:*

Compliance with paragraph (a) may require the ASR to be proactive in certain circumstances. For example, where an issuer has changed its appointed ASR~~,~~:

(1) the incoming ASR will generally be expected to proactively notify affected ~~registered~~ securities holders of any steps they need to take to continue managing any securities held in uncertificated form (eg, completing the incoming ASR's onboarding process for using any service facilities to transfer such securities); and

(2) the outgoing ASR will generally be expected to proactively notify affected securities holders of any impact that the change may have on the holder (eg, limitations on and arrangements for accessing historical statements and confirmations issued by the outgoing registrar).[159]

(b) In the course of providing securities registrar services, an ASR will (in its capacity as agent of an issuer-client) receive requests, enquiries and instructions from ~~registered~~ securities holders. The ASR should take all reasonable steps to acknowledge, respond to and process such requests, enquiries and instructions promptly, diligently and with reasonable skill and care.

3.2 Provision of service facilities

An ASR should provide the use of its service facilities in accordance with the terms and conditions notified to and agreed with users of such facilities. In particular, an ASR should take all reasonable steps to ensure that:

(a) such facilities are provided and operated in a fair and orderly manner;

(b) activities, instructions or other things carried out, executed or processed through such facilities are processed promptly and in accordance with such terms and conditions;

(c) appropriate identity checks are conducted when onboarding persons as users of such facilities;

***Note**:*

The ASR is expected to take all reasonable steps to establish the true and full identity of a person seeking to become a user of its service facilities. At a minimum, this includes checking the identity document that is first mentioned in the list below (save that where the person does not hold such document, the next mentioned document should be used and so forth), ie:

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[159] **Note for the purpose of this conclusions paper only**: Added to better clarify obligations of the outgoing ASR.

(1) in the case of a natural person, his or her: (A) Hong Kong identity card; (B) other national identification document; or (C) passport;

(2) in the case of a corporation, its: (A) legal entity identifier (LEI) registration document; (B) certificate of incorporation; (C) certificate of business registration; or (D) other equivalent identity document; and

(3) in the case of a trust, the trustee's information (as described in paragraph (1) or (2) of this note, as applicable).

(d) appropriate systems are in place, and checks conducted, to enable the ASR to establish with reasonable certainty the identity of the person sending instructions or requests through such facilities, and the person's authority to do so; and

Note:

In general, the ASR is expected to adopt authentication methodologies to ascertain the reliability of instructions and requests received. Such methodologies should be in line with industry standards and market practice, and provide a reasonable and appropriate degree of protection to ~~registered~~ securities holders, taking into account:

(1) the nature of the instruction or request received;

(2) the size and value of any prescribed securities that are the subject of the instruction or request;

(3) the potential impact that the instruction or request may have on the ~~registered~~ securities holder of those securities if acted upon; and

(4) any pre-existing agreement with such securities holder regarding the sending of such instructions or requests (eg, any limits set, any agent appointed, etc).

(e) where the ASR offers pre-registration in respect of its service facilities (ie, permits persons to become users of such facilities even though they have no immediate need to use the facilities), appropriate checks are conducted to ensure that information provided by a person at the time of pre-registration is, or may be reasonably expected to be, up-to-date at the time that the person uses the facilities to send any instructions or requests.

***Note**:*

In assessing whether any information submitted by a person during the pre-registration process remains up-to-date, the ASR is expected to take into account the length of time that has passed since the person submitted the information, and since the person last used the facilities. Due regard should also be had to:

(1) the nature of the instruction or request received;

(2) the size and value of any prescribed securities that are the subject of the instruction or request; and

(3) the potential impact that the instruction or request may have on the ~~registered~~ securities holder of those securities if acted upon.

3.3 Best interests of issuer-clients

In performing its services or in carrying out instructions from its issuer-clients, an ASR should act in the best interests of its issuer-clients and the integrity of the market.

Note:

ASRs may be expected to continue complying with this obligation during and after any process for effecting a change in an issuer-client's appointed ASR. In particular:

(1) *The outgoing ASR and incoming ASR are expected to cooperate in facilitating the handover process so that it is completed properly and as quickly and efficiently as possible. To that end, any records to be transferred to the incoming ASR should, as far as reasonably practicable, be transferred electronically (unless the originals are in paper form in which case the original paper form records should be transferred). The format for transferring records electronically should be agreed in advance.*

(2) *Following a handover, both the outgoing ASR and incoming ASR should render all reasonable assistance to one another that may be required to deal with a matter that occurred prior to the handover and while the outgoing ASR was the issuer's appointed ASR.*[160]

[160] **Note for the purpose of this conclusions paper only**: New note added to better clarify ASRs' obligations both during the handover process when there is a change of ASRs, and subsequently. (See also paragraphs 123 to 126 of this conclusions paper.)

4. GP 3 Capabilities

An ASR should have and employ effectively the resources and procedures which are needed for the proper performance of its functions and obligations as an ASR.

4.1 Internal controls, financial and operational resources

An ASR should have satisfactory internal control procedures in place and financial and operational capabilities to ensure its business and operations are properly structured and conducted so that there is reasonable assurance that:

(a) the ASR has adequate financial resources;

***Note**:*

(1) The Commission may specify specific financial resources requirements under section 8 of the ASR Rules, including a minimum capital level, a minimum liquidity level and a maximum gearing ratio. In specifying such requirements, the Commission will take into account all relevant circumstances (including the scope and size of the ASR's business and operations as well as the nature and impact of any other business activities that it conducts)[161]*, and the need for reasonable assurance as to the ASR's continued financial viability and ability to wind down in an orderly manner (should that become necessary).*

(2) The levels specified may vary from ASR to ASR. However, in general, it is expected that minimum capital levels specified will not be lower than HK$5 million, minimum liquidity levels will be set by reference to the ASR's projected operating expenses for at least the next six months, and maximum gearing ratios specified will not be higher than 70%.

(b) the ASR can carry on its business and operations in an orderly, efficient and effective manner;

(c) proper and adequate safeguards and risk management policies are in place and documented to protect the ASR's business and operations~~, its issuer-clients and registered holders~~ from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions, and to protect its issuer-clients and securities holders from financial loss arising from misconduct or omissions by the ASR or its employees or agents;[162]

***Note**:*

(1) Safeguards and risk management policies put in place are expected to be commensurate with the nature, size and complexity of the ASR's business and operations, and to be regularly reviewed and updated to ensure their continued effectiveness taking into account any change to the ASR's business and operations, and relevant regulatory developments.

(2) Where ~~the ASR's business and operations include matters~~ an ASR conducts business activities otherwise than as an ASR, or provides services other than ~~the provision of~~ securities registrar services, the safeguards to be put in place are expected to take into account and address any risks posed by such ~~matters~~ other activities or services.

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[161] **Note for the purpose of this conclusions paper only**: Drafting amendment – amended consequential to the new definition of "business and operations".

[162] **Note for the purpose of this conclusions paper only**: See paragraphs 175 and 176 of this consultation paper which explain the amendments to this paragraph (c).

(d) supervisory and other internal review functions (eg, compliance and internal audit) are segregated from operational duties to avoid undetected errors and abuses which may expose the ASR~~,~~ or its issuer-clients ~~or registered holders~~[163] to inappropriate risk;

(e) proper records are kept and maintained in relation to the ASR's business and operations;

***Note**:*

This includes complying with requirements under Part 4 of the ASR Rules and ~~relevant provisions of company law~~ other applicable laws and regulations (eg, section 627 of the Companies Ordinance and section 18I of the Stamp Duty Ordinance (Cap 117))[164]*.*

(f) the ASR can carry on its business and operations in a manner that is compliant with all applicable laws and regulations; and

(g) the ASR can perform its functions and obligations in a manner which ~~enables~~ assists or facilitates[165] its issuer-clients to comply with all laws and regulatory requirements applicable to them, and which complies with the requirements set out in Schedule 2 to this Code.

***Note**:*

Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from ~~registered~~ securities holders including instructions to transfer~~,~~ or dematerialize ~~or rematerialize~~[166] *prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers, it is crucial that the ASR complies with those requirements when performing such functions and obligations (eg, requirements under relevant company law, the USM Rules, etc).*

4.2 Human and technical resources

(a) An ASR should have sufficient human and technical resources and experience to ensure the proper performance of its functions and obligations at all times. An ASR should ensure that any person it employs or appoints in connection with its business and operations is qualified, suitably trained or has appropriate experience to act in the capacity and to perform the respective duties and responsibilities for which the person is so employed or appointed.

(b) An ASR should provide suitable training and adequate information to its employees and agents to ensure that they can perform their duties and responsibilities diligently.

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[163] **Note for the purpose of this conclusions paper only**: See paragraphs 175 and 176 of this consultation paper which explain the amendments to this paragraph (d).

[164] **Note for the purpose of this conclusions paper only**: Added in light of ASRs' role as "applicant" under the proposed amendments to the SDO.

[165] **Note for the purpose of this conclusions paper only**: See footnote 149 above.

[166] **Note for the purpose of this conclusions paper only**: Reference to "rematerialize" is deleted as rematerialization will not be possible except in very limited circumstances, ie, delisting of the securities concerned. (See paragraphs 131 to 135 of this conclusions paper.)

***Note**:*

This includes, for example, ensuring that employees and agents are apprised of policies and procedures that are relevant to their respective roles and responsibilities.

(c) An ASR should ensure that it has adequate resources to manage and supervise its employees and agents diligently, and does so supervise them.

4.3 Suitable premises

Under the ASR Rules, an ASR must not use any premises for any of the purposes specified in those Rules unless the premises are suitable for use for that purpose. In assessing the suitability of any such premises (or of any other premises used in connection with its business and operations), the ASR should have due regard to the following:

(a) that the premises are subject to appropriate security measures, and are (as necessary) fire and water-proof;

(b) that the premises are not used for residential purposes;

(c) that any area of the premises used for storing records and documents relating to issuer-clients and/or ~~registered~~ securities holders is segregated, and subject to appropriate security and access controls;

(d) that if the premises are shared with a third party (whether or not within the same group as the ASR), appropriate measures are taken to restrict access to that part of the premises used by the ASR and to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or any ~~registered~~ securities holders, as necessary and reasonable in the circumstances;

(e) that any access to the premises by third parties (including any issuer-client, ~~registered~~ securities holder, or another company within the same group as the ASR) is appropriately restricted so as to safeguard, and preserve confidentiality in respect of all property, documents and information relating to the ASR's business and operations, or to any of its issuer-clients or ~~any registered~~ securities holders, as necessary and reasonable in the circumstances;

(f) that the premises are accessible at all times for the purposes of regulatory visits by the Commission.

***Note**:*

For avoidance of doubt, any premises used by an ASR to process or store information or data under section 4(1)(b) of the ASR Rules includes premises used to: (i) keep records or documents required under those rules; and (ii) transmit information or data relating to its securities registrar services.[167]

[167] **Note for the purpose of this conclusions paper only**: Note added consequential to deleting section 4(1)(c) of the ASR Rules.

4.4 Capacity

(a) An ASR should ensure that it has adequate systems capacity for the proper performance of its functions and obligations as an ASR.

Note:

(1) This includes, for example, ensuring adequate systems capacity in connection with the performance of any services to issuer-clients or ~~registered~~ securities holders, including the provision of securities registrar services and operation of any service facilities.

(2) In considering the adequacy of systems capacity, an ASR should take into account its service level commitments and obligations regarding the volume, speed and turnaround times for any processes, transactions or other matters. The market's reasonable expectation in respect of these matters should also be taken into account.

(b) An ASR should have an adequate margin above its current capacity to handle its current volume and systematically establish future capacity estimates on a regular basis. In addition, an ASR should conduct periodic stress tests to assess whether its computer systems and ~~service~~ facilities can perform adequately in relation to estimated capacity levels, including in the event of heavily subscribed public offers and large increases in the number of ~~registered~~ securities holders or number of transactions effected by such holders.

4.5 Reliability

An ASR should ensure that the computer and other systems and facilities used in the performance of its functions and obligations are reliable and that both internal and external system/programme developers observe the following requirements:

(a) proper planning, testing and implementation of such systems and facilities, and of any upgrades;

(b) regular monitoring of such systems and facilities, including any equipment;

(c) availability of timely and adequate support in emergencies;

(d) timely rectification of problems;

(e) adequate resolution of recurring problems;

(f) proper and adequate maintenance of written documentation detailing functional and technical specifications of all such systems and facilities; and

(g) maintenance and retention of a continuous and properly documented audit trail of changes and/or repairs to such systems and facilities.

Note:

It is expected that not all systems and facilities may be computer-based, eg, an ASR may put in place systems and facilities for handling enquiries in person. Obligations under this section 4.5 are intended to apply in respect of both computer-based and non-computer-based systems and facilities.

4.6 Contingency planning

(a) An ASR should have an appropriate contingency plan to deal with potential operational failures, emergencies and disasters. The contingency plan should

be documented, maintained and periodically tested to ensure that it is viable and adequate. A plan for dealing with media and regulatory enquiries should be formulated and the ASR should have competent and trained staff to deal with such matters.

***Note**:*

(1) At a minimum, an ASR's contingency plan is expected to cover the following:

- *identify and address different contingency scenarios that may pose a significant risk of disrupting normal operations (including cyber-attacks[168], critical vendor failures, relevant physical disasters or emergencies, etc);*
- *provide a clear business continuity plan and its objectives, and set out details of recovery times and recovery points[169]; and*
- *include clearly defined procedures for crisis and event management (including the management of operational incidents and service facilities incidents).*

(2) In developing its contingency plan, an ASR should take into account that it is expected to make all reasonable efforts to resume the provision of services, particularly critical services, as soon as reasonably practicable following the occurrence of any contingency scenario, and with a view to minimising divergence from service level commitments and obligations. Critical services are expected to include any services affecting:

- *the timely update of registers of holders (eg, following any transfer, dematerialization, corporate action, etc); or*
- *the smooth operation of CCASS (eg, services relating to the transfer of prescribed securities to HKSCC Nominees Limited ~~the central nominee~~ to settle continuous net settlement (CNS) transactions within the settlement period, timely adjustments to ~~the~~ HKSCC Nominees Limited's registered holdings ~~of the central nominee~~ following a corporate action, etc).*

(b) An ASR should ensure that its backup site and systems are protected and operational in the event of systems failure. At a minimum, the ASR should have:

(i) a backup site or other suitable facility which will enable the ASR to maintain critical functions in the event of an emergency;

***Note**:*

Critical functions include any functions that are time critical, such as functions that may affect the timely update of registers of holders or the smooth operation of CCASS.

(ii) backup records, servers and supporting documentation which are located in separate premises;

(iii) backup client and transaction databases which are kept securely in off-line media (such as mass storage devices, standalone database

[168] See also section 6.3, below (which discusses matters relating to cybersecurity), and in particular section 6.3(c) (which notes the need for contingency procedures to cover cyber-attack scenarios).

[169] See also note (2) under section 4.6(b)(iii) below, which expands on "recovery points" expected in respect of registers of holders.

servers, or other offline backup facilities[170]) which enable the ASR to retrieve and access the data in a timely manner;

***Note**:*

(1) Client and transaction databases include, at a minimum, all registers of holders, as well as other databases containing critical data relating to the ASR's issuer-clients, ~~registered~~ securities holders and transactions conducted through any of the ASR's service facilities.

(2) To enable recovery points for registers of holders to be no more than one business day old, the backup record of each register of holders should be updated to no earlier than the close of business of the immediately preceding business day.

(3) Offsite storage is generally expected to be subject to proper security measures, and to be fire and waterproof.

(iv) backup functions which are performed regularly and monitored to:

(A) ensure information stored in client and transaction databases is securely and completely backed up; and

(B) enable timely remedial action and resolution of errors; and

(v) backup printing facilities or printers for the production of title instruments (where applicable) or other related documentation.

4.7 Insurance[171]

Under the ASR Rules, an ASR must ensure that it is covered by insurance that is necessary to provide reasonable protection against risks associated with its business and operations. Such risks include risks of loss or damage attributable to any of the following:

(a) forgery or fraudulent alteration of any of the following by an employee or agent of the ASR —

(i) a cheque or other negotiable instrument;

(ii) a register of holders of prescribed securities for which the registrar acts as the securities registrar;

(iii) a certificate or other document evidencing title to, or other interests in, prescribed securities; or

(iv) an instrument or other document relating to, or received by the registrar in connection with, the holding, disposal, or other change in title to prescribed securities;

(b) forgery or fraudulent alteration of an instruction or request (whether electronic or otherwise) by an employee or agent of the ASR and relating to or received by the registrar in connection with—

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[170] **Note for the purpose of this conclusions paper only**: Amended to address concerns regarding the meaning of offline media. (See paragraphs 175 to 176 of this conclusions paper.)

[171] **Note for the purpose of this conclusions paper only**: See paragraphs 180 to 181 of this conclusions paper which explain the addition of this section 4.7.

(i) the holding, or any disposal of, or any change in title to, prescribed securities;

(ii) the making, distribution, receipt or any other disposal of any payment relating to prescribed securities; or

(iii) the exercise of rights relating to prescribed securities.

5. GP 4 Outsourcing[172]

When outsourcing tasks, an ASR should take into account the degree of materiality or criticality of the task to the ASR's business and operations, and structure the outsourcing arrangements with a view to ensuring that ~~material risks are properly identified and managed, and that the interests of the ASR, issuer clients and registered holders~~ the ASR's business and operations, and all property and information relating to such business and operations, are properly protected.

5.1 Risk assessment preceding outsourcing arrangements

An ASR should not commence any arrangements for outsourcing its tasks to a service provider unless it has first performed a suitable risk assessment and is satisfied that:

(a) all material risks relating to the arrangements (including to the particular tasks to be outsourced and the particular service provider involved) have been identified;

(b) all material risks identified can and will be adequately managed for so long as the arrangements are and remain effective; and

(c) the arrangements will not impair the effectiveness of the ASR's internal controls nor compromise the interests of issuer-clients ~~or registered holders~~[173] or the integrity of the market.

Such risk assessment should be regularly reviewed in light of any material change to the outsourcing arrangements entered into, or to the ASR's business and operations, and relevant regulatory developments.

5.2 Pre-requisites for outsourcing

Where an ASR outsources any of its tasks to a service provider, it should ensure that:

(a) sufficient and appropriate due diligence is carried out as regards the service provider's suitability and ability to carry out the outsourced tasks, and to do so in compliance with the ASR's obligations under applicable laws and regulations;

(b) sufficient and appropriate procedures and controls are in place to monitor the service provider's performance of the outsourced tasks, and to effectively manage any risks posed by the outsourcing arrangements on a continuing basis;

***Note**:*

The monitoring of the service provider's performance of outsourced tasks will be crucial. Accordingly, and taking into account the criticality of the outsourced tasks to the business and operations of the ASR, it is expected that:

(1) the ASR's monitoring will, at a minimum, seek to:

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[172] **Note for the purpose of this conclusions paper only**: See footnote 147 above.

[173] **Note for the purpose of this conclusions paper only**: See paragraphs 175 and 176 of this consultation paper which explain the amendments to this paragraph (c).

- *ensure that the service provider is in compliance with all material terms of the outsourcing arrangements;*
- *ensure the adequacy of the resources deployed by the service provider for the purposes of the outsourced tasks;*
- *establish whether any incidents or problems have been encountered, and if so, how these have been handled;*
- *establish whether the service provider's contingency plan regarding the outsourced tasks has been suitably updated in light of such incidents or problems; and*
- *review the service provider's risk profile and in particular its continued financial viability;*

(2) the ASR's monitoring will be performed by staff with sufficient relevant knowledge and expertise;

(3) the ASR's senior management will be kept suitably apprised of the service provider's performance, and any issues or incidents of concern will be promptly escalated as necessary; and

(4) the ASR's control procedures for overseeing the outsourced tasks will be regularly reviewed by its audit function.

(c) a binding written contract is entered into with the service provider, the nature and details of which are appropriate to the materiality or criticality of the outsourced tasks to the business and operations of the ASR;

***Note**:*

See also section 5.3 below which expands on the matters that the contract should, at a minimum, cover.

(d) sufficient and appropriate procedures and controls are in place to ensure continuity of service by the service provider to the ASR, including a business recovery plan (with periodic testing of backup facilities) and exit strategies in the event of the termination of any outsourcing arrangements;

***Note**:*

Contingency arrangements relating to any outsourcing will be critical to ensuring the continued smooth performance of the outsourced tasks. The ASR is therefore expected to:

(1) have an adequate understanding of the service provider's contingency arrangements, and consider the implications that these may have on the ASR's own contingency plans and exit strategies in the event that an outsourced task is interrupted due to systems or other failures at the service provider's end;

(2) consider the availability of alternative service providers and/or the arrangements for possibly having to bring the outsourced tasks back in-house in an emergency situation; and

(3) ensure that, when outsourcing arrangements (or any part thereof) are terminated:

- *all relevant data is either retrieved from the service provider or destroyed/deleted; and*
- *the service provider has not retained any copy of it (or of any part of it).*

(e) sufficient and appropriate procedures and controls are in place to protect from loss, damage and unauthorised use or disclosure, any property, information or data belonging or relating to the ASR, its issuer-clients or any ~~registered~~ securities holders, and in the possession or control of the service provider;

***Note**:*

This includes ensuring that the ASR's outsourcing arrangements (including any sharing of personal data with the service provider or its use by such provider) are in compliance with the Personal Data (Privacy) Ordinance (Cap 486) and with relevant codes, guidelines and best practices issued by the Office of the Privacy Commissioner for Personal Data from time to time.

(f) sufficient and appropriate procedures and controls are in place to ensure that the service provider will not use the services of a sub-contractor unless the ASR:

(i) has been fully informed of all relevant details, including the name of the sub-contractor, where it will perform the services sub-contracted, and (if applicable) where any data will be stored;

(ii) is able to object to or terminate the sub-contracting if it could have material adverse effects on the performance of a critical or material task or would lead to a material increase in risk; and

(iii) is able to take other appropriate measures against the service provider if it identifies shortcomings as a consequence of any sub-contracting arrangement; and

(g) sufficient and appropriate arrangements are in place to ensure that the ASR (including its auditor) and the Commission are able to obtain promptly, directly and upon request, up-to-date information concerning outsourced tasks including, as necessary, access to any data, systems, premises and staff of the service provider and of any sub-contractor engaged by the service provider.

***Note**:*

Information will be regarded as up-to-date if it is as up-to-date as reasonably practicable in the circumstances. The arrangements mentioned in this paragraph should also cover the obtaining of information following any insolvency, resolution or discontinuation of business operations of the service provider or sub-contractor concerned.

5.3 Outsourcing contract

The written contract mentioned in section 5.2(c) above should, at a minimum:

(a) specify the tasks to be outsourced, the terms of the outsourcing, and the respective rights, responsibilities and liabilities of the ASR and the service provider;

(b) enable the ASR to comply with its obligations under applicable laws and regulations;

(c) be regularly reviewed and revised, as appropriate, to reflect any changes to the outsourcing arrangements (or to risks posed by the outsourcing arrangements[174]), to the ASR's business and operations, and relevant regulatory developments; and

[174] See also section 5.1 above, which requires an ASR to regularly review its risk assessment of any outsourcing arrangements entered into.

(d) provide for sufficient levels of maintenance and technical assistance to enable the ASR to meet, as far as reasonably practicable, its service level commitments and obligations to issuer-clients and/or ~~registered~~ securities holders.

5.4 Outsourcing tasks outside Hong Kong

(a) An ASR should, as far as reasonably practicable, avoid outsourcing tasks to a service provider that is located, or that will perform the tasks, outside Hong Kong. Where this is unavoidable, the ASR should as far as reasonably practicable, ensure that the outsourcing arrangements are governed by Hong Kong law.

***Note**:*

In considering whether an overseas outsourcing arrangement is unavoidable, the Commission will take into account all relevant facts and circumstances, and all factors taken into account by the ASR (eg, economic considerations, security considerations, operational considerations, etc).

(b) An ASR should also consider the additional risks posed by engaging a service provider that is located, or that will perform the tasks, outside Hong Kong, and ensure that such risks are appropriately and adequately addressed. At a minimum, the ASR should consider and address the following:

(i) whether the service provider is subject to conflicting requirements under the laws and regulations of a place outside Hong Kong that may materially affect its ability to perform the outsourced tasks as intended;

(ii) whether, in an emergency or contingency situation, it may be more difficult to monitor and control the outsourced task or to implement appropriate responses in a timely manner;

(iii) whether there are any applicable economic, social, or political conditions that might adversely impact the service provider's ability to perform the outsourced tasks effectively for the ASR;

(iv) whether the ASR or Commission (or any auditor appointed by either of them)[175] may be denied prompt and direct access to any books, records, or other material in the possession or control of the service provider and relating to the ASR's business or operations;

(v) whether the regulatory environment for data security and protection is such as to require additional precautionary measures (such as introducing enhanced encryption) to safeguard any confidential information or data relating to the ASR's business or operations (including confidential information or data relating to the ASR, its issuer-clients or any ~~registered~~ securities holder) that the service provider has access to or control of;

(vi) whether confidential information or data belonging or relating to the ASR, its issuer-clients and/or any ~~registered~~ securities holders will be

[175] **Note for the purpose of this conclusions paper only**: Added for completeness and consistency with section 5.2(g) above.

accessible by overseas authorities and/or regulators, and if so, whether such access is reasonable in the circumstances, requires authorisation by the ASR, issuer-client or ~~registered~~ securities holder involved (as appropriate), and (unless prohibited by ~~applicable~~ relevant[176] laws and regulations) will be notified to the ~~SFC~~ Commission; and

***Note**:*

In general, where an overseas authority or regulator has sought access to such data, the ASR should notify the ~~SFC~~ Commission immediately. The ~~SFC~~ Commission may require the ASR to make alternative arrangements for the outsourced tasks if it considers the access request to be inappropriate or unjustified.

(vii) whether confidential information or data (including any personal data) belonging or relating to the ASR, its issuer-clients or any ~~registered~~ securities holder will be transferred and/or maintained outside Hong Kong, and if so, whether this will be done in accordance with relevant laws and regulations (including relevant provisions of the Personal Data (Privacy) Ordinance) and with the consent or authority of the ASR, issuer-client and/or ~~registered~~ securities holder (as appropriate).

***Note**:*

The matters listed in paragraphs (i) to (vii) above should be similarly considered and addressed when the ASR's service provider is seeking to appoint a sub-contractor that is located, or will perform the outsourced tasks, outside Hong Kong and/or outside the jurisdiction where the service provider is located.

5.5 ASRs to remain responsible and liable for outsourced tasks

Notwithstanding any outsourcing of an ASR's tasks to a service provider (or a sub-contractor), the ASR remains fully responsible in respect of any matter to which the outsourced tasks relates, and for ensuring compliance with obligations imposed on the ASR under applicable laws and regulations.

***Note**:*

(1) This section 5 applies irrespective of whether or not the service provider is an affiliate within the same group of companies as the ASR.

(2) When assessing the suitability of outsourcing arrangements between an ASR and an affiliated service provider, the Commission will generally take into account:

- *the group's organisation and control structures, as well as the specific arrangements between the ASR and its affiliates;*
- *the ASR's ability to control or influence the actions of the affiliated service provider;*
- *whether the interests of the ASR (or of its issuer-clients ~~or any registered holders~~) differ from those of the affiliated service provider;*
- *whether the intra-group relationship may restrict the ability of the ASR to control or influence the affiliated service provider, and by extension, the ability of the Commission to effectively supervise the ASR; and*

[176] **Note for the purpose of this conclusions paper only**: Amended for consistency of terminology with section 5.4(b)(vii) below.

- *whether the ASR and/or its affiliate may choose not to enforce with rigour the provisions of the contract between them regarding the outsourcing arrangements.*

(3) The requirements in this section 5 apply according to the degree of materiality or criticality of the outsourced task to the ASR's business and operations and to its regulatory obligations. In general:

- *a task will be regarded as material if it comprises or affects a significant proportion of the activities, operations, clients or market relationships or would introduce a material or unacceptable level of risk to the ASR if it were to fail;*
- *a task will be regarded as critical if it is critical to the ASR's functioning or to the integrity of the market (including therefore the smooth operation of CCASS);*
- *a critical task may be one that is small in scale but without which the ASR is unable to conduct its activities and thus unable to meet its obligations or comply with applicable regulations.*

(4) Even where a task is not material or critical, the ASR is expected to consider the appropriateness of applying these requirements as a matter of good practice.

(5) In assessing what is material or critical, ASRs are expected to consider individual factors as well as the totality of all factors relevant to an outsourced task. The combination of a number of factors, which are minimal in isolation, may, when considered in aggregate, determine that the outsourced task to which they relate is material or critical.[177]

[177] **Note for the purpose of this conclusions paper only**: New notes added to address concerns about the need for more clarity on the outsourcing requirements. (See paragraphs 206 to 208 of this conclusions paper.)

6. GP 5 Computer systems and facilities

An ASR should set up and maintain its computer systems and facilities to achieve a high degree of reliability, availability and security in respect of its systems, data and networks and incorporate adequate capacity and contingency measures.

6.1 Systems integrity

(a) An ASR should ensure that:

(i) the computer systems and facilities used in connection with its business and operations have sufficient operational integrity, meet business needs, and operate in a secure and adequately controlled environment that seeks to minimise fraud and disruption and account for any unauthorised access and use[178]; and

(ii) key components of its computer systems and facilities are adequately documented, and regularly reviewed and updated to ensure their continued suitability and adequacy taking into account any changes in its business and operations, and relevant regulatory developments.

***Note**:*

At a minimum the following is expected to be documented in respect of the computer systems and facilities:

(1) its design, development, functions and detailed specifications; and

(2) all testing, reviews, modifications, upgrades and rectifications.

(b) An ASR should ensure that a periodic review programme is established to comprehensively plan, test and monitor the security, reliability and capacity of its computer systems and facilities.

6.2 Systems and data security

An ASR should ensure that the following key aspects of systems and data security are implemented in respect of its computer systems and facilities:

(a) proper segregation of employee duties;

(b) restricted and controlled access to the following, with clear audit logs:

(i) the computer systems and facilities, or any part thereof;

(ii) any programme or data stored in or accessible through or forming part of such systems or facilities; and

(iii) any premises where such systems or facilities are located;

***Note**:*

Restrictions and controls on access should cater for remote access as well and, at a minimum, require:

[178] **Note for the purpose of this conclusions paper only**: Added for better clarity in light of concerns about the scope of audit logs required. (See paragraphs 164 – 167 of this conclusions paper.)

(1) adoption of robust and effective password rules for access (including the use of multiple passwords and system-generated one-time passcodes, where necessary or appropriate);

(2) change of passwords at regular intervals; and

(3) use of an automatic time-out feature for access.

(c) implementation of policies and procedures for:

(i) granting, modifying and removing user access rights to ensure access is on a need-to-have basis and approved by persons duly authorised to do so; and

(ii) regularly reviewing access rights already granted to ensure they remain appropriate;

(d) storage of data in a safe and secure systems environment protected against data leakage or loss due to system breakdown, cyber-attack or unauthorised access;

(e) use of appropriate encryption technology to ensure secured communication with issuer-clients and ~~registered~~ securities holders, and to protect the confidentiality of information stored in and transmitted from the computer systems or facilities;

(f) prompt and appropriate notification to users of the computer systems or facilities of material information relating to their (actual or purported) use of such systems or facilities (eg, system login, password resets, changes to personal particulars, etc);

(g) maintenance of audit logs for logging details of user activities on the computer systems and facilities;

***Note**:*

(1) Audit logs kept in respect of access to, and use of, computer systems and facilities serve as important aspects of systems and data integrity. In particular, they: (i) help ensure the integrity of registers of holders; and (ii) account for all access to and activities conducted through such systems and facilities, eg, transactions and processes (such as dematerialization, transfers, corporate action distributions, etc) and systems-related enhancements and activities (such as changes to system configurations and database, software patches, etc). ASRs are thus expected to maintain sufficient audit logs to demonstrate and safeguard the integrity of such registers and account for such access and activities.[179]

(2) At a minimum, audit logs should reflect, in respect of each user activity, the user ID of the user concerned; the date, time and duration of access and of the activity concerned; and the nature of the activity concerned.

(h) regular review of such audit logs by suitably qualified and independent persons to detect potential problems and plan preventive measures, and appropriate reporting of review results to senior management;

(i) implementation of intrusion detection devices to monitor any unauthorised or abnormal access to the computer systems or facilities, and any unauthorised

[179] **Note for the purpose of this conclusions paper only**: Added for better clarity in light of concerns about the scope of audit logs required. (See paragraphs 164 – 167 of this conclusions paper.)

use or modification of any programme or data stored in or accessible through or forming part of such systems or facilities;

(j) implementation of robust and effective fraud monitoring mechanisms to detect suspicious transactions and unusual activities in a timely manner to minimise fraud and forgery; and

(k) deployment of a secure network infrastructure through proper network segmentation (ie, a Demilitarised Zone with multi-tiered firewalls) to protect critical systems and data.

6.3 Cybersecurity

(a) An ASR should monitor and evaluate security patches or hotfixes released by software provider(s) on a timely basis and, subject to an evaluation of the impact, conduct testing as soon as practicable and implement the security patches or hotfixes as soon as practicable following the completion of testing.

(b) An ASR should implement and update anti-virus and anti-malware solutions (including the corresponding definition and signature files) on a timely basis to detect malicious applications and malware on critical components of its computer systems and facilities.

(c) To ensure appropriate contingency procedures[180] can be effectively executed when cybersecurity situations occur, an ASR should make all reasonable efforts to cover possible cyber-attack scenarios (such as distributed denial-of-service (DdoS) attacks, and total loss of business records and/or data belonging or relating to the ASR, its issuer-clients or ~~registered~~ securities holders resulting from cyber-attacks (eg, ransomware)) in its contingency plan.

(d) An ASR should define a cybersecurity risk management framework and set out key roles and responsibilities of the staff involved.

***Note**:*

In general, the framework should, as far as reasonably practicable (taking into account the nature and extent of potential cybersecurity threats that might be faced given the structure of the ASR's computer systems and facilities), cover the following responsibilities:

(1) conducting a self-assessment of the overall cybersecurity risk management framework on a regular basis;

(2) performing periodic security testing to detect security vulnerabilities in its computer systems and facilities;

(3) monitoring and logging suspicious activities on such systems and facilities to protect them and any data against cyber-attack;

(4) reviewing significant issues escalated from any cybersecurity incident reporting (whether actual or suspected);

(5) reviewing major findings identified from internal or external audits or from cybersecurity reviews, and endorsing and monitoring the completion of remedial actions;

(6) monitoring and assessing the latest cybersecurity threats and attacks; and

[180] See also section 4.6 above, which expands on requirements relating to contingency planning.

(7) where applicable, reviewing and approving contracts with service providers to whom any tasks have been outsourced.

(e) An ASR should establish written policies and procedures specifying the manner in which an actual or suspected cybersecurity incident should be escalated and reported internally and externally (eg, to issuer-clients, ~~registered~~ securities holders and users of its service facilities[181], the Commission, etc, as appropriate).

(f) An ASR should provide adequate cybersecurity awareness training to internal users of its computer systems and facilities on a regular basis. When designing the content of the training programme, the ASR should take into account the nature and extent of potential cybersecurity threats it might face.

(g) An ASR should take all reasonable steps to remind and alert issuer-clients, ~~and registered~~ securities holders and users of its service facilities about cybersecurity risks, and to recommend preventive and protection measures when using any of its service facilities (eg, that login credentials should be properly safeguarded and cannot be shared).

6.4 Use of authenticated messages

An ASR should, as far as reasonably practicable, use and advocate the use of authenticated messages in its communications with ~~registered~~ securities holders where such communications are:

(a) in electronic form;

(b) personal to a particular ~~registered~~ securities holder; and

(c) material to that holder's rights, interests or obligations as a ~~registered~~ securities holder.

***Note**:*

In general, and as far as reasonably practicable, an ASR is expected to use and advocate the use of authenticated messages where these materially affect:

(1) any instructions regarding the transfer, dematerialization or rematerialization of prescribed securities;

(2) any corporate action entitlements relating to prescribed securities; and

(3) any proxy instructions relating to prescribed securities.

[181] **Note for the purpose of this conclusions paper only**: Added because users of an ASR's service facilities may not be securities holders at the time.

7. GP 6 Information for issuer-clients and ~~registered~~ securities holders

An ASR should make adequate disclosure of relevant material information in its dealings with issuer-clients and ~~registered~~ securities holders.

7.1 Client agreement

An ASR should enter into a written agreement with its issuer-clients before providing services to them. The written agreement should, at a minimum, include a description of the scope and nature of the services to be provided, the terms and conditions on which they are to be provided, and the terms and processes for varying, suspending or terminating such services.

***Note**:*

(1) The terms and conditions must also be compliant with applicable laws and regulations. For example, any suspension or termination of a client agreement must also comply with Part 8 of the ASR Rules.

(2) For avoidance of doubt, compliance with Part 8 of the ASR Rules does not preclude ASRs from retaining an issuer-client's books and records pending settlement of outstanding fees and charges. However, any such retention must be reasonable in all the circumstances.[182]

7.2 User agreement

(a) An ASR should enter into a written agreement with users of its service facilities before making such facilities available to them. The written agreement should set out the terms and conditions on which the facilities are to be made available and, at a minimum, include:

(i) the identity, address and contact details of each party to the agreement;

(ii) a description of the service facilities to be made available to the user, and the purposes for which such facilities may be used (or not used, if applicable); and

(iii) sufficient details and information to ensure users are properly informed of how to use the service facilities, their rights and obligations when doing so, and the risks involved.

***Note**:*

(1) The address(es) provided in the agreement should include:

- *in the case of the ASR, at least one place where users can attend physically to make enquiries with or submit instructions and documents to the ASR or its issuer-clients in person; and*
- *details of any appropriate channels for the parties to make enquiries to verify the identity of the sender of or the authenticity of any messages received.*

(2) The details and information should include, for example:

- *details of operating hours for using the facilities;*

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[182] **Note for the purpose of this conclusions paper only**: Added for better clarity in light of concerns raised. (See paragraphs 115 – 117 of this conclusions paper.)

- *details of any applicable pre-requisites, limitations and dependencies for using the facilities;*
- *where the facilities are to be used to send messages to, or receive messages from, the ASR or its issuer-clients, and/or to effect transactions in prescribed securities (eg, to effect transfers, submit dematerialization requests, etc), details of the processing procedure, applicable cut-off and turnaround times (and consequences of missing those times), different service levels, etc;*
- *details of any fees and charges to be borne by users;*
- *sufficient information for users to understand the risks and responsibilities involved in using the facilities; and*
- *details of any contingency arrangements relating to the provision or use of the facilities.*

(b) An ASR should provide a copy of the User Agreement (including any amendments and any other related or supporting documents) to users, and draw to their attention any relevant risks and risk disclosure statements.

***Note**:*

Where a User Agreement is entered into otherwise than on a face-to-face basis, there is generally a higher risk of impersonation. The ASR is expected to ensure that its checks and procedures are adequate in providing reasonable assurance of the identity of the person concerned. This may include, for example, relying on facial recognition technologies to confirm a person's identity.

7.3 No circumvention of legal requirements

An ASR should ensure that it complies with its obligations under each Client Agreement and User Agreement, and that these agreements:

(a) do not operate to remove, exclude or restrict any rights of an issuer-client or user of its service facilities, or obligations of the ASR, under the law; nor

(b) include any clause, provision or term which is inconsistent with the ASR's obligations under this Code.

7.4 Disclosure of fees, charges and related information

(a) An ASR should disclose to the relevant issuer-client and ~~registered~~ securities holder the basis and amount of any fees and charges payable for services provided to them or on their behalf.

***Note**:*

(1) Where different levels of fees or charges are payable (eg, based on different service levels), all relevant details should be clearly specified.

(2) Where a percentage-based fee or charge is payable, details of what the percentage is charged against should be clearly specified.

(b) As far as reasonably practicable, an ASR should make public any fees or charges payable by ~~registered~~ securities holders, including in particular fees or charges payable in connection with the following:

(i) any transactions in prescribed securities handled or processed by the ASR (including any transfer, dematerialization or transmission of prescribed securities); and

(ii) any enquiries or other matters handled by the ASR at the request of a ~~registered~~ securities holder and relating to securities issued by the ASR's issuer-client or to the ASR's service facilities.

7.4A Annual statements[183]

(a) An ASR that makes annual statements available for access electronically must: (i) notify the recipient when the statement is made available; and (ii) ensure that the recipient of the statement has access to, or is provided information on how to access, the computer systems and facilities through which the statement is to be accessed.

(b) Where prescribed securities cease to be listed, the ASR concerned must, in the annual statement covering the securities, clarify:

(i) the date on which the securities cease, or will cease, to be listed;

(ii) whether the securities holder to whom the statement is sent is entitled to be issued any title instrument in relation to their securities; and

(iii) if so, when and how such title instrument may be obtained.

7.5 Information about the ASR

An ASR should upon request provide its issuer-clients and ~~registered~~ securities holders adequate and appropriate information about its business and operations.

[183] **Note for the purpose of this conclusions paper only**: Added to better clarify ASRs' obligation when sending or making statements available for access electronically, particularly where access is via an ASR's service facilities and the recipient has yet to complete the onboarding process for using such facilities, and on delisting of its issuer-client's prescribed securities.

8. GP 7 Conflicts of interest[184]

An ASR should try to avoid conflicts of interest, and when they cannot be avoided, should ensure that issuer-clients ~~and registered holders~~ are treated fairly while also safeguarding the integrity of the market.

8.1 Conflicts of interest

An ASR should act in the best interests of its issuer-clients~~, registered holders~~ and the integrity of the market. An ASR should try to avoid conflicts of interest (whether actual or potential), and when conflicts cannot be avoided, it should ensure that the parties involved are informed of the conflict, that the interests of its issuer-clients ~~or registered holders (as the case may be)~~ are treated fairly, ~~and that~~ while also safeguarding the integrity of the market ~~is safeguarded~~.

***Note**:*

While an ASR may be contractually obligated to comply with requests or directions from its issuer-clients, it must also have due regard to safeguarding the integrity of the market. Where requests or directions from an issuer-client might jeopardise the integrity of the market, the ASR is expected to highlight its concerns to the issuer-client and endeavour, as far as reasonably practicable, to find an alternative solution that addresses conflicting interests and concerns.

8.2 Policies and procedures

An ASR should establish, maintain and implement policies and procedures for identifying and dealing with conflicts of interest (whether actual or potential). Such policies and procedures should also specify steps for avoiding such conflicts.

8.3 Confidentiality

An ASR should take all reasonable steps to preserve confidentiality in respect of any personal or confidential information obtained by it in the performance of its functions and obligations as an ASR. In particular, it should not:

(a) disclose information relating to any of its issuer-clients or any ~~registered~~ securities holder to any person; nor

(b) use such information for any purpose,

other than in the performance of its functions and obligations as an ASR unless such disclosure or use is expressly or impliedly authorised by the relevant issuer-client or ~~registered~~ securities holder (as the case may be), or is required or permitted by or under any applicable laws and regulations.

[184] See footnote 148 above.

9. GP 8 Safeguarding of third-party assets

An ASR should ensure that third-party assets are promptly and properly accounted for and adequately safeguarded.

9.1 Establishment of review processes

An ASR should establish and maintain appropriate procedures (including, where appropriate, regular reconciliation) to prevent or detect errors, omissions, fraud and other unauthorised or improper activities in its business and operations as an ASR.

***Note**:*

The ASR is expected to:

(1) regularly reconcile its internal records and reports with those issued by relevant third parties (eg, HKSCC, banks, etc) to identify and highlight for action any errors, omissions or misplacement of assets; and

(2) ensure that such reconciliations are checked/reviewed and approved by appropriate senior staff member(s).

9.2 Audit trails

Adequate audit trails should be maintained which will enable an ASR to detect and investigate suspected improprieties in its business and operations so as to assist the ASR in the prevention of any improprieties.

9.3 Safekeeping of documents and third-party assets

(a) An ASR should properly store and safe-keep third-party assets. It should also establish appropriate procedures for the distribution of dividends, warrants and other entitlements, and for the handling of documentation (such as blank title instruments or cheques), securities, seals and impressions and information relating to issuer-clients and ~~registered~~ securities holders.

(b) An ASR should also establish procedures to document the handling or movements of third-party assets. This may include procedures for:

(i) clear identification of staff members and representatives of issuer-clients with authority to make additions, deletions or changes or otherwise part with possession of third-party assets, and the parameters of such authority;

(ii) use of standardised and sequentially numbered documents or other appropriate methods to acknowledge and account for asset movements;

(iii) secure storage of the ASR's assets and third-party assets, as well as other important documents and controlled forms (eg, cheque books, title instruments, etc) which are kept at the ASR's premises;

(iv) prompt depositing of cheques, cashier orders and other negotiable instruments and securities into appropriate account(s);

***Note**:*

During the period when any title instrument or cash is held at the ASR's premises, routine audits should be conducted to ensure proper safeguarding of the ASR's assets and third-party assets.

(v) payments or refunds in relation to dividends, public offer applications, rights issues or other corporate actions, and whether payable to an issuer-client or ~~registered~~ securities holder;

***Note**:*

(1) In the case of application monies relating to public offers, the ASR is expected to have adequate arrangements to protect such monies until the allotment of the securities concerned to successful applicants and the despatch of refund monies to unsuccessful and partially successful applicants is completed. This includes holding the application monies in a separate account on trust for the applicants so as to ensure that the monies belong beneficially to the applicants, and that the issuer is entitled to receive only the amount representing payment for allotted securities.

(2) Where any payment is made by cheque, such cheque should be crossed "Account Payee Only" and made payable to the relevant ~~registered~~ securities holder or unsuccessful applicant in a public offer (as applicable).

(vi) maintenance and updating of registers of holders that it is responsible for in a timely and accurate manner;

(vii) clear definition and communication of authorisation requirements and authorised signatories and applicable authority parameters to relevant banks.

***Note**:*

An ASR should consider the need to require two or more authorised signatories, and should not make any payment (whether by cheque or otherwise) unless the date, specified payee and amount portions of the cheque or other payment instruction (as the case may be) are properly filled in.

10. GP 9 Compliance

An ASR should comply with all regulatory requirements applicable to the conduct of its business and operations so as to promote the best interests of its issuer-clients and the integrity of the market. In addition, an ASR should provide securities registrar services in a manner which ~~enables~~ assists or facilitates[185] its issuer-clients to comply with their obligations under applicable laws and regulations.

10.1 Compliance

(a) An ASR should comply with, and implement and maintain measures to comply with, all applicable laws and regulations. Such measures should also aim to ensure that the ASR's employees and agents comply with such laws and regulations.

***Note**:*

Compliance with applicable laws and regulations includes compliance with this Code, the Commission's Guidelines ~~on~~ for Electronic Public Offers, and (where the ASR is a participant of HKSCC) the rules and operational procedures of HKSCC.

(b) In addition, an ASR should provide securities registrar services in a manner which ~~complies~~ is consistent[186] with any related requirements imposed on its issuer-clients under applicable laws and regulations, and with the requirements set out in Schedule 2 to this Code.

***Note**:*

Many functions and obligations of an issuer are, in practice, performed by the issuer's ASR (eg, matters relating to the keeping of registers of holders, the handling of instructions from ~~registered~~ securities holders including instructions to transfer, dematerialize or rematerialize prescribed securities, etc). Where these are subject to legal or regulatory requirements that are imposed on issuers (eg, requirements under relevant company law, the USM Rules, the rules of any exchange on which prescribed securities issued by the issuer are listed or traded, etc), or where there are reasonable market expectations as to how such functions or obligations are to be performed, the ASR is expected to:

(1) perform the functions and obligations in a manner that ~~complies~~ is consistent with such requirements and (as far as reasonably practicable) such expectations; and

(2) advise its issuer-client of any potential or actual breach of such requirements or expectations.

(c) An ASR will be responsible for the acts and omissions of its employees and agents in the conduct of the ASR's business and operations.

10.2 Maintenance of audit function

(a) An ASR should maintain an audit function to evaluate and report on the adequacy and effectiveness of its management, operations and internal controls. The audit function should conduct regular reviews and audits to detect activities or conditions which may breach, or contribute to non-compliance by the ASR and/or its staff of, legal and regulatory requirements,

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[185] **Note for the purpose of this conclusions paper only**: See footnote 149 above.

[186] **Note for the purpose of this conclusions paper only**: See footnote 149 above.

or its own policies and procedures. The work and procedures of the internal audit unit should be periodically reviewed by external auditors.

(b) Wherever possible, an ASR's compliance and internal audit functions should be effectively segregated from and independent of its operational and supervisory functions, and should report directly to senior management. Where the size of the ASR does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors.

(c) An ASR should ensure that:

(i) there is adequate planning, control and recording of all audit and review work performed;

(ii) timely reporting of findings, conclusions and recommendations to senior management; and

(iii) matters or risks highlighted in relevant reports are followed up and resolved satisfactorily.

10.3 Handling of complaints and other requests

(a) An ASR should have properly documented policies and procedures in relation to the timely handling of complaints, and ~~other~~ requests from issuer-clients or ~~registered~~ securities holders. The ASR should also review such policies and procedures regularly, and update them as necessary, to ensure their continued suitability and adequacy taking into account changes in the ASR's business and operations, and relevant regulatory developments.

***Note**:*

In general, an ASR should have due regard to the following when assessing the suitability and adequacy of its policies and procedures for handling complaints and other requests:

(1) whether there is sufficient senior management supervision of its complaints handling policies and procedures (including the setup, implementation and on-going monitoring of its complaints handling process);

(2) taking into account the scale of the ASR's operations (eg, the number of issuer-clients it serves, or the number of issuer-clients with a significant number of ~~registered~~ securities holders, etc) and the nature and volume of complaints and requests received, whether there is a need to put in place dedicated resources to handle complaints and other requests or enquiries;

(3) whether serious or high-impact complaints are properly escalated internally to senior management and/or reported to the Commission (eg, complaints regarding the same or similar issue and involving or affecting multiple ~~registered~~ securities holders, complaints concerning possible fraud or misconduct by the ASR's staff, etc);

(4) whether key information about the ASR's policies and procedures for handling complaints and other requests (eg, information about how complaints or requests can be lodged, the expected processing timeframes under normal circumstances and when a response may be expected, etc) is disclosed or otherwise readily accessible to the ASR's issuer-clients and ~~registered~~ securities holders, and presented in clear and understandable language;

(5) whether proper records of all complaints are kept (including details of the substance of each complaint, follow-up actions taken in respect of complaints relating to issuer-

clients, ~~registered~~ securities holders and third-party assets, and how the complaint was resolved); and

(6) whether clear and effective record retention policies are established and maintained to ensure that relevant documents and records are readily accessible and available to senior management, and (where applicable) to the Commission.

(b) An ASR should ensure that:

(i) complaints from issuer-clients and ~~registered~~ securities holders are handled in a timely and appropriate manner;

(ii) steps are taken to investigate and respond to complaints in a timely and appropriate manner;

(iii) where a complaint cannot be dealt with promptly, the complainant is advised of any further steps which may be available to the complainant, such as advice that the complaint may be made to the Commission; and

(iv) if the complaint cannot be satisfactorily resolved between the ASR and the complainant, the complainant is advised of the option to escalate the complaint to the Commission.

***Note**:*

(1) An ASR is expected to properly review the subject matter of each complaint and ensure that a complaint is investigated and assessed thoroughly, fairly and objectively taking into account all facts and circumstances of the complaint.

(2) If the subject matter of a complaint relates (or may relate) to other issuer-clients and/or ~~registered~~ securities holders, or raises issues of broader concern, the ASR is expected to take steps to investigate and remedy such issues, notwithstanding that the other clients or holders may not have filed complaints with the ASR.

(3) Where the ASR identifies any recurring or systemic problems, the ASR is expected to investigate to identify the root cause and rectify the problem accordingly.

(4) The ASR is expected to ensure that investigation results are communicated to complainants clearly and promptly.

(c) An ASR should ensure that its policies and procedures for handling complaints and other requests are clearly communicated to all relevant staff and are strictly enforced. Relevant staff should also be provided with adequate training on such policies and procedures. Complaints should be investigated by staff who are not directly involved in the subject matter of the complaint.

***Note**:*

Frequent complaints against an ASR may raise concerns about the adequacy of the ASR's internal controls, conduct, operational capabilities and management supervision.

10.4 Notification

(a) An ASR should promptly notify the Commission of any occurrences of material non-compliance by the ASR, or its employees, agents or service providers, with applicable laws and regulations.

(b) An ASR should establish and maintain policies and procedures for escalating incidences of material non-compliance to senior management and reporting them to the Commission.

10.5 Incidents management

An ASR should establish, maintain and implement incidents management policies and procedures for:

(a) detecting occurrences of operational incidents and service facilities incidents;

(b) assessing and classifying the severity of such incidents as ***major***, ***medium*** or ***minor***;

Note:

In determining the severity of an operational incident or service facilities incident, the ASR is expected to consider, at a minimum, how great an impact the incident will (or is likely to) have on the following:

(1) the ASR's continued smooth provision of securities registrar services (including its continued smooth operation of any service facilities);

(2) the availability, reliability or integrity of information in critical databases (including any client and transaction databases);

(3) the continued operation of fair and orderly markets;

(4) the ASR's ability to comply, or to continue to comply, with its obligations under applicable laws and regulations (including this Code);

(5) the nature and extent of any impact on the property, rights and interests of issuer-clients and/or ~~registered~~ securities holders, including the number of such clients or holders who are (or are likely to be) affected; and

(6) the likelihood of attracting significant negative media attention, and its potential impact on the reputation of the ASR or the Hong Kong market.

The ASR is generally expected to classify an incident as "major" if its occurrence will have (or is likely to have) a serious or significant adverse impact on any of the above; and as "medium" if its occurrence will have (or is likely to have) an adverse impact on any of the above but not one which is serious or significant. Only incidents ~~that are (or are likely to be)~~ whose adverse effect is technical and can be easily and promptly rectified are expected to be classified as "minor".[187]

(c) identifying and implementing response measures to mitigate damage arising from such incidents, and remedial or rectification measures for resolving issues or problems identified;

(d) escalating to senior management, for information and/or decision, the occurrence of, and matters relating to, such incidents; and

(e) keeping the Commission informed of the occurrence of, and matters relating to, such incidents.

Note:

(1) Section 18 of the ASR Rules deals with the reporting of operational incidents and service facilities incidents to the Commission. In determining whether, and how quickly, any such incident should be reported to the Commission, the ASR should

[187] **Note for the purpose of this conclusions paper only**: Amended for better clarity and specificity. (See also paragraphs 204 to 205 of this conclusions paper.)

take into account all relevant facts and circumstances, including in particular, the nature and severity of the incident. In general, the Commission expects that:

- *~~(1)~~ if the severity of an incident is classified as "major" or "medium", it will be reported to the Commission immediately upon the ASR becoming aware of it — ie, as soon as reasonably practicable after the key person-in-charge of monitoring the normal functioning of the service or service facility concerned has become aware and assessed that the time needed to investigate or make enquiries exceeds what might be considered reasonable in the circumstances; and*
- *~~(2) if the severity of an incident is classified as "minor", it will~~ in any event, all incidents arising, outstanding or resolved during a half-year period must be reported ~~in~~ by the ASR~~'s next quarterly~~ to the Commission in the half-yearly return~~s to the Commission~~ relating to that half-year.*[188]

(2) In the event where an ASR is uncertain whether an incident should be reported to the Commission immediately upon the ASR becoming aware, it should consult the Commission.[189]

[188] **Note for the purpose of this conclusions paper only**: Amended to make clear that all incidents (and not only minor incidents) must be included in half-yearly returns.

[189] **Note for the purpose of this conclusions paper only**: Added to encourage ASRs to consult the Commission in case of doubt.

11. GP 10 Responsibilities of senior management

The senior management of an ASR should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the ASR.

11.1 Responsibilities

The senior management of an ASR should:

(a) understand the nature of the ASR's business and operations (including any outsourcing arrangements);

(b) understand and properly manage the risks associated with the ASR's business and operations, including performing periodic evaluation of its risk management processes; and

(c) ensure that appropriate and adequate internal control and risk management policies and procedures are in place in accordance with applicable laws and regulations and to guard against such risks.

***Note**:*

Internal control and risk management policies and procedures are expected to be updated on an on-going basis as necessary, and to seek to protect all aspects of the ASR's business and operations, maintain the continued smooth functioning of its services and facilities, and ensure compliance with its obligations under applicable laws and regulations (including this Code).

11.2 Access to information and advice

The senior management of an ASR should clearly understand the extent of their authority and responsibilities, and in that respect:

(a) have access to all relevant information about the ASR's business and operations on a timely basis; and

(b) have available to them, and seek where appropriate, all necessary advice on such business and operations and on their own responsibilities.

11.3 Responsibility of individuals

In determining the degree of responsibility of a particular individual, the Commission will give due regard to the factors referred to in section 1.2(b) above.

Schedule 1: Maximum levels for certain fees and charges

	Description of service	Service level	Maximum fee / charge
1.	Setting up of a USI facility with an ASR	[ ]	[ ]
2.	Dematerialization of prescribed securities	[ ]	[ ]
3.	Transfer of prescribed securities (held or to be held in uncertificated form)	[ ]	[ ]

Schedule 2: Requirements relating to obligations of issuer-clients

1. Maintenance of issuer-clients' register of holders

1.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of how their registers of holders should be kept (**Issuers' ROH requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), the USM Rules and the Securities and Futures (Stock Market Listing) Rules (Cap 571V). In practice, such registers (where they relate to prescribed securities) are kept and maintained by the issuer's ASR. Where this is the case, the ASR must ensure that:

(a) each register of holders is kept and maintained in Hong Kong;

***Note**:*

(1) Insofar as the ASR is concerned, a register of holders will be regarded as being "maintained in Hong Kong" if any changes to the register are initiated and controlled in Hong Kong and by persons located in Hong Kong. Such changes should be final, and not dependent on the need for further input or adjustments elsewhere.

(2) Where the servers that store data comprising a register of holders are physically located outside Hong Kong, the Commission will take into account all relevant facts and circumstances to determine if the register can still be regarded as being maintained in Hong Kong, including:

- *the actual systems set-up, and any arrangements and interdependencies between the ASR's systems in Hong Kong and any systems outside Hong Kong;*
- *the data that will be stored in Hong Kong, and the extent to which matters relating to maintenance of the register will be controlled and decided in Hong Kong;*
- *the location of employees and agents responsible for the operation of systems used in connection with the maintenance of the register;*
- *the respective roles of the ASR's senior management and IT personnel in Hong Kong and overseas; and*
- *all related risk management and contingency arrangements.*

A key focus will be to establish whether the register of holders will be fully accessible and controlled from Hong Kong at all times, and whether any systems issues that arise can be resolved promptly (notwithstanding any time zone differences) and with minimal impact to investors in Hong Kong.

(3) The Commission will generally regard the following as indicating that a register of holders is not maintained in Hong Kong:

- *if access to the register of holders can be controlled or denied by a person located or an event occurring outside Hong Kong;*
- *if key processes (such as transfers, dematerialization, or corporate actions) affecting entries in the register are substantively conducted or handled by systems or persons located outside Hong Kong;*
- *if changes to the register cannot be regarded as final pending some action or confirmation from a person located outside Hong Kong; or*

- *if key IT support is located outside Hong Kong, or if systems issues affecting accessibility or proper maintenance of the register cannot be identified or resolved without assistance from persons located outside Hong Kong and those persons cannot be reached promptly.*

(b) each register of holders is kept and maintained properly, accurately and in a manner which complies with all applicable laws and regulations, including the Issuer's ROH requirements and this Code;

***Note**:*

In particular, the ASR should ensure that registers properly and accurately reflect prescribed securities as being in uncertificated form where this is the case. The ASR should also ensure that registers are kept for the duration required under applicable laws and regulations. Where different laws and regulations prescribe different durations, the ASR should ensure that the most stringent requirement (ie, longest duration) is fulfilled. Where the listing status of the prescribed securities is in the process of being cancelled, the ASR should ensure that the register is updated up to the time of its ceasing to be the securities registrar for those securities.[190]

(c) each register of holders is updated in a timely manner, and the management of information in the register is assigned to qualified and experienced staff;

(d) all reasonably necessary procedures are adopted to:

(i) guard against falsification of any entries in a register of holders, and to facilitate discovery of any such falsification; and

(ii) identify and promptly rectify any errors, inaccuracies or omissions of any entries in a register of holders;

***Note**:*

*In this regard, the ASR is expected to take all reasonable steps to comply with arrangements agreed with HKSCC for ensuring the accuracy of HKSCC's records of prescribed securities held by it or its nominee (**HKSCC records**), including arrangements for:*

(1) notifying or confirming to HKSCC details of any changes to entries in a register of holders reflecting prescribed securities held by HKSCC or its nominee (eg, following a transfer, dematerialization, corporate action, etc); and

(2) facilitating HKSCC's reconciliation of entries in the HKSCC records with entries in relevant registers of holders.

(e) all reasonable assistance is rendered to facilitate the inspection and taking of copies of entries in any register of holders as permitted by applicable laws and regulations; and

***Note**:*

In this regard, and taking into account issuers' obligations regarding the inspection and taking of copies of entries in a register of holders[191]*, the ASR is expected to*

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[190] **Note for the purpose of this conclusions paper only**: Added to better clarify ASRs' obligations when prescribed securities are in the process of being delisted. (See paragraphs 131 to 136 of this conclusions paper.)

[191] **Note for the purpose of this conclusions paper only**: This includes in particular issuers' obligations under sections 5 and 6 of the amended USM Rules.

make transparent: (i) any restrictions regarding how any register of holders is made available for inspection; (ii) the particulars to be provided by a person when requesting copies of any entries in a register of holders; and (iii) details of when entries will no longer be available.

(f) registers of holders are not closed for any period that is longer than that permitted by applicable laws and regulations.

1.2 External electronic data storage provider

Where an ASR uses the services of an external electronic data storage provider (ie, EDSP) to store data constituting or relating to a register of holders, the ASR must:

(a) conduct:

(i) proper initial due diligence on the EDSP, and the EDSP's controls vis-à-vis infrastructure, personnel and processes for delivering data storage services; and

(ii) regular monitoring of the EDSP's service delivery,

which due diligence and monitoring should be commensurate with the criticality, materiality, scale and scope of the EDSP's service, and take into account requirements under sections 5 and 6 of this Code (on, outsourcing and on computer systems and facilities, respectively);

(b) ensure that the EDSP is suitable and reliable having regard to the EDSP's operational capabilities, technical expertise and financial soundness; and

(c) ensure that all contents of registers of holders stored using the EDSP's services remain fully and promptly accessible at the ASR or Commission's reasonable request, and that an offline backup copy is maintained as required under section 4.6(b) of this Code.

1.3 Delisting

~~Where an ASR maintains the register of holders of prescribed securities and the listing status of such securities has been, or is in the process of being, cancelled, the ASR must take all reasonable steps to:~~

~~(a) update the register to reflect that, upon such cancellation, the securities are no longer in uncertificated form; and~~

~~(b) notify every person who immediately prior to the cancellation is registered in the register as a holder of the securities of the following:~~

~~(i) the number of units of the securities registered in their name immediately prior to the cancellation;~~

~~(ii) that such units ceased or will cease to be in uncertificated form upon such cancellation; and~~

~~(iii) whether the holder is entitled to obtain a title instrument in respect of such units, and if so, the process for doing so.~~

The USM Rules impose various obligations on issuers of prescribed securities when the listing status of such securities has been, or is in the process of being, cancelled. This includes the obligation to issue title instruments if the governing provisions of those securities so require. In such event, the ASR will be under no obligation to assist the issuer in arranging for the preparation and issue of such title documents unless it has been specifically contracted by the issuer to do so.[192]

2. Transfer and dematerialization of prescribed securities

2.1 Compliance with statutory and other requirements

A number of statutory and other requirements are imposed on issuers in respect of the processes for transferring or dematerializing prescribed securities (**Issuers' transfer and dematerialization requirements**). These include requirements under the Companies Ordinance (or equivalent legislation in other jurisdictions), and the USM Rules. In practice, such processes will be handled by the issuer's ASR. Where this is the case, the ASR must ensure that:

(a) all transfers and dematerialization requests submitted to the ASR for registration are acknowledged and processed promptly and in a manner that complies with all applicable laws and regulations, including the Issuer's transfer and dematerialization requirements and this Code;

***Note**:*

In particular, the ASR should ensure that transfers to be effected without an instrument of transfer are processed only: (i) upon receipt of a valid specified request (as defined in section 2 of the USM Rules); and (ii) through the ASR's UNSRT system.

(b) transfers of prescribed securities in uncertificated form are, as soon as reasonably practicable, either registered in the register of holders, or rejected with reasons for the rejection notified to the transferor and transferee;

***Note**:*

In this regard, the Commission considers that "as soon as reasonably practicable" means:

(1) in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is HKSCC or its nominee, within the time period agreed with HKSCC;

(2) in respect of a transfer of prescribed securities held by the transferor in uncertificated form, and where the transferee is not HKSCC or its nominee, either:

- *(where the transfer is to be registered) as soon as reasonably practicable after receiving confirmation from the Stamp Office that stamp duty payable*

[192] **Note for the purpose of this conclusions paper only**: Amended to reflect the revised arrangements on delisting as reflected in new section 4A and section 26 of the revised USM Rules, and section 25 of the revised ASR Rules. (See paragraphs 131 to 140 of this conclusions paper.)

in respect of the transfer has been received, and provided such confirmation is received within five business days after the transferor and transferee have submitted transfer instructions in the requisite form and manner; or

- *(where the transfer is to be rejected because no confirmation is received from the Stamp Office within five business days after the transferor and transferee submitted transfer instructions in the requisite form and manner) as soon as reasonably practicable after the expiry of such five business days;*
- *(where the transfer is to be rejected for any other reason) as soon as reasonably practicable after the decision to reject is made; and*

(3) in respect of a transfer of prescribed securities held by the transferor in certificated form, and to be held by the transferee in uncertificated form, within five business days after receiving all relevant documents and information from the transferor and transferee~~, such period to be gradually reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong~~.[193]

(c) all requests to dematerialize prescribed securities are, as soon as reasonably practicable, either accepted and the dematerialization reflected in the register of holders, or rejected with reasons for the rejection notified to the person requesting the dematerialization.

***Note**:*

In this regard, the Commission considers that "as soon as reasonably practicable" means:

(1) in respect of a dematerialization of prescribed securities where the title instrument is submitted through HKSCC or its nominee (and irrespective of whether or not the securities are registered in the name of HKSCC or its nominee), within the time period agreed with HKSCC; and

(2) in any other case, within five business days after receiving all relevant documents and information relating to the securities sought to be dematerialized~~, such period to be reduced to two business days within [two years] following the implementation of an uncertificated securities market in Hong Kong~~.[194]

2.2 Dematerializing ~~where possible~~ once securities become participating securities[195]

~~As far as reasonably practicable, an~~ Under the USM Rules, once prescribed securities become participating securities, issuers may:

(a) no longer issue title instruments in respect of such securities; and

(b) dematerialize the securities at a securities holder's request or at its own initiative.

To facilitate the early dematerialization of participating securities, ASRs should exercise best endeavours to obtain either their issuer-clients' or the relevant

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[193] **Note for the purpose of this conclusions paper only**: Deleted to incentivise investors to dematerialize their holdings earlier rather than later.

[194] **Note for the purpose of this conclusions paper only**: See footnote 193 above.

[195] **Note for the purpose of this conclusions paper only**: This section is amended to tally with the amendments to Part 7 of the amended USM Rules. (See paragraphs 46, 80 to 83 of this conclusions paper.)

securities holder's instructions to dematerialize prescribed securities wherever ~~feasible~~ possible.

***Note**:*

The following are examples of situations where ASRs should seek instructions to dematerialize~~ation should be considered~~:

(1) where a ~~registered~~ securities holder seeks to dematerialize some but not all of the units covered by the title instrument that has been submitted in connection with a transfer request~~, the ASR should consider dematerializing all units covered by the title instrument~~;

(2) where a transferee seeks to dematerialize some but not all of the securities that it is acquiring~~, the ASR should consider dematerializing all units to be acquired~~;

(3) where the title instrument submitted in relation to a transfer is for more units than are to be transferred, and the transferor has not requested to dematerialize the portion to be retained by the transferor~~, the ASR should consider dematerializing all units covered by the title instrument~~;

(4) where, following a corporate event or action (eg, a split or consolidation exercise or a change in name of the issuer or the securities holder), a ~~registered~~ securities holder, or other person entitled to do so, submits their existing title instruments and a request to replace such instruments~~, the ASR should consider dematerializing the units covered by the title instruments~~;

(5) where a ~~registered~~ securities holder, or other person entitled to do so, submits a request to replace a lost or damaged title instrument~~, the ASR should consider dematerializing the units represented by the lost or damaged instrument~~;

(6) where title instruments have not been issued, and are not required to be issued, in respect of any securities~~, the ASR should consider dematerializing them~~.

3. Communications with securities holders

3.1 Distribution to registered and non-registered securities holders

An ASR should ensure that all communications that an issuer-client has instructed the ASR to send or distribute on its behalf to any person who is:

(a) a ~~registered~~ securities holder of securities issued by such client; or

(b) a person who holds such securities through HKSCC or its nominee, and who has requested to receive communications from the issuer-client directly (**non-registered holders**),

are sent or distributed in a timely, accurate and appropriate manner. These communications may include: (i) the sending of any notice of change in the register of holders under the USM Rules;[196] and (ii) the distribution of title instruments (eg, from an initial public offer or a rights issue), the company's interim/annual reports, notifiable transactions circulars, and documents relating to corporate ~~activities~~ actions (eg, bonus issues, mergers and acquisitions, cash offers, preferential share offers, meetings convened under the direction of the Courts, etc).

[196] **Note for the purpose of this conclusions paper only**: Added given that the obligation to send confirmations regarding changes in the ROM is now imposed on issuers. (See paragraphs 99 to 101 of this conclusions paper.)

3.2 Procedures for handling communications, payments, etc

An ASR should ensure that it has documented procedures for the handling of communications and payments between an issuer-client and a ~~registered~~ securities holder, and that such procedures are properly followed and implemented. In particular, these procedures should:

(a) address how the ASR handles changes of instructions in relation to payments to ~~registered~~ securities holders and the return of important communications; and

(b) require any deviation from instructions to be supported by written documentation from the relevant ~~registered~~ securities holder or issuer-client (as the case may be).

***Note**:*

Procedures relating to the return of important communications should clarify the criteria and procedures for determining:

(1) whether the address of a ~~registered~~ securities holder, as recorded in the relevant register of holders, may no longer be accurate; and if so

(2) whether communications to such holder should no longer be sent to that address so as to avoid undue nuisance to new occupants at the address.

3.3 Investigation in unusual or suspicious circumstances[197]

The Commission expects an ASR to, as far as practicable, conduct reasonable investigations when:

(a) important communications to a ~~registered~~ securities holder are returned in unusual or suspicious circumstances; or

(b) the ASR receives notification that indicates that a securities holder no longer resides at a particular address.

***Note**:*

The ASR's procedures for handling the return of important communications (as mentioned in paragraph 3.2 above) should clarify when circumstances should be regarded as unusual or suspicious and provide guidance as to the nature and extent of the investigation to be conducted. The ASR's procedures for handling notifications of a securities holder's ceasing to reside at a particular address should clarify what steps can be taken and in what circumstances to minimise inconvenience or disturbance to the occupants of that address.

3.4 Arrangements for handling enquiries

An ASR should ensure that it has arranged to make available facilities, adequate resources and, as far as possible, documented procedures for the handling of enquiries (such as obtaining shareholding histories, dividend claims, lost items applications, title disputes, instructions to be taken in corporate actions and general questions about corporate announcements and dividend timetables) from ~~registered~~ securities holders and (to the extent appropriate) non-registered holders via telephone calls, letters, faxes, personal visits or other communication methods. An ASR should handle enquiries in a timely and appropriate manner as

[197] **Note for the purpose of this conclusions paper only**: Added for better clarity.

well as ensure that the reasonable instructions of ~~registered~~ securities holders and (to the extent appropriate) non-registered securities holders, relating to the enquiries, are properly carried out.

4. Provision of ePO channel

4.1 Compliance with Guidelines for Electronic Public Offers

When an ASR provides an ePO channel to collect applications from the public during an initial public offer (or a follow-on public offer) of prescribed securities, it must display or provide access to the relevant prospectus and supplemental prospectus (if any) in accordance with the Commission's Guidelines for Electronic Public Offers.

Annex 5 – Table cross-referencing earlier questions

March 2023 Consultation

Questions 1-37 of the March 2023 Consultation are addressed by the corresponding paragraphs of this Conclusions Paper as indicated below.

Q1.	***Do you have any comments or concerns about deferring implementation of the USS option? If so, please elaborate.***
	Paragraphs 73-75
Q2.	***Do you have any comments or concerns about the proposed concept of "authenticated message" and how it will work? If so, please elaborate.***
	Paragraphs 15, 35-43, 141-142
Q3.	***Do you have any comments or concerns about any of the other proposed concepts discussed above? If so, please elaborate.***
	Paragraphs 29-30, 141-142, 243-245
Q4.	***Do you have any comments or concerns about the proposed obligations in respect of the maintenance, inspection, copying, closure, rectification or evidential value of ROMs of prescribed securities? If so, please elaborate.***
	Paragraphs 17, 102-106, 141-142, 182-184, 246-247
Q5.	***Do you have any comments or concerns about the proposed obligations applying in respect of prescribed securities other than shares, eg, listed depositary receipts, stapled securities and authorized CIS (eg, listed REITs and listed ETFs) that are withdrawable from the HKEX System? If so, please elaborate.***
	Paragraphs 13, 24-28, 46, 111-113
Q6.	***Do you have any comments or concerns about the proposed arrangements for effecting transfers of prescribed securities in the USM environment? If so, please elaborate.***
	Paragraphs 14, 31-34, 86-98
Q7.	***Do you have any comments or concerns about the proposals concerning dematerialization at an investor's request? If so, please elaborate.***
	Paragraphs 16, 76-85, 248-249
Q8.	***Do you have any comments or concerns about the proposals concerning dematerialization at the issuer's initiative? If so, please elaborate.***
	Paragraphs 16, 46, 48, 248-249
Q9.	***Do you have any comments or concerns about the proposals concerning limited rematerialization at the issuer's initiative? If so, please elaborate.***
	Paragraphs 16, 131-140
Q10.	***Do you have any comments or concerns about the proposals relating to the setting of deadlines to facilitate the market's transition to full dematerialization? If so, please elaborate.***
	Paragraphs 7, 8, 9, 11, 12, 44-49, 50-54, 65-67, 68-71, 79, 80
Q11.	***Do you have any comments or concerns about the proposed definition of "issuer"? If***

	so, please elaborate.
	Paragraphs 214-215
Q12.	***Do you agree with the proposal that, where the "issuer" comprises more than one entity, all such entities should be responsible for complying with any obligations imposed on the issuer under the USM Rules, but that compliance by any one of them will suffice? If not, please elaborate.***
	No consultation feedback received
Q13.	***Do you have any comments or concerns about the proposal to allow joint holders to send paper instructions on the basis of which electronic instructions may be entered by the ASR? If so, please elaborate.***
	Paragraphs 92-96
Q14.	***Do you agree that it is neither appropriate nor necessary for the USM Rules to provide for the sending of instructions by one joint holder on behalf of all? If not, please elaborate.***
	Paragraphs 92-96
Q15.	***Do you have any comments or concerns about the proposal to leave the matter of consolidation of holdings for entitlements distribution to issuers and their ASRs to decide? If so, please elaborate.***
	Paragraphs 107-110
Q16.	***Do you consider that any of the following fees (if charged to investors in the USM environment) should be standardised, and upper limits in respect of them specified somewhere, ie:*** ***(i) any transfer fee;*** ***(ii) any dematerialization fee; and*** ***(iii) any fee charged for setting up a USI facility?*** ***If yes, why? If no, why not?***
	Paragraphs 10, 60-64
Q17.	***If you agree that any of the above fees should be standardised and upper limits in respect of them specified somewhere, do you agree that such limits should be specified in legislation or SFC codes, rather than in the Listing Rules? If no, why not?***
	Paragraphs 10, 60-64, 78
Q18.	***Do you have any other comments or concerns about the proposed USM Rules? If so, please elaborate.***
	Paragraphs 32, 44-46, 60-64, 90-91, 97-98
Q19.	***Do you have any comments or concerns about the proposed scope of services to be regulated under the ASR Rules? If so, please elaborate.***
	Paragraphs 17, 148-151, 157
Q20.	***Do you have any comments or concerns about the proposals regarding the systems requirements to be imposed on ASRs? If so, please elaborate.***
	Paragraphs 17, 53, 158-170

Q21.	***Do you have any comments or concerns about the proposals regarding the financial and other resources requirements to be imposed on ASRs? If so, please elaborate.***

Paragraphs 171-172, 191-192

Q22.	***Do you have any comments or concerns about the operational and business requirements proposed to be imposed on ASRs? If so, please elaborate.***

Paragraphs 173-176, 177-181, 221-222

Q23.	***Do you have any comments or concerns about the notification and reporting requirements proposed to be imposed on ASRs? If so, please elaborate.***

Paragraphs 185-205

Q24.	***Do you have any comments or concerns about the proposal to require ASRs to provide information and documents, as necessary? If so, please elaborate.***

Paragraphs 223-226

Q25.	***Do you have any comments or concerns about the proposals regarding the appointment of skilled persons? If so, please elaborate.***

Paragraphs 227-230

Q26.	***Do you have any comments or concerns about the proposal to require ASRs to issue written confirmations and annual statements? If so, please elaborate.***

Paragraphs 16, 99-101

Q27.	***Do you have any comments or concerns about the proposed obligations and arrangements relating to handovers from one ASR to another? If so, please elaborate.***

Paragraphs 114-117, 123-126

Q28.	***Do you have any other comments or concerns about the proposed ASR Rules? If so, please elaborate.***

Paragraphs 216, 219-220

Q29.	***Do you have any comments or concerns about the proposal to require issuers of prescribed securities to have an ASR at all times, including where the securities are not yet participating securities? If so, please elaborate.***

Paragraphs 127-130

Q30.	***Taking into account the discussions in paragraphs 134 and 135 above, do you have any comments or concerns about the proposals relating to suspension of trading where no ASR is appointed? If so, please elaborate.***

Paragraphs 16, 127-130

Q31.	***Do you have any comments or concerns about the proposed notification requirements relating to changes in ASRs? If so, please elaborate.***

Paragraphs 118-120, 121-122

Q32.	***Do you have any comments or concerns about the proposal to impose fines on issuers for breaches of the notification requirements? If so, please elaborate. Please also suggest what alternative sanctions might be imposed.***

No consultation feedback received

Q33.	***Do you have any other comments or concerns about the proposed amendments to***

	the SML Rules? If so, please elaborate.
	Paragraphs 127-130
Q34.	***Do you have any comments or concerns about the proposed amendments to the OFC Rules? If so, please elaborate.***
	Paragraph 146
Q35.	***Do you have any comments or concerns about the proposal to carve out from the definition of "dealing in securities" the provision of services relating to a public offer that fall within the scope of securities registrar services? If so, please elaborate.***
	Paragraphs 231-234
Q36.	***Do you have any comments or concerns about the proposals as to which decisions under the USM regime should be subject to review by the SFAT? If so, please elaborate.***
	Paragraphs 128-130
Q37.	***Do you have any comments or concerns about the proposed amendments to the Companies (Winding-up) Rules? If so, please elaborate.***
	Paragraph 251

October 2023 Consultation

Questions 1-14 of the October 2023 Consultation are addressed by the corresponding paragraphs of this Conclusions Paper as indicated below.

Q1.	***Do you have any comments or concerns about the proposed new GP4 on outsourcing? If so, please elaborate.***
	Paragraphs 206-208
Q2.	***Do you have any comments or concerns about the proposed new GP5 on ASRs' computer systems and facilities? If so, please elaborate.***
	Paragraphs 158-170
Q3.	***Do you have any comments or concerns about the proposed new GP6 on information to be disclosed by ASRs to their issuer-clients and registered holders? If so, please elaborate.***
	Paragraphs 152-153
Q4.	***Do you have any comments or concerns about the proposed amendments relating to GP1 on the honesty and fairness standards applicable to ASRs? If so, please elaborate.***
	Paragraphs 55-59, 173-174
Q5.	***Do you -have any comments or concerns about the proposed amendments relating to GP2 on the diligence standards applicable to ASRs? If so, please elaborate.***
	Paragraphs 153
Q6.	***Do you have any comments or concerns about the proposed amendments relating to GP3 on ASRs' capabilities? If so, please elaborate.***
	Paragraphs 175-176
Q7.	***Do you have any comments or concerns about the proposed amendments relating to GP7 on conflicts of interest? If so, please elaborate.***
	Paragraphs 17, 209-212
Q8.	***Do you have any comments or concerns about the proposed amendments relating to GP9 on ASRs' compliance obligations? If so, please elaborate.***
	Paragraphs 154-156, 204-205
Q9.	***Do you have any comments or concerns about the proposed amendments relating to GP10 on the responsibilities of ASRs' senior management? If so, please elaborate.***
	Paragraphs 217-218
Q10.	***Do you have any comments or concerns about the Schedules proposed to be included? If so, please elaborate.***
	Paragraphs 7,10, 55-64, 154-156, 182-184
Q11.	***Do you have any comments or concerns about the proposed amendments to reflect changes in market practices? If so, please elaborate.***
	Paragraphs 18, 143-145, 231-233
Q12.	***Do you have any comments or concerns about the proposed amendments to reflect ASRs' ability to offer ePO services without having to work with a Type 1 licensed***

	intermediary? If so, please elaborate.
	Paragraphs 18, 231-233
Q13.	***Do you have any comments or concerns about the proposal that the ePO Guidelines deal essentially with ePOs of prescribed securities, and have only limited application in respect of ePOs of non-prescribed securities? If so, please elaborate.***
	Paragraph 18
Q14.	***Do you have any comments or concerns about the proposed further amendments regarding the arrangements for stamping and collecting stamp duty in the USM environment? If so, please elaborate.***
	Paragraphs 91, 97-98

Other feedback received

The Conclusions Paper also addresses other feedback on topics that are not covered by questions in the March 2023 Consultation and the October 2023 Consultation in the paragraphs as indicated below.

Interaction among the USM initiative, FINI and SWT arrangements
Paragraphs 143-145
ASR applications
Paragraphs 235-238, 239-242
Definitions
Paragraph 250