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

Consultation paper on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong

March 2023

Contents

Foreword

This consultation paper is issued by the Securities and Futures Commission (**SFC**). Market participants and interested parties are invited to submit written comments on the proposals discussed in this paper and on related matters that might impact the proposals. Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

Comments should be submitted by no later than **30 June 2023** and in writing as follows:

By mail or hand delivery to:	Supervision of Markets Division Securities and Futures Commission 54/F One Island East 18 Westlands Road Quarry Bay Hong Kong
By fax to:	(852) 2521 7917
By online submission at:	http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/
By Email to:	usmconsult@sfc.hk

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

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

March 2023

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Retention

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[1] Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap 486).

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

Enquiries

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

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

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

Executive summary

Purpose

1. This paper seeks views on proposed subsidiary legislation for implementing an uncertificated securities market in Hong Kong, indicative drafts of which are attached to this paper for comment.

Background

2. In 2019 / 2020, the Securities and Futures Commission (**SFC**), Hong Kong Exchanges and Clearing Limited (**HKEX**) and the Federation of Share Registrars Limited (**FSR**) jointly consulted the market on the operational model for implementing an uncertificated securities market (**USM**) in Hong Kong. **Annex 1** illustrates the model that was endorsed subsequent to that consultation (**Operational Model for USM**).

3. In June 2021, the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (**USM Amendment Ordinance**)[3] was enacted. This put in place the broad framework for implementing USM. It also anticipated the introduction of subsidiary legislation which would set out relevant details, taking into account the model endorsed.

Proposed subsidiary legislation

4. Since June 2021, focus has turned to developing the technical details and specifications of the Operational Model for USM, and the subsidiary legislation needed to support that model. This paper focuses on such subsidiary legislation, which comprises the following items.

The proposed Securities and Futures (Uncertificated Securities Market) Rules (**USM Rules**)

5. This is a new piece of subsidiary legislation which aims to provide for various operational and technical matters and processes under the USM environment. Matters proposed to be covered by these rules include:

   (a) matters relating to the registers of persons who hold "**prescribed securities**"[4];

   (b) the processes and requirements for transferring legal title to prescribed securities without paper;

   (c) the authentication of electronic messages in the USM environment, and the rights and responsibilities that flow from using such messages;

   (d) investors' ability to request the dematerialization of their prescribed securities, and the related processes and requirements;

[3] The USM Amendment Ordinance can be accessed at https://www.elegislation.gov.hk/hk/2021/17!en.

[4] The term "prescribed securities" refers to six categories of securities that: (i) are listed on the Stock Exchange of Hong Kong Limited; and (ii) may participate in the USM regime. For more details, see paragraph 23(a) below.

(e) issuers' authority to initiate the dematerialization of prescribed securities in certain circumstances, and rematerialization if the securities are in the process of delisting, and the related processes and requirements; and

(f) the imposition of deadlines to facilitate the market's transition to full dematerialization.

For more details, see **Annex 2** and paragraphs 37 to 100 below.

The proposed Securities and Futures (Approved Securities Registrars) Rules (**ASR Rules**)

6. This is a new piece of subsidiary legislation which aims to provide for the regulation of persons approved by the SFC to provide certain services to or on behalf of issuers of prescribed securities (**securities registrar services**[5]). A person approved under this new subsidiary legislation will be an "approved securities registrar" (**ASR**). Matters proposed to be covered by these rules include:

   (a) the scope of securities registrar services;

   (b) the systems requirements to be imposed on ASRs;

   (c) the financial resources requirements to be imposed on ASRs;

   (d) the other resources-related requirements to be imposed on ASRs, including in relation to their premises, personnel, internal controls, risk management and contingency arrangements;

   (e) the operational and business requirements to be imposed on ASRs, including in relation to record-keeping, segregation of client assets and insurance coverage;

   (f) the regular notification and reporting requirements to be imposed on ASRs to facilitate the SFC's supervision and monitoring of their businesses and operations;

   (g) the SFC's power to appoint, or require an ASR to appoint, a skilled person to make a report on matters concerning the ASR;

   (h) the confirmations and statements to be sent to investors who hold prescribed securities in uncertificated form[6]; and

   (i) the obligations relating to the handover of responsibilities from one ASR to another.

   For more details, see **Annex 3** and paragraphs 101 to 127 below.

7. Additionally, the SFC is also working on amending and expanding its current Code of Conduct for Share Registrars to cater for the USM environment. The revised code (**ASR Code**) will supplement the requirements under the ASR Rules, and expand on the standards and practices expected of ASRs. In particular, the ASR Code will expand on the requirements and standards that ASRs' systems will be expected to meet, and

[5] For more details about "securities registrar services", see paragraphs 102 to 105 below.

[6] The phrase "in uncertificated form" has a very specific meaning. It does not simply mean that no certificate or other *current* instrument of title has been issued in respect of the securities concerned. It also means that they are recorded on the register of holders of those securities as being held in uncertificated form. For more details, see paragraphs 47 to 49 below.

cover matters such as systems integrity and security, systems capability, risk management and contingency arrangements. The ASR Code will therefore be critical to assessing a person's suitability to become, and remain, an ASR.

Proposed amendments to Part 4 of the Securities and Futures (Stock Market Listing) Rules (Cap 571V, **SML Rules**)

8. These proposed amendments are to cater for the USM environment and new ASR regime. They aim to require that:

   (a) all issuers of prescribed securities appoint an ASR to maintain in Hong Kong their register of members or securities holders (**ROM**);

   (b) issuers notify the SFC and the Stock Exchange of Hong Kong Limited (**SEHK**) of any intended change in the ASR[7]; and

   (c) the SEHK suspend trading of prescribed securities for any period during which no ASR is appointed in respect of those securities.

   For more details, see **Annex 4** and paragraphs 128 to 141 below.

Proposed amendments to the Securities and Futures (Open-ended Fund Companies) Rules (Cap 571AQ, **OFC Rules**)

9. These proposed amendments are to enable open-ended fund companies (**OFCs**) to participate in the USM initiative. They essentially seek to remove the need to use paper instruments of transfer, and permit the use of alternatives as set out in the USM Rules. They also seek to restrict closures of the register of shareholders of an OFC where its shares are prescribed securities. For more details, see **Annex 5** and paragraphs 142 to 143 below.

Proposed amendments to Schedules 5 and 8 to the Securities and Futures Ordinance (Cap 571, **SFO**)

10. These are essentially consequential in nature.

   (a) The proposed amendments to Schedule 5 aim to narrow the scope of the definition of "dealing in securities" so as to carve out certain activities relating to the public offer of securities as such activities will come within the proposed scope of securities registrar services. The SFC's Guidelines for Electronic Public Offerings (**EIPO Guidelines**) will therefore also require amendment.

   (b) The proposed amendments to Schedule 8 aim to make certain SFC decisions under the proposed subsidiary legislation "specified decisions" under Part XI of the SFO. Persons aggrieved by such decisions will thus be able to seek a review of those decisions by the Securities and Futures Appeals Tribunal (**SFAT**)[8].

   For more details, see paragraphs 144 to 148 below.

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[7] A similar obligation is imposed on the issuer's ASR under the proposed ASR Rules as part of the obligations on handover mentioned in paragraph 6(i) above.

[8] The SFAT is a statutory tribunal, established under section 216 of the SFO. SFC decisions that are reviewable by the SFAT may be confirmed, varied or set aside by the SFAT. Where a decision is set aside, the SFAT may substitute its own decision in place of the original SFC decision. The SFAT may also remit the matter to the SFC with directions, including a direction to consider the matter afresh.

Proposed amendments to the Companies (Winding-up) Rules (Cap 32H)

11. These proposed amendments are minor and technical in nature. For more details, see paragraphs 149 and 150 below.

Technical details and specifications

12. We appreciate that, thus far, only the overall structure and design of the Operational Model for USM has been disclosed publicly. However, this should not affect market participants' review of the proposed subsidiary legislation attached to this paper. This is because while the proposed legislation takes into account the overall structure and design of the model, it is not dependent on the model's technical details and specifications. This is deliberate, and intended to allow such details and specifications to evolve over time as necessary.

Further consultation

13. Apart from the subsidiary legislation described above, the SFC is also working on the ASR Code (as mentioned in paragraph 7 above) and the EIPO Guidelines (as mentioned in paragraph 10(a) above). Drafts of these will be exposed for public consultation in due course.

Comments invited

14. The USM initiative will introduce a major change in our market. The subsidiary legislation supporting this initiative will therefore have a significant impact on investors, issuers and other market participants. We urge interested parties to submit written comments on the proposals discussed in this paper. The deadline for submissions is **Friday, 30 June 2023**.

Layout of this paper

15. This paper is divided into the following sections.

    (a) Section I summarises the USM initiative and where we are now.

    (b) Section II recaps the Operational Model for USM.

    (c) Sections III to V discuss, respectively, the proposed USM Rules, the proposed ASR Rules and the proposed amendments to the SML Rules.

    (d) Section VI discusses proposed amendments to other subsidiary legislation.

16. This paper should be read in conjunction with the 2019 and 2020 consultation documents on the Operational Model for USM, jointly issued by the SFC, HKEX and the FSR[9].

[9] The January 2019 Joint Consultation Paper and April 2020 Joint Consultation Conclusions Paper can be accessed at, respectively, https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=19CP1 and https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=19CP1.

I. Background

The USM initiative

17. The SFC has been working with HKEX and the FSR on implementing USM in Hong Kong. The initiative seeks to:

    (a) provide better investor choice and protection by enabling investors to hold listed securities (in particular listed shares) in their own names and without paper;

    (b) enhance the efficiency and competitiveness of Hong Kong's securities market by reducing the need for paper and manual processes, facilitating straight-through-processing and elevating our financial market infrastructure; and

    (c) promote more environment-friendly practices through reducing the need for paper.

Work done so far

18. In 2019 / 2020, the SFC, HKEX and the FSR jointly consulted the market on the operational model for implementing USM in Hong Kong. The diagram at Annex 1 illustrates the model that was endorsed subsequent to that consultation (ie, the Operational Model for USM). For comparison, a diagram of the current model is also reproduced in Annex 1.

19. In June 2021, the USM Amendment Ordinance was enacted. This put in place the broad framework for implementing USM. It also anticipated the introduction of subsidiary legislation which would set out relevant details, taking into account the model endorsed.

20. Since then:

    (a) the SFC, HKEX and the FSR have been working on developing the technical details and specifications of the Operational Model for USM; and

    (b) the SFC has been working on developing the subsidiary legislation and other regulatory requirements needed to support the model.

Focus of this consultation

21. This Consultation Paper seeks views on the following proposed subsidiary legislation, indicative drafts of which are attached as Annexes 2 to 5 to this paper.

    (a) The proposed USM Rules: This is a new piece of subsidiary legislation which aims to provide for various operational and technical matters and processes under the USM environment – see Annex 2.

    (b) The proposed ASR Rules: This is a new piece of subsidiary legislation which aims to provide for the regulation of persons approved by the SFC to provide securities registrar services (as explained in paragraphs 102 to 105 below) – see Annex 3. A person approved under this new subsidiary legislation will be an "approved securities registrar".

(c) Proposed amendments to the SML Rules: These amendments seek to expand and amend the existing obligations under Part 4 of the SML Rules to cater for the USM environment and new ASR regime – see Annex 4.

(d) Proposed amendments to the OFC Rules: These amendments seek to enable OFCs to participate in the USM initiative, and are essentially similar in nature to amendments made to the Companies Ordinance (**CO**) under the USM Amendment Ordinance – see Annex 5.

(e) Proposed amendments to Schedule 5 to the SFO: These amendments are essentially consequential in nature. They seek to carve out from the definition of "dealing in securities" certain activities that are proposed to be regulated under the ASR Rules as securities registrar services.

(f) Proposed amendments to Schedule 8 to the SFO: These amendments make certain SFC decisions under the proposed subsidiary legislation "specified decisions", and thus subject to review by the SFAT on application by a person aggrieved by the decision.

(g) Proposed amendments to the Companies (Winding-up) Rules (Cap 32H): These are technical amendments to enable the production of evidence other than a share certificate.

A point to note here is that the proposed amendments mentioned in paragraphs (e) to (g) above will be prepared by the Department of Justice. As such, no indicative drafts of these are attached to this consultation paper.

Layout of this paper

22. In the following sections, we first recap the key features of the Operational Model for USM and then discuss each of the above proposed rules and proposed rule amendments in turn. This paper should be read in conjunction with the 2019 and 2020 consultation documents on the Operational Model for USM, jointly issued by the SFC, HKEX and the FSR[10].

[10] See footnote 9 above for links to these consultation documents.

II. Operational model for USM

Recap of the model

23. The key features of the Operational Model for USM are as follows.

(a) Scope of securities covered: The USM initiative will apply only to "prescribed securities", ie, securities that are listed on the SEHK and that fall within one of the following categories: (i) shares[11]; (ii) depositary receipts; (iii) stapled securities; (iv) interests in SFC-authorized collective investment schemes (**authorized CIS**)[12]; (v) subscription warrants[13]; and (vi) rights under a rights issue[14].

(b) Central nominee structure retained: The existing nominee structure within the Central Clearing and Settlement System (**CCASS**) will be retained. This means investors who hold their securities through CCASS, or through any other system that might replace CCASS in future, (**HKEX System**) will continue to hold only a beneficial interest while legal title will remain with a central nominee, ie, HKSCC Nominees Limited (**HKSCC-NOMS**).

(c) UNSRT systems: It will be possible for legal title to prescribed securities to be evidenced and transferred without paper documents, but only through a "**UNSRT system**"[15] which must be operated by an ASR.

(d) How securities may be held without paper: Investors will have the following two options for holding prescribed securities in their own names and without paper.

(i) They may set up a "**USI facility**". This will entail an investor signing up with an ASR to use its UNSRT system to hold and manage[16] such securities. The securities will be registered in the name of the investor concerned, and managed directly by that investor, ie, the investor may (via the USI facility) communicate directly with the issuer in respect of matters relating to the investor's holdings. Investors who hold multiple securities may have to set up multiple USI facilities if the issuers of those securities have appointed different ASRs.

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[11] This includes shares in both Hong Kong incorporated companies, and companies incorporated outside Hong Kong. It however excludes shares that constitute units in an SFC-authorized collective investment scheme as such shares are covered separately.

[12] Only interests in authorized CIS that are withdrawable from CCASS are covered. Interests that are structured as *shares* also come under this category if they are withdrawable from CCASS.

[13] Only subscription warrants that entitle the holder to subscribe for securities that come within categories (i) to (iv) are covered.

[14] Only rights that entitle the holder to subscribe for securities that come within categories (i) to (iv) are covered.

[15] The term "UNSRT system" refers to an uncertificated securities registration and transfer system – see new section 101AAB of the SFO introduced under section 7 of the USM Amendment Ordinance.

[16] The reference here to an investor being able to "manage" securities refers to how the investor communicates with the issuer of those securities on matters relating to the investor's holdings. It therefore includes things such as:

- sending instructions to update particulars previously notified to the issuer (eg, the investor's name, address, bank account details for receiving payments, etc);
- sending instructions to register a transfer of those securities to (or from) someone else; and
- sending instructions relating to corporate actions (eg, dividend elections, rights subscriptions, etc).

(ii) They may set up a "**USS facility**". This will entail an investor signing up with a clearing or custodian participant in the HKEX System (**CP**) to use the services of the CP to hold and manage prescribed securities. The securities will be registered in the name of the investor concerned, but managed via the CP concerned (**sponsoring CP**) and through the HKEX System, ie, the investor's communications with the issuer in respect of matters relating to the investor's holdings must be routed via the sponsoring CP and through the HKEX System. (However, see also paragraph 24 below.)

(e) Regulation of ASRs: As ASRs' systems (in particular their UNSRT systems) will form a critical part of the securities market infrastructure, they will be regulated more directly and robustly than today. A new regulatory regime for this will be introduced, which will comprise the ASR Rules and a code of conduct setting out the standards and practices expected of ASRs (ie, the ASR Code).

(f) Electronic interface with ASRs' systems: As is the case today, the process of depositing securities into the HKEX System, and withdrawing them from that system, will constitute legal title transfers. To facilitate such transfers being handled electronically, an electronic interface will be established between the systems of Hong Kong Securities Clearing Company Limited (**HKSCC**) and the systems of each ASR. This interface will also be used for corporate action-related communications between HKSCC-NOMS and listed issuers (via their ASRs). To that end, HKSCC will introduce a new "registrar participant" category for ASRs under its rules.

Deferral of the USS facility

24. In the course of developing the technical details and specifications of the Operational Model for USM, it became clear that the processes and systems needed to support the USS facility are far more complex than previously envisaged, and will require much greater investment than previously anticipated. At the same time, market demand for this facility remains unclear. In view of this, the more practical way forward is to defer implementation of the USS option and proceed only with the USI option first. As the market becomes familiar with the USM environment and USI facility, it will be possible to better assess how to structure the USS facility to best serve investors' needs, and what adjustments (if any) should be made.

Q1. Do you have any comments or concerns about deferring implementation of the USS option? If so, please elaborate.

How the Operational Model for USM will work

Prerequisites for holding securities without paper

25. The Operational Model for USM will enable prescribed securities to be issued, transferred and held without paper documents. To achieve this, issuers and investors will need to first take the following steps.

(a) An issuer of prescribed securities will need to appoint an ASR to: (i) provide and operate a UNSRT system in respect of those securities; and (ii) maintain its ROM. It may also be necessary to amend the terms governing the holding and transfer of those securities (eg, the Articles of Association or by-laws in the case of shares of a non-Hong Kong company)[17].

(b) An investor will need to set up a USI facility with the relevant ASR, ie, with the ASR appointed by the issuer of the prescribed securities that the investor holds. As mentioned in paragraph 23(d)(i) above, if an investor holds multiple securities, and the issuers of such securities have appointed different ASRs, the investor may need to set up multiple USI facilities.

Issuers' initial prerogative and subsequent obligation

26. At the initial stage, only issuers of prescribed securities will have the prerogative to decide whether to participate in the USM initiative or not, and investors will have limited options. In other words:

(a) issuers will have the prerogative to decide whether or not to:

(i) issue new units of their prescribed securities without paper, ie, without any certificate or other title document (**title instrument**)[18];

(ii) refuse to issue title instruments in respect of existing units following any event that might otherwise require the issue of such instruments[19]; and

(iii) require transfers of their prescribed securities to be effected electronically (rather than by means of traditional instruments of transfer) if the securities are held in uncertificated form; and

(b) where an issuer exercises the above prerogative, investors will not be able to demand otherwise, ie, investors will not be able to demand that title instruments be issued to them or that instruments of transfer be accepted.

27. Eventually, however, the above will no longer be a prerogative, and issuers will no longer be able to issue title instruments. This will effectively prevent issuers from issuing new units in certificated form[20], and compel them to dematerialize existing units whenever an opportunity arises.

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[17] The USM Amendment Ordinance provides for the USM Rules to override any conflicting provisions in the Articles of Association or other terms of issue applicable to prescribed securities – see new section 101AAD of the SFO introduced under section 7 of the USM Amendment Ordinance. However, in some cases, it may be better to amend the Articles or other terms. For example, if existing conflicts are extensive, it may be tidier and clearer to amend the Articles or other terms rather than rely on section 101AAD. Moreover, in the case of prescribed securities constituted under the laws of a place outside Hong Kong (including shares of a non-Hong Kong company), the override under section 101AAD applies only to the extent that it is not prohibited by or contrary to the laws of that place – see new section 101AAE of the SFO introduced under section 7 of the USM Amendment Ordinance. Amendment in some cases may therefore be unavoidable.

[18] This will apply in respect of all issues of new units, including new units issued pursuant to an initial public offer, a rights issue or other entitlements distribution (eg, bonus issues or scrip dividends).

[19] This includes events such as a transfer of any existing units of the securities, an application to replace title instruments (eg, because such instrument has been lost or damaged, or represents a larger quantity of securities than is to be transferred, or the particulars stated on it have changed), etc.

[20] The phrase "in certificated form" refers to securities that are not "in uncertificated form". For more details, see paragraphs 47 to 49 below.

28. To encourage investors to transition to full dematerialization, it is expected that:

(a) once an issuer completes the necessary procedures and formalities for participating in the USM regime (as mentioned in paragraph 25(a) above), it will refrain from issuing title instruments whenever possible[21]; and

(b) once prescribed securities are dematerialized, the issuer will not rematerialize them (save in the limited case where the securities are to be delisted).

29. We accept, however, that it will not be possible to dematerialize *existing* units of prescribed securities unless:

(a) the holder of the units requests the issuer to dematerialize them; or

(b) an event occurs which triggers the need for a new title instrument to be issued in respect of the units[22].

This is because any existing title instruments will need to be returned for cancellation so as to prevent misuse, and this cannot be compelled where no active steps are taken by the investor concerned (eg, where the investor is not seeking to transfer the securities or to replace lost or damaged title instruments, but is merely holding the securities as an investment).

Allotment process

30. In the USM environment, the allotment of prescribed securities in uncertificated form will simply entail issuers crediting investors' securities balances electronically. No title instruments will be issued.

Transfer

31. When the USM regime is first implemented, most (if not all) existing prescribed securities will be in paper form, ie, paper title instruments will have been issued to their holders. Because such instruments will have to be returned for cancellation on effecting a transfer, it follows that the transfer process cannot be entirely electronic. We therefore propose to permit the continued use of traditional paper instruments of transfer in such cases, ie, where the transferor holds the securities in certificated form. However, transferees of such securities will nevertheless be able to hold them in uncertificated form if the issuer offers this option (as discussed in paragraph 26 above) or is required to offer this option (as discussed in paragraph 27 above).

32. On the other hand, where the prescribed securities are already in uncertificated form, the transfer process is expected to be electronic. However, there may be limited circumstances where this is not feasible.

(a) First, there may be circumstances where a holder cannot send transfer instructions electronically, eg, where the holder is an elderly person and not tech-savvy, or where joint holders are involved and the issuer's ASR is unable as yet

[21] So, for example, it is expected that such issuers will issue any new units of their prescribed securities in uncertificated form rather than certificated form, and dematerialize existing units of their prescribed securities following any transfers of them or in response to a request to replace any lost or damaged title instruments relating to them, etc.

[22] See footnote 19 above for examples of such events.

to accept electronic instructions from all joint holders[23]. In such circumstances, it is proposed that the holder be permitted to send paper form instructions to the issuer's ASR and that the latter then enter those instructions electronically into its system to effect the transfer.

(b) Secondly, if the securities are in the process of being delisted, there is no reason to prohibit the use of instruments of transfer. In such cases, the securities will in any case soon fall outside the remit of the USM regime, and may be rematerialized. As such, there is no compelling reason to regulate how any transfers should be effected just before the securities to be transferred are delisted. The matter is therefore proposed to be left to issuers to decide.

(c) There may also be circumstances where it is impracticable to require the transfer process to be electronic, eg, where the securities are the subject of a general offer, and the offeror has appointed someone other than the issuer's ASR as its receiving agent to collect acceptances and transfer instructions[24]. In such cases, it may not be feasible for the offeror, or its agent, to receive transfer instructions electronically, and the use of paper instruments of transfer may be unavoidable[25].

33. Where transfer instructions are sent electronically, they will of course have to be sent to the issuer's ASR. However, the routing of such instructions will differ depending on who they are from. Under the Operational Model for USM, it is envisaged that:

(a) instructions from HKSCC-NOMS will be routed via the electronic interface described in paragraph 23(f) above; while

(b) instructions from other holders will be routed via their USI facilities.

Conversion process

34. Where both the issuer and holder of prescribed securities have met the necessary pre-requisites (as discussed in paragraph 25 above), the holder may convert any existing holdings into uncertificated form at any time. The issuer too may take the initiative to convert securities into uncertificated form as and when an opportunity to do so arises (eg, when securities are being transferred, when an application is made to replace lost or damaged title instruments, etc).

35. On the other hand, once securities are converted into uncertificated form, it will not be possible to convert them back into paper form unless they are to be delisted and thus cease to be prescribed securities.

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[23] Paragraph 94 below explains why ASRs may not be able to accept electronic instructions from all joint holders.

[24] Offerors often appoint the issuer's share registrar as their receiving agent to receive acceptances and transfer instructions from investors who wish to take up the offer. However, in some cases (eg, a hostile takeover), the offeror may appoint someone else as its agent.

[25] Investors accepting general offers typically send both their acceptances and transfer instructions to the offeror's receiving agent. However, if the agent is someone other than the issuer's ASR, the agent may not be in a position to receive the transfer instructions electronically in the form of a specified request. It may thus need to receive paper instruments of transfer which it can then pass to the issuer's ASR.

Technical details and specifications of Operational Model

36. As noted in paragraph 20(a) above, the SFC, HKEX and the FSR have been working on developing the technical details and specifications of the Operational Model for USM. We appreciate that details in this regard are not yet publicly available. However, this should not affect market participants' review of the subsidiary legislation discussed in this paper. Ultimately, such details may evolve over time and in keeping with changes in technology, market development and market practices. Accordingly, in developing the subsidiary legislation, we have been mindful to stay technology-neutral as far as possible, and to develop regulation that takes into account the overall structure and design of the Operational Model for USM but without being too dependent on its technical details and specifications.

III. Proposed USM rules

Regulatory approach and scope

37. The proposed USM Rules provide for various operational and technical matters and processes under the USM environment. In developing these rules, we have endeavoured to achieve a suitable balance between:

    (a) putting in place an effective regime that provides adequate safeguards for issuers and investors without being too rigid and prescriptive; and

    (b) securing an appropriate degree of flexibility to allow for future advances in technology and changes in market practices and expectations.

38. In terms of content, the rules introduce the following key concepts:

    (a) "system-member" and "provisional system-member";

    (b) "certificated form" and "uncertificated form";

    (c) "participating securities"; and

    (d) "specified request" and "authenticated message".

39. The rules also provide for the following key matters and processes relating to prescribed securities:

    (a) the keeping of ROMs in respect of such securities;

    (b) the process for transferring legal title to such securities;

    (c) the authentication of electronic messages in the USM environment, and the rights and responsibilities that flow from using such messages;

    (d) the process, requirements and limitations vis-à-vis converting such securities from certificated form to uncertificated form (**dematerialization**) and vice versa (**rematerialization**); and

    (e) the imposition of deadlines to facilitate the market's transition to full dematerialization.

40. We expand on each of the above in the paragraphs below.

Key concepts

System-member

41. The term "**system-member**" is intended to describe an investor who has set up a USI facility with an ASR, and is thus able to hold and manage securities electronically through the UNSRT system operated by that ASR. This concept is similar to that of a bank customer who signs up for the bank's online banking service and may thus conduct banking transactions electronically via the bank's online platform.

42. A point to note is that an investor must set up a USI facility with the *relevant* ASR. So, for example, an investor who holds shares in List Co A must set up a USI facility with List Co A's ASR in order to manage the investor's shares in List Co A. It does not suffice to set up a USI facility with List Co B's ASR (unless both List Co A and List Co B

have appointed the same ASR). The term "corresponding UNSRT system" is used in the rules to reflect this. It thus connects prescribed securities to the particular UNSRT system that must be used to evidence, and effect transfers of, the securities without paper documents. It follows that a person may be a system-member of more than one UNSRT system.

System-member versus registered holder

43. It is important to note that the term "system-member" only indicates that an investor has set up a USI facility through which prescribed securities can be managed electronically. It does not indicate that the investor is a registered holder of any securities, ie, that the investor actually *holds* any prescribed securities or holds them in uncertificated form. It follows that an investor:

    (a) may be a system-member *but not* a registered holder of any securities; or

    (b) may be a system-member *and* a registered holder, but not hold any prescribed securities in uncertificated form.

44. Moreover, although investors may from time to time cease to be registered holders, once they set up a USI facility and become a system-member of a particular UNSRT system, their status as such system-member will remain unchanged despite any change in their holdings.

Provisional system-member

45. A related concept is that of "**provisional system-member**". This concept is introduced to provide for situations where an investor:

    (a) ends up holding prescribed securities in uncertificated form but not at the investor's own instigation (eg, as a result of a distribution of bonus shares that are only in uncertificated form); and

    (b) has not yet set up (or completed the process for setting up) a USI facility which can be used to manage those securities.

46. In such situations, the issuer's ASR will set up a temporary or provisional USI facility in the investor's name, thus safeguarding the investor's right to receive the prescribed securities concerned and any entitlements flowing from such securities. However, the investor will not be able to exercise all rights attached to the securities (eg, the right to sell them) unless the investor has completed the necessary procedures and formalities for setting up a USI facility and become a full system-member. It is hoped that this will incentivise investors to complete such procedures and formalities and thereby facilitate the market's transition to full dematerialization.

Certificated form versus uncertificated form

47. The terms "**certificated form**" and "**uncertificated form**" essentially aim to distinguish between prescribed securities that are evidenced by a paper instrument and those that are not. However, certain additional criteria must also be met. In other words, the mere existence (or non-existence) of title instruments will not suffice to determine whether the securities are in certificated or uncertificated form. In particular:

(a) New section 1AB of Part 1 of Schedule 1 to the SFO[26] envisages that, in order for prescribed securities to be in uncertificated form, they must be recorded in the ROM as being held in uncertificated form, and such recording in the ROM must be in accordance with the USM Rules.

(b) In line with the above:

(i) section 4(3) of the proposed USM Rules requires the ROM to include a record indicating the number of units of prescribed securities held by a person in uncertificated form; and

(ii) section 4(4) of those rules clarifies when any such record may be added, amended or removed from a ROM.

48. In essence therefore, securities are "in uncertificated form" only if:

(a) no *current*[27] title instrument has been issued in respect of them; and

(b) the securities are recorded in the ROM as being in uncertificated form in accordance with sections 4(3) and 4(4).

49. If either of these criteria is not met, the securities are "in certificated form". This is by virtue of new section 1AB(b) of Part 1 of Schedule 1 to the SFO[28]. It follows that, for the purposes of the USM regime, even if the terms of issue of any prescribed securities do not require title instruments to be issued, the securities will still be "in certificated form" if they are not recorded in the ROM as being in uncertificated form. This also means that, despite the absence of any title instruments, the securities may not be regarded as already dematerialized.

Participating securities

50. The term "**participating securities**" is intended to describe prescribed securities that are USM-enabled in that the issuer has completed all applicable procedures and formalities for enabling such securities to participate in the USM environment. At a minimum, this will require the following:

(a) the issuer of the securities must have appointed an ASR to maintain its ROM;

(b) the appointed ASR must provide and operate a UNSRT system through which title to the securities can be evidenced and transferred without paper documents; and

(c) where necessary, the documents governing the issue and transfer of the securities (eg, the Articles of Association in the case of shares) must have been amended to remove any obstacles to the securities becoming participating securities.

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[26] New section 1AB of Part 1 of Schedule 1 to the SFO was introduced under section 27(5) of the USM Amendment Ordinance.

[27] It follows that all *previously* issued title instruments (if any) must have been cancelled.

[28] New section 1AB(b) of Part 1 of Schedule 1 to the SFO clarifies that if prescribed securities are not in uncertificated form, they are in certificated form.

Specified request

51. The term "**specified request**" refers to the arrangement that will replace the traditional instrument of transfer in the USM environment. The term was introduced under the USM Amendment Ordinance[29], with the expectation that it would be expanded in the USM Rules[30].

52. Sections 11(2) and 12(3) of the proposed USM Rules expand on what will constitute a "specified request". In general, it will comprise two electronic messages – one from the transferor and one from the transferee. However, for the reasons discussed in paragraph 32(a) above, paper form messages may also be used in certain limited circumstances.

53. A point to note is that the messages from transferors and transferees (whether sent electronically or in paper form) must specify or confirm certain particulars relating to the transfer. Additionally, in the case of messages sent electronically, these must be in the form of "authenticated messages" (as discussed below).

Authenticated messages

54. The term "**authenticated message**" describes an electronic message that meets certain criteria and can thus be relied upon for the purposes of effecting transactions in the USM environment. Its scope, and the rights and obligations that flow from using such messages, are set out in Part 4 of the proposed USM Rules. More specifically:

    (a) Section 13 clarifies that authenticated messages only refer to messages sent between certain parties, namely:

        (i) between issuers and holders or prospective holders (ie, transferees); and

        (ii) between offerors and holders.

        Offerors are included here so that the communication and acceptance of offers to investors, such as takeovers, can also be sent electronically as authenticated messages.

    (b) Section 13 also clarifies that authenticated messages must be sent through either:

        (i) the facilities of an ASR, and in accordance with the specifications and procedures for using those facilities; or

        (ii) the facilities of a recognized clearing house (**RCH**), and in accordance with its rules.

        This is to allow for the different routing options discussed in paragraph 33 above. The ASR's specifications and procedures and the RCH's rules will elaborate on the criteria for authenticating a message, eg, that it must be sent using a

[29] See, for example, sections 33, 34 and 57 of the USM Amendment Ordinance. The former amends section 151 of the CO so that transfers of shares in a Hong Kong company may be registered upon the lodging of an instrument of transfer or a specified request. The latter amends section 36 of the Stamp Duty Ordinance (Cap 117) so as to achieve the same but in respect of units in a unit trust scheme.

[30] See the definition of "specified request" under sections 33(3) and 57 of the USM Amendment Ordinance. Both describe the term as a request that complies with the requirements of USM-related subsidiary legislation dealing with the registration of transfers.

particular authentication methodology or communication channel as approved by the ASR or RCH (as the case may be).

(c) Sections 14 and 15, respectively, seek to clarify who is to be regarded as having sent an authenticated message and who is to be regarded as an addressee of such a message. The provisions also clarify that authenticated messages can have more than one sender or addressee, and that such messages can be sent or received by agents on behalf of a principal.

(d) Sections 17 and 18 go on to elaborate the obligations of the senders of an authenticated message. Essentially, they cannot deny that they sent the message or that the information contained in it is correct. Moreover, if the message is sent by an agent, neither the agent nor its principal can deny that the message was sent with the principal's authority. Additionally, the agent cannot deny that it sent the message, and the principal cannot deny that the information contained in it is correct.

(e) Similarly, section 19 elaborates on the rights of the addressee of an authenticated message. Essentially, addressees are entitled to accept that the message was sent by the person stated or identified as the sender, and that the information contained in it is correct. Where the message is sent by an agent, the addressee can also accept that the message was sent by the agent with the principal's authority. However, an addressee cannot accept such matters if the addressee is aware that any of those matters is untrue.

(f) Lastly, section 19 also seeks to clarify that a person who is permitted to rely on an authenticated message may do so without becoming liable in damages to any other person as a result of such reliance.

55. A point to note is that the proposed rules do not limit the use of authenticated messages to any particular purpose. Such messages may therefore be used for any purpose so long as they relate to participating securities, are between the persons mentioned in paragraph 54(a) above, and are sent as described in paragraph 54(b) above. So, for example, the legislation does not prohibit the use of authenticated messages to send instructions relating to corporate actions, including where they relate to securities that are in certificated form.

Q2. Do you have any comments or concerns about the proposed concept of "authenticated message" and how it will work? If so, please elaborate.

Q3. Do you have any comments or concerns about any of the other proposed concepts discussed above? If so, please elaborate.

Obligations relating to ROMs of prescribed securities

56. Part 2 of the proposed USM Rules sets out obligations relating to the ROMs of prescribed securities. These obligations aim to safeguard investors' interests and are intended to apply in respect of all prescribed securities, including listed depositary

receipts, and authorized CIS (such as listed real estate investment trusts (**REITs**) and listed exchange-traded funds (**ETFs**)) that are withdrawable from the HKEX System.

57. The proposed obligations are similar to those typically imposed in respect of a company's register of members and thus cover the keeping, inspection (including copying), closure, rectification and evidential value of ROMs. We elaborate on these in more detail below.

Keeping of the ROM (Section 4)

58. We propose that issuers of prescribed securities must first of all be required to keep a ROM and include certain basic information in it. To avoid duplication, this obligation will be regarded as fulfilled if similar registers are kept in accordance with other laws (such as the register of members in the case of companies) and contain the information required.

59. We propose that the ROM must also mention specifically that securities are held in uncertificated form where this is the case. This is necessary in light of the concept and definition of securities being in "uncertificated form" or "certificated form" (as discussed in paragraphs 47 to 49 above).

60. We also propose to require that entries in the ROM be made as soon as reasonably practicable. In general, we expect most ROM particulars to be updated within two to five days of the issuer receiving the relevant information or documents to enter such particulars. However, we do not propose to specify any particular timeframe in the legislation at the outset as the market may need some flexibility to adjust to the new USM environment. We will, however, consider specifying an indicative timeline in the ASR Code for better transparency[31].

61. We also do not propose to impose a specific obligation regarding the location of the ROM as ROMs now tend to be electronic rather than physical. However, consistent with the current requirement under the SML Rules, we propose to require that ROMs be maintained in Hong Kong by the issuer's ASR. Consequently, ASRs will have to have full and unfettered control of, and access to, the ROM from Hong Kong at all times. (ROM maintenance is discussed in more detail in paragraphs 132 and 133 below.)

ROM inspection and making copies of ROM (Sections 5 and 6)

62. We note that, under existing laws, the rights to inspect and take copies of a ROM differ depending on the particular type of prescribed securities[32].

63. We do not see any need for the USM Rules to align existing inspection rights and obligations. However, given that the removal of title instruments will mean the ROM is

[31] Although obligations relating to the updating of ROMs are imposed on issuers, in practice, it is their ASRs that will effect such updates. In view of this, we propose to incorporate timelines in the ASR Code as a standard expected of ASRs when updating ROMs.

[32] For example, section 631 of the CO allows for public inspection of the ROM of a Hong Kong incorporated company. However, there is no similar right to inspect the ROM of an OFC under the OFC Rules. Section 69 of those rules only permits inspection by a shareholder, and only of entries relating to that shareholder.

the sole means to evidence title, we do believe some minimum inspection and copying rights should be ensured.

64. Accordingly, we propose that investors should be entitled to inspect and take copies of all ROM entries relating to their *own* holdings, but not entries relating to other persons' holdings. The right to inspect and take copies of such other entries should be left to other laws or regulations that govern those securities more specifically. A point to note here is that any inspection rights and obligations under the USM Rules will be in addition to, and will not detract from, any inspection rights and obligations under other applicable laws. So, for example, the more limited inspection rights under the USM Rules will not affect an investor's wider inspection rights under the CO.

65. Lastly, we also propose to regulate the fees charged for inspection and copying under the Rules. The fee levels in this regard are proposed by reference to similar fees under the CO[33].

ROM closure (section 7)

66. We propose that ROM closures in the USM environment should be limited to no more than two consecutive business days at a time, or if longer, only for such period during which the prescribed securities in question are suspended from trading. There are two reasons for this.

    (a) First, there is likely to be much less of a need for ROM closure in the USM environment. ROM closure allows issuers to update their ROMs to reflect all transfers lodged prior to the effective date of a corporate action or general meeting. This helps ensure that any entitlements or other rights flowing from the corporate action can be calculated accurately, and that only holders whose names appear in the ROM on the record date are allowed to attend general meetings. ROM closure is particularly important in the paper environment where the updating of transfers onto ROMs relies on manual processes and checks. These take time and can result in the build-up of backlogs. In the USM environment, however, it is expected that transfer processes will be streamlined and automated. This should significantly reduce any backlog and, consequently, the need for ROM closure.

    (b) Secondly, and more importantly, ROM closures of more than two consecutive days will unfairly prejudice investors who hold securities in their own names in uncertificated form. Transfers cannot be registered when the ROM is closed. Because deposits into the HKEX System constitute legal title transfers, it follows that investors holding securities in their own names will be unable to deposit them into the HKEX System during any period when the ROM is closed. This will affect their ability to settle trades executed on the SEHK. By limiting closures to two consecutive business days, we aim to limit the potential adverse impact on such investors. The two-day limit should also be more than enough for any updating of the ROM as mentioned in paragraph (a) above.

[33] See section 12 of the Company Records (Inspection and Provision of Copies) Regulation (Cap 622I).

ROM rectification (section 8)

67. To better safeguard investors' interests, we propose to allow them to seek redress through the Courts in respect of any errors or omissions in the ROM relating to their holdings.

Evidential value (section 9)

68. With the removal of title instruments, the ROM will be critical to evidencing title to prescribed securities held in uncertificated form. We propose to make this clear in the USM Rules by providing specifically that a record in the ROM reflecting any person as holding a specified number of units of prescribed securities in uncertificated form will, in the absence of evidence to the contrary, be proof of the person's title to those units.

Penalty for breach (sections 4(8), 5(5) and 6(4))

69. We propose that the breach of certain obligations relating to the ROM of prescribed securities should constitute an offence, namely:

    (a) any breach of the obligations to keep a ROM and to enter the particulars required within the time specified; and

    (b) any breach of the obligations to permit a holder to inspect and take copies of ROM entries relating to the holder's own holdings.

70. In terms of penalty levels, we propose fines at level 4 (up to $25,000) and, in the case of any breach of the obligations to keep a ROM and enter the required particulars, daily fines of $700 for every day the offence continues. These penalty levels are based on fines for comparable offences imposed under the CO[34].

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.

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.

Process for effecting transfers

71. Part 3 of the proposed USM Rules deals with how transfers of prescribed securities will be effected in the USM environment. In particular:

[34] See section 627 of the CO and sections 7 and 11 of the Company Records (Inspection and Provision of Copies) Regulation (Cap 622I).

(a) Sections 10 and 11 seek to clarify that either instruments of transfer or specified requests may be used to effect transfers of prescribed securities. The provisions do not mandate which must be used in what circumstances. This is deliberate so as to allow issuers some flexibility in the matter, taking into account the particular circumstances of a case. That said, the expectation is that:

(i) instruments of transfer will generally be used if the securities are still in certificated form or are in the process of being delisted; and

(ii) specified requests will generally be used if the securities are in uncertificated form.

This is reflected by providing that issuers may refuse an instrument of transfer where the securities are in uncertificated form, and may refuse a specified request where the securities are in certificated form. For additional flexibility, we also propose that specified requests may be refused where the securities are in the process of being delisted or where it is not reasonably practicable to use a specified request[35].

(b) Sections 10 and 11 also seek to clarify the information that an instrument of transfer or specified request must contain. Some flexibility is provided in this regard to allow the issuer to require information that may not need to be included in the ROM but may be needed for operational purposes, such as identity information, bank account details for crediting cash entitlements, etc. As will be seen, the particulars proposed to be provided are identical in respect of both instruments of transfer and specified requests.

(c) Section 12 deals specifically with transfers relating to minority buy-outs and is cast in terms similar to sections 10 and 11 which deal generally with transfers. A main purpose of section 12 is to specify who may sign an instrument of transfer, or send a specified request, on behalf of the minority shareholders whose securities are being bought out. There is no intention to mandate that an instrument of transfer or specified request must be used in any particular circumstances.

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.

Dematerialization and rematerialization

72. Provisions relating to dematerialization and rematerialization are set out in Parts 5, 6 and 7 of the proposed USM Rules. These cover, respectively, dematerialization at the request of an investor, dematerialization at an issuer's initiative, and mandatory dematerialization pursuant to specified timelines. Rematerialization is also covered but to a lesser extent as the general intention is not to permit rematerialization (except in the limited circumstance where the securities in question are in the process of being delisted). We expand on each of these below.

[35] Paragraph 32 above explains why the use of instruments of transfer may be acceptable or necessary in such situations.

Dematerialization on request (Part 5)

73. Part 5 focuses on the process and requirements for the dematerialization of prescribed securities where this is requested or initiated by an investor. It covers requests from both existing holders and prospective holders (ie, transferees). It also provides for cases involving lost or damaged title instruments.

74. Section 20 deals with dematerialization requests from registered holders, while section 21 deals with dematerialization requests from transferees who wish to hold their acquired securities in uncertificated form.

    (a) The proposed process and requirements under both provisions are largely the same, ie, the investor concerned must be a system-member of the corresponding UNSRT system, and must submit a dematerialization request as well as the title instruments representing the securities sought to be dematerialized.

        (i) We propose that only system-members be allowed to submit a dematerialization request, ie, *provisional* system-members will not be able to do so. This is deliberate and designed to encourage investors to complete the procedures and formalities for setting up a USI facility.

        (ii) The proposal to require title instruments to be submitted is important as they must be properly cancelled to avoid being misused. That said, the submission of title instruments will not be necessary in two situations, ie, where no such instruments were previously issued (eg, because their terms of issue did not require the issue of such instruments), and where the issuer is satisfied that any such instruments previously issued are lost or damaged[36].

    (b) To safeguard investors' rights, we propose that any refusal of a dematerialization request should be notified formally to the investor, and with reasons. Any title instruments received with the dematerialization request should then also be returned.

    (c) Conversely, where a dematerialization request is accepted, we propose that the investor should be similarly notified, albeit without the need to give any reasons. Additionally, the title instruments issued in respect of the securities should be cancelled, and the ROM should record such cancellation as well as the fact that the securities are now held in uncertificated form.

    (d) We also propose that any breach of the obligations mentioned in paragraphs (b) and (c) above should constitute an offence, and in each case, punishable by a level 4 fine (up to $25,000) and daily fines of $700 for every day the offence continues.

75. A point to note is that acceptance of any dematerialization request from a transferee will be conditional on the transfer being otherwise acceptable. If there are any problems with the transfer, the dematerialization request will be refused. Similarly, if the issuer

[36] There may be procedures and formalities for applying to replace lost title instruments (whether prescribed by law or otherwise). (For example, sections 162 to 169 of the CO set out the procedures for replacing any lost or damaged certificates relating to shares in a Hong Kong company.) It is expected that issuers will at a minimum need to be satisfied that these procedures and formalities have been complied with in order to be satisfied that the title instruments are indeed lost or damaged.

has reason to refuse a transferee's dematerialization request, it will also need to refuse the transferee's transfer request as the title instruments will need to be returned. That said, we expect it to be highly unlikely that an issuer would consider the transfer acceptable and yet have concerns about the dematerialization request.

76. As regards the form of a dematerialization request, we propose to leave this to individual issuers to decide, taking into account any relevant considerations. Accordingly, section 22 provides that a dematerialization request must be submitted in such form and manner as the issuer requires, and be accompanied by the requisite fee.

Q7. Do you have any comments or concerns about the proposals concerning dematerialization at an investor's request? If so, please elaborate.

Dematerialization and rematerialization at the issuer's initiative (Part 6)

77. Part 6 focuses on the issuer's prerogative[37] to issue new units of prescribed securities in uncertificated form (eg, pursuant to an initial public offer, a rights issue, etc), and to dematerialize existing units (eg, following a transfer). It applies where the investor concerned has not submitted a dematerialization request under Part 5, and covers both cases where a title instrument would otherwise have to be issued, and cases where the terms of issue do not require a title instrument to be issued.

78. Section 24 deals with the issue of new units in uncertificated form. In this regard, we propose as follows.

    (a) The only prerequisite will be that the investor receiving the new units must be a system-member or a provisional system-member.

    (b) In terms of procedural requirements, we propose that issuers give prospective holders notice of their intention to issue new units in uncertificated form. Additionally, upon the units being issued, the issuer must record them in the ROM as being in uncertificated form, and refrain from issuing any title instruments in respect of them. Any breach of these obligations will constitute an offence punishable by a level 4 fine (up to $25,000) and daily fines of $700 for every day the offence continues.

    (c) A point to note is that we no longer propose to require issuers to issue new units in *both* certificated form and uncertificated form. Instead, we now propose that new units must either all be in certificated form or all be in uncertificated form. This is necessary to keep operational requirements and processes simpler and avoid unnecessary complexity and confusion for the market.

79. Section 23 deals with the dematerialization of existing units. In this regard, we propose as follows.

    (a) In terms of prerequisites:

[37] Paragraphs 26 to 29 above discuss the issuer's prerogative in more detail.

(i) the investor whose units are to be dematerialized must be a system-member or a provisional system-member; and

(ii) the issuer must have received the title instruments issued in respect of the units to be dematerialized, unless none were issued, or the issuer is satisfied that they are lost or damaged.

The requirement to receive any title instruments issued is necessary so as to ensure that such instruments are properly cancelled, and thus not susceptible to misuse.

(b) In terms of procedural requirements, an issuer, who decides to dematerialize any existing units of prescribed securities must notify the investors concerned. Additionally, it must cancel any title instruments issued in respect of the securities and record such cancellation in the ROM, as well as the fact that the securities are now held in uncertificated form. Any breach of these obligations will constitute an offence punishable by a level 4 fine (up to $25,000) and daily fines of $700 for every day the offence continues.

80. Section 25 confirms that, irrespective of an investor's wishes, the issuer is under no obligation to issue title instruments in respect of securities that are in uncertificated form. This is to make clear that where an issuer has exercised its prerogative to issue new units of prescribed securities in uncertificated form, or to dematerialize existing units of such securities, the investor cannot demand otherwise.

81. It is worth noting that a key difference between dematerialization at the request of an investor and dematerialization at an issuer's initiative is that:

(a) in the case of the former, the investor must be a system-member; whereas

(b) in the case of the latter, the investor may be a system-member or a provisional system-member.

This difference is necessary to ensure that issuers can take steps to move the market towards full dematerialization without depending on investors having first set up a USI facility.

82. Another point worth noting is that we expect issuers will likely take every opportunity to dematerialize existing units of prescribed securities. The following are some examples of when an issuer may seek to dematerialize existing units of such securities:

(a) where a registered holder seeks to dematerialize some but not all of the units covered by a title instrument – as the title instrument will have been submitted to the issuer, the issuer will be in a position to also dematerialize the portion in respect of which no dematerialization request has been submitted[38];

(b) where a transferee acquires existing units of the securities, or seeks to dematerialize some but not all of the securities that it has acquired – again, as the title instrument will have been submitted to the issuer, the issuer will be in a

[38] For example, the registered holder holds a title instrument representing 10,000 shares in List Co A, but submits a dematerialization request to dematerialize 6,000 of the shares. The issuer may dematerialize the remaining 4,000 shares as well because the title instrument received covers all 10,000 shares.

position to also dematerialize the portion in respect of which a dematerialization request has not been submitted[39];

(c) 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 – again, as the title instrument will have been submitted to the issuer, the issuer will be in a position to also dematerialize the portion to be retained by the transferor[40], and such situations may include cases involving partial offers[41];

(d) where the number of issued units of any prescribed securities has been increased or decreased by way of a sub-division or consolidation exercise – dematerialization in this case will depend on whether the investor submits any title instruments for replacement;

(e) where the issuer changes its name – again, dematerialization in this case will depend on whether the investor submits any title instruments for replacement;

(f) where a registered holder, or other person entitled to do so, submits a request to replace a lost or damaged title instrument – in this case, so long as the procedures and formalities for replacing a lost or damaged title instrument have been completed to the issuer's satisfaction, there would be nothing preventing the issuer from dematerializing the units represented by the lost or damaged instrument; and

(g) where title instruments have not been issued, or are not required to be issued, in respect of the securities – such securities will still need to be converted into uncertificated form (as defined under the proposed USM Rules[42]), but as there will be no title instruments to retrieve for cancellation, the issuer will be in a position to dematerialize the securities without any active steps being taken by investors.

83. Section 26 seeks to provide for rematerialization at an issuer's initiative in the limited situation where the prescribed securities are in the process of delisting. We believe this is necessary for the following reasons.

(a) Upon delisting, the securities will cease to be prescribed securities. As such, they can no longer come within the scope of the USM regime and can no longer be held in uncertificated form (within the technical meaning of the USM Rules). It seems necessary therefore to allow or provide for their rematerialization.

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[39] For example, a transferee acquires 10,000 shares in List Co A but does not request to hold the shares in uncertificated form after the transfer, or requests to hold only 6,000 of the shares in uncertificated form after the transfer. In either case, the issuer may dematerialize all 10,000 shares and require the transferee to hold them in uncertificated form after the transfer.

[40] For example, a transfer is of 6,000 shares in List Co A, but the transferor holds only a single title instrument covering 10,000 shares. On receiving this instrument, the issuer may dematerialize all 10,000 shares, ie, including the 4,000 shares to be retained by the transferor.

[41] In the case of a partial offer, an investor may have submitted title instruments representing more units than are taken up by the offeror. Currently, the issuer will issue a title instrument to the investor in respect of the units not taken up by the offeror. In the USM environment, the issuer will have the option to dematerialize such units instead.

[42] As discussed in paragraphs 47 to 49 above, the concept of uncertificated form has a more technical meaning and does not simply refer to securities where no title instruments are issued.

(b) However, the circumstances of a delisting may differ greatly. For example:

(i) it may be due to a privatisation (in which case the securities may still exist after the delisting and rematerialization would be meaningful); or

(ii) it may be due to a restructuring or liquidation involving the issuer (in which case the securities may not exist for much longer after the delisting and any rematerialization may be of little, if any, value).

(c) In view of the above, we propose that the matter should be left to the issuer to determine around the time of the delisting, and taking into account any relevant laws and requirements. Section 26(1) seeks to achieve this by clarifying that the issuer has the option (but not the obligation) to rematerialize if the securities are in the process of delisting. However, if the issuer opts to do so, it will need to ensure that the rematerialization is completed before the securities cease to be listed.

Q8. Do you have any comments or concerns about the proposals concerning dematerialization at the issuer's initiative? If so, please elaborate.

Q9. Do you have any comments or concerns about the proposals concerning limited rematerialization at the issuer's initiative? If so, please elaborate.

Mandatory dematerialization (Part 7)

84. Part 7 seeks to deal with the setting of deadlines to facilitate the market's transition to full dematerialization. To that end, the proposed legislation anticipates that the following deadlines will be set.

(a) Section 27 envisages the imposition of deadlines by when issuers must ensure that their prescribed securities have become participating securities. This will be a crucial first step as it will enable issuers to issue new units of prescribed securities in uncertificated form, and dematerialize existing units as and when an opportunity to do so arises. It will also enable investors to dematerialize their existing holdings if they so wish.

(b) Section 28 envisages the imposition of deadlines after which new securities may no longer be in certificated form. This too will be a crucial step in moving the market towards dematerialization as it will incentivise investors to become familiar with the USM environment and the holding and transferring of securities without paper.

(c) Section 29 envisages the imposition of deadlines after which title instruments may no longer be issued. This will further incentivise investors to become familiar with the USM environment and thus encourage the market's move towards full dematerialization.

(d) Section 30 envisages the imposition of deadlines by when all securities held within the HKEX System must be dematerialized. Given that a large portion of

issued prescribed securities are held through the HKEX System, this too will be a crucial step in the market's transition to full dematerialization.

85. The above deadlines are (in the case of sections 27, 28 and 29) imposed on issuers, and (in the case of section 30) imposed on both issuers and HKSCC (as the RCH operating the HKEX System). To ensure the effectiveness of these deadlines, we also propose that any non-compliance by the issuer or HKSCC (as the case may be) should constitute an offence, but only if the non-compliance is without reasonable excuse. As for the penalty, we propose a level 4 fine (up to $25,000) and daily fines of $700 for every day the offence continues.

86. To ensure flexibility, the rules allow for different deadlines to be specified in respect of different classes or descriptions of prescribed securities (eg, shares of Hong Kong-incorporated companies, shares of Hong Kong-incorporated companies with a shareholder base not exceeding "X", etc).

87. Additionally, to allow for the possibility that issues may arise, and more time may be needed, we also propose to introduce provisions to enable the SFC to defer or exempt the deadlines.

    (a) The deferral provision (section 31) is anticipated for use if it becomes necessary to defer any of the deadlines in respect of any particular class or description of prescribed securities. The provision is envisaged as a tool to help coordinate the dematerialization process as necessary.

    (b) The exemption provision (section 32) is intended for use in individual cases, taking into account the facts and circumstances of the particular case. It is included to allow for flexibility to deal with unique or unanticipated scenarios, and to cater for prescribed securities that are in the process of being delisted[43].

88. It is worth noting that the deadlines set under Part 7 will not cover cases where an investor is simply holding title instruments and *not* taking any steps that would otherwise require the issue of a new title instrument. Dematerialization cannot be compelled in such cases because it is important that existing title instruments are returned to the issuer for proper verification and cancellation before any units that they represent are dematerialized. Failing to do so may risk disputes as to whether the dematerialized units are held by the true owner or not.

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.

[43] Where securities are in the process of being delisted, they will soon cease to be dematerialized (within the meaning of the USM Rules). There is therefore little point in requiring compliance with the deadlines in such cases.

Other matters to note

Definition of "issuers"

89. The proposed USM Rules impose a number of obligations on issuers of prescribed securities[44]. However, given the structure of some prescribed securities, it may not always be obvious who the issuer is. In particular, the structure around prescribed securities such as units in an authorized CIS may be such that there is more than one entity involved in its operation and management. The question then arises as to which of these entities should be held responsible as issuer under the USM Rules.

90. In view of the above, the term "issuer" is defined in section 2 of the proposed USM Rules, and cast so as to cover all key entities involved. So, for example:

    (a) In the case of an authorized CIS, we propose that the term "issuer" should cover the operator of the CIS and the manager of the CIS property. However, we do not propose to specifically cover the trustee.

    (b) In the case of rights under a rights issue, we propose that the term "issuer" need only refer to the rights issuer because, in practice, the issuer of the rights is also the issuer of the underlying securities (ie, the securities that may be acquired by exercising the rights). We propose the same in respect of subscription warrants given that, in practice, the issuer of the warrants and the issuer of the underlying securities tend to be the same person.

91. In adopting this approach, our thinking is that the key entities involved will in any event be working in tandem for the purposes of the structure concerned and will have agreed among themselves who is to be responsible for what. It would be inappropriate therefore for the legislation to stipulate which entity among them should be responsible, particularly given that in the case of some obligations, breach constitutes an offence.

92. As regards responsibility for compliance, we propose to clarify that compliance by one will suffice, but that all will be held liable in the event of a breach. Section 2(3) of the proposed USM Rules seeks to clarify this.

93. A related point to note is that many of the obligations proposed to be imposed on issuers under the USM Rules will in practice be handled by ASRs. These include obligations relating to the ROM[45], obligations relating to the handling and registration of transfers, and obligations relating to the dematerialization and rematerialization of prescribed securities[46]. In light of this, we have considered whether these obligations should be imposed on ASRs rather than issuers. However, given the importance of these obligations and the fact that ASRs handle them only as agents of issuers, we believe it is more appropriate to impose these obligations on issuers. This is also

[44] The most significant of these are: (i) the obligations to keep ROMs and make them available for inspection and copying (discussed in paragraphs 56 to 66 above); and (ii) the obligations to comply with the timelines for facilitating the market's transition to full dematerialization (discussed in paragraph 84 above). Any breach of these obligations will constitute an offence (as discussed in paragraphs 69, 70 and 85 above).

[45] For example, obligations relating to the matters to be entered in the ROM, and to the inspection, copying and closure of the ROM.

[46] For example, requirements relating to the issue and cancellation of title instruments, and to the recording in the ROM of the form in which the securities are held following a dematerialization or rematerialization.

consistent with the approach under the CO[47]. However, in so far as ASRs aid or abet issuers in such breaches, they too may be held liable. Their fitness and properness to remain ASRs may also be impugned.

Q11. Do you have any comments or concerns about the proposed definition of "issuer"? If so, please elaborate.

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.

Instructions from joint holders

94. Currently, all joint holders of securities are required to sign the instrument of transfer when effecting a transfer, and to sign elections or other instructions relating to corporate actions. We understand, however, that replicating this in the USM environment will make the design of UNSRT systems much more complex, and hence their build much more expensive. In view of this, and given that joint holdings make up a relatively small portion of the investor base, we propose to retain the option for joint holders to send transfer instructions in paper form which can then be entered electronically by the ASR as described in paragraph 32(a) above, at least at the initial stage.

95. We have also considered whether the USM Rules should clarify that in the case of joint holdings, instructions may be sent by any one of the joint holders on behalf of all of them. Our view is that it would be inappropriate to do so as it might take away joint holders' right to decide how their holdings should be managed (ie, jointly or severally). Moreover, it is in any event open to joint holders to execute a power of attorney authorizing one of them to act on behalf of all of them, including for the purposes of sending authenticated messages to effect a transfer, make elections in respect of corporate actions, etc. There is therefore no need for the USM Rules to enable this.

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.

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.

[47] For example, obligations relating to the keeping, inspection, copying and closure of a company's ROM are all imposed on the issuer notwithstanding that, in practice, such matters are handled by the issuer's share registrar.

Consolidation of holdings for entitlements distribution

96. When we consulted the market on the Operational Model for USM in 2019 / 2020, we invited views on whether an investor's holdings in different forms should be consolidated before calculating their entitlements. Most respondents were against consolidation, but the concerns raised were mainly in respect of securities managed through the USS facility (which is now proposed to be deferred). There were also views that any principles on consolidation should apply equally to all investors, irrespective of whether they manage their securities through a USS facility or a USI facility[48]. In view of the feedback received previously, and having considered the matter further, we do not propose to either mandate or prohibit consolidation. Instead, we propose to leave it to issuers and their ASRs to decide whether to require consolidation and in what circumstances. The proposed USM Rules are therefore silent on the matter of consolidation.

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.

Fees

97. A related matter that arises in the context of the USM Rules is whether any fees chargeable to investors should be standardised, and an upper limit specified in respect of them by legislation or Code.

98. Currently, transfer fees (which are payable by investors when registering transfers of listed equities such as shares) are standardised, and their upper limits set out in the Listing Rules[49].

99. We expect a transfer fee will likely continue to be charged in the USM environment, although details of what this will be, and how it will be charged, have yet to be discussed. Nevertheless, the question arises whether any such transfer fee should continue to be standardised and an upper limit in respect of it specified either in legislation (eg, in the USM Rules or ASR Rules) or in suitable SFC codes (eg, the ASR Code).

100. Similarly, there may be other fees in the USM environment which, like the transfer fee, may be charged to investors but which investors are not in a position to negotiate or refuse. The question arises whether these fees, too, should be standardised and an upper limit in respect of them specified either in legislation or suitable SFC codes. In particular, we are thinking here of the dematerialization fee (referred to in section 22 of the proposed USM Rules), and any fee payable by investors for setting up a USI facility. We welcome views in this regard.

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[48] See paragraphs 70 and 71 of the January 2019 Joint Consultation Paper and paragraphs 86 to 89 of the April 2020 Joint Consultation Conclusions Paper. (See footnote 9 above for links to these papers.)

[49] Reference here to the Listing Rules is to: (i) the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (rule 13.60); and (ii) the Rules Governing the Listing of Securities on GEM (rules 17.68 to 17.71).

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?***
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?***
Q18.	***Do you have any other comments or concerns about the proposed USM Rules? If so, please elaborate.***

IV. Proposed ASR Rules

Regulatory approach

101. In developing the regime for ASRs, we have drawn reference to other regimes under the SFO[50] but have also kept in mind the following.

(a) Our objective is to achieve a reasonable and sufficient degree of regulatory oversight over ASRs' activities.

(b) The focus of the regulation will be on ASRs' systems and processes given the critical role these will play under the USM regime.

(c) Most major jurisdictions elsewhere do not have a specific regime for regulating the provision of services similar to securities registrar services.

Scope and requirements

Scope of securities registrar services

102. The proposed ASR Rules provide for the regulation of ASRs. These are persons who will be approved by the SFC to provide securities registrar services, ie, any of the following services:

(a) the maintenance in Hong Kong of the ROM for any prescribed securities;

(b) the provision and operation of UNSRT systems;

(c) the provision of services in relation to a public offer of prescribed securities, where these are provided by the person appointed to maintain the ROM of those securities (**securities registrar**); and

(d) the provision of corporate action services, where these are provided by the securities registrar.

The first two services described above are already incorporated in the definition of "securities registrar services"[51] while the other two are added under section 3 of the proposed ASR Rules.

Services relating to public offers

103. Paragraph 102(c) above is intended to refer to the kind of services currently provided by share registrars in connection with public offers of securities. It is therefore intended to:

(a) include the provision and operation of any electronic channels for receiving applications, the vetting of applications received (whether through any such electronic channels or otherwise), any assistance provided in the balloting process, the arranging of refunds in respect of unsuccessful applications, etc; but

[50] In particular, we have drawn reference to: (i) the licensing regime for intermediaries; (ii) the regime for regulating authorized providers of automated trading services; and (iii) the regime for recognized exchange companies and clearing houses.

[51] See paragraphs (a) and (b) of the definition introduced under section 27(4) of the USM Amendment Ordinance.

(b) exclude services that constitute book-building or placing activities, as well as services provided by intermediaries to facilitate applications from their investor-clients.

104. Accordingly, the scope under section 3(a) of the proposed ASR Rules is limited to services provided by a person to, or as agent of, the issuer. This should exclude intermediaries given that they would be acting as agents of their investor-clients rather than as agents of the issuer. The additional limitation that the services be provided by the person who is appointed to maintain the ROM in respect of those securities will exclude investment banks and others who assist with book-building or placing activities. It is worth noting that the scope of section 3(a) would also exclude services provided by an ASR acting as receiving agent in the context of an offer as defined in the Codes on Takeovers and Mergers and Share Buy-backs. This is because services in connection with such offers would be provided to, or as an agent of, the offeror rather than the issuer. Activities relating to such offers will hence continue to be governed by those codes.

Services relating to corporate actions

105. As for paragraph 102(d) above, this is intended to cover services such as assisting with the calculation and distribution of entitlements to securities holders, the receipt and processing of elections and instructions from holders, the organisation and holding of general meetings, the receipt and processing of related proxy appointments and voting instructions, the handling of redemption requests (where applicable), etc. To ensure that the scope does not capture similar services by persons who do so as nominees or agents of investors, section 3(b) incorporates the same limitations as those discussed in paragraph 104 above.

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.

Obligations and requirements

106. In terms of content, the proposed ASR Rules set out the various obligations and requirements that we propose to impose on ASRs. These cover the following:

(a) systems requirements;

(b) financial and other resources requirements;

(c) operational and business requirements;

(d) notification and reporting requirements;

(e) a process for review by skilled persons;

(f) specific obligations to investors; and

(g) obligations relating to the handover from one ASR to another.

We expand on each of these in the paragraphs below.

Systems requirements

107. As discussed in paragraph 101(b) above, the regulatory regime for ASRs is intended to be systems-focused. It is also expected that each ASR's systems and processes for the USM environment will differ as they will be designed to meet the ASR's own specific business and operational needs and requirements.

108. In view of the above, and given the highly operational and technical nature of the systems and processes involved, we do not consider it appropriate to set out detailed systems requirements in the ASR Rules. Instead, we propose that the rules only impose certain high-level requirements, and that the ASR Code expand on these requirements and set out in more detail the standards expected of ASRs' systems and facilities. Accordingly, section 5 of the proposed ASR Rules sets out general requirements, and the ASR Code will expand on these by prescribing standards and requirements in relation to matters such as:

(a) security measures for ensuring the integrity of ASRs' systems, and of data stored in their systems and in the ROMs they maintain;

(b) systems capabilities for providing certain minimum functions;

(c) risk management procedures and processes; and

(d) contingency arrangements and measures to ensure continuity of services, and of access to systems and to the ROMs maintained.

Q20. Do you have any comments or concerns about the proposals regarding the systems requirements to be imposed on ASRs? If so, please elaborate.

Financial and other resources requirements

109. We propose that ASRs be subject to certain financial resources obligations, including in particular, that they maintain certain minimum capital and liquidity levels, and that their borrowings do not exceed certain levels. This is reflected in section 8 of the proposed ASR Rules. The provision does not set out specific levels as these are proposed to be specified by the SFC on a case-by-case basis, taking into account the scope and size of each ASR's securities registrar business[52]. These requirements aim to ensure an ASR's continued financial viability and to allow for an orderly winding down should that become necessary.

110. Additionally, we propose to require that ASRs ensure the suitability and adequacy of their premises, personnel, internal controls, risk management systems, and contingency arrangements. These requirements are reflected in sections 4 and 6 and aim to ensure that an ASR's operations are carried out smoothly and properly.

[52] Our current thinking is that: (i) minimum capital levels should not be lower than $5 million; (ii) minimum liquidity levels will be set by reference to projected operating expenses for the next (at least) six months; and (iii) gearing ratios (ie, external borrowing over total equity) should not exceed 70%.

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.

Operational and business requirements

111. In terms of ASRs' operations and business, we propose as follows.

(a) ASRs must maintain sufficient and adequate insurance coverage, taking into account the size, structure and nature of their businesses and operations. This is reflected in section 7 of the proposed ASR Rules.

(b) ASRs must appoint independent auditors to audit their financial statements and keep the SFC informed of who their auditors are. This is reflected in section 14.

(c) ASRs must not change their financial year without the SFC's approval. This is reflected in section 15.

(d) ASRs must keep proper records of their financial position, and of their business and activities, including in particular, records of transactions effected through their UNSRT systems. This is reflected in sections 11 and 12.

(e) ASRs must handle client monies as directed, keep them in segregated client or trust accounts and notify the SFC of non-compliance with such requirements. This is reflected in sections 20 to 23.

112. These requirements aim to ensure that issuers' and investors' interests are properly safeguarded.

Q22. Do you have any comments or concerns about the operational and business requirements proposed to be imposed on ASRs? If so, please elaborate.

Notification and reporting requirements

113. To facilitate the SFC's supervision and monitoring of ASRs, we propose to introduce various notification and reporting requirements.

(a) The notification requirements are designed to flag changes to an ASR's financial position and to various other information relating to its structure, business, operations and personnel[53], so that the SFC may look into such matters further as necessary. These requirements are reflected in sections 9, 10 and 19 of the proposed ASR Rules.

(b) The reporting requirements are designed to provide a general overview of an ASR's business and operations, and to flag significant changes or events. They include requirements to submit annual audited statements, quarterly returns and

[53] The specific changes that need to be notified to the SFC are listed in Part 2 of the Schedule to the proposed ASR Rules.

reports of significant incidents relating to the ASR's systems and operations. These requirements are reflected in sections 16, 17 and 18.

Q23. Do you have any comments or concerns about the notification and reporting requirements proposed to be imposed on ASRs? If so, please elaborate.

Provision of information and review by skilled persons

114. To further facilitate the SFC's supervision of ASRs, we propose to enable the SFC to:

(a) require ASRs to provide such information and documents as the SFC may reasonably require for performing its functions, including information and documents relating to an ASR's systems and services, or to any of the matters they have previously notified or reported to the SFC; and

(b) appoint, or require an ASR to appoint, a "skilled person" to report on any matter relating to its operations.

115. These matters are set out in sections 30 and 31 of the proposed ASR Rules. The provisions are designed to enable the SFC to: (i) quickly obtain information regarding an ASR's services, systems and processes, as necessary; and (ii) seek external assistance in reviewing any matters concerning such services, systems and processes, where necessary. This is particularly important in the case of ASRs' systems and processes, given their technical nature and significance in the USM environment. The provisions are modelled on section 91 of the SFO (which deals with the provision of information by recognized exchange companies and clearing houses) and section 159 of the SFO (which deals with the appointment of external auditors to examine and audit the accounts and records of licensed corporations and their associated entities).

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.

Q25. Do you have any comments or concerns about the proposals regarding the appointment of skilled persons? If so, please elaborate.

Specific obligations to investors

Provision of confirmations and statements

116. With the removal of title instruments and instruments of transfer, it will be necessary to provide other forms of comfort to investors regarding the status of their registered holdings. To that end, we propose to require ASRs to provide the following to investors who hold prescribed securities in their own names and in uncertificated form.

(a) A written confirmation must be sent to an investor whenever there is any change on the relevant ROM in relation to the investor's holdings (eg, following an

allotment, transfer, dematerialization, share consolidation or division, etc). This is reflected in section 24 of the proposed ASR Rules.

(b) An annual statement must be sent to an investor reflecting the investor's holdings as at the beginning and as at the end of the year in question. This is reflected in section 25.

Form of confirmations and statements

117. Such confirmations and annual statements may be sent (or made available) electronically, or may be sent in paper form. Where statements are sent electronically, the proposed ASR rules make clear that *no* fee should be charged. However, where statements are sent in paper form, we propose to allow ASRs to charge a reasonable fee for the purposes of cost recovery and to disincentivise the use of paper. This is reflected in section 26.

Matters relating to statements

118. Additionally, with respect to the annual statements, two points are worth highlighting. First, any such statements will only cover prescribed securities handled by the ASR issuing the statement. Consequently, it may not reflect *all* of the investor's holdings as at the beginning or end of the year[54]. Secondly, we have considered whether the rules should require such statements to be sent more frequently. Our view is that this is unnecessary given that ASRs will be expected to provide online access to investors so that they may view and manage their holdings of prescribed securities at all times. Moreover, it will be open to ASRs to provide more regular statements on request and for a reasonable fee.

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.

Handover obligations

119. Given the important role that ASRs and their systems and processes will play in the USM environment, it will be necessary to closely monitor any change of an issuer's ASR. The aim is to ensure that any handover from one ASR to another is effected as smoothly and seamlessly as possible. To that end, we propose as follows.

Prohibition on ceasing to be ASR

120. First, we propose to prohibit ASRs from ceasing to be an issuer's securities registrar except in the following circumstances.

[54] For example, an investor may hold shares in List Co A and List Co B. List Co A and List Co B may each have appointed different ASRs, ie, List Co A may have appointed ASR-1 while List Co B may have appointed ASR-2. In such case, the investor may receive two annual statements, ie, one from ASR-1 setting out the investor's holdings in List Co A, and one from ASR-2 setting out the investor's holdings in List Co B.

(a) Where there is an orderly handover — by this we mean that the issuer and the two ASRs involved have consented to the change, and the relevant books and records have been properly passed to the incoming ASR.

(b) Where it is impractical, unreasonable or unduly burdensome for an ASR to continue as the issuer's securities registrar, and the SFC has permitted the ASR to cease acting as such — the discretion to grant such permission will be exercised with restraint given the potential impact on investors, and is therefore expected to be exercised in exceptional circumstances only, eg, where the issuer has not paid the ASR for its services for an unreasonable length of time.

(c) Where, by virtue of disciplinary or other action taken under the SFO, the ASR is unable to continue acting as the issuer's securities registrar — it is expected that matters pertaining to any handover to another ASR will be dealt with in the course of handling the relevant disciplinary or other matter.

121. The above prohibition is reflected in section 27 of the proposed ASR Rules. A point to note here is that the prohibition is intended to apply only if the change of ASR occurs when the securities in question are still prescribed securities. If the change occurs *after* the securities cease to be prescribed securities (eg, as a result of being delisted or, in the case of rights and warrants, as a result of having lapsed or expired), the prohibition will not apply.

122. Changes in ASRs typically occur for commercial reasons. We appreciate, however, that a change may also be triggered by other reasons, including financial difficulties, loss of key staff, etc, at the ASR's end. We expect, however, that potential issues in this regard may be revealed in the quarterly returns that ASRs will be required to submit (as discussed in paragraph 113(b) above). This is because the information to be provided in such returns will include, among other things, information concerning the ASR's financial position and operations. This will help alert the need to monitor or supervise an ASR more closely.

Transfer of ROM and related records

123. Secondly, we propose to require the outgoing ASR to take all reasonable steps to pass the ROM and related records to the incoming ASR before the change takes effect. If this is not possible, they should be passed as soon as reasonably practicable after the change. If there is no incoming ASR, the ROM and related records should be passed to the issuer[55]. This is reflected in section 28.

Notification to SFC and SEHK

124. Thirdly, we propose to require ASRs to notify the SFC and SEHK in advance if they intend to become, or to cease to be, the ASR of any particular prescribed securities. Such notice should be given at least three months in advance or (if that is not possible) as soon as reasonably practicable. It should also be given by both the incoming and outgoing ASRs, and contain certain details relating to the change, such as the date of the intended change, details of the securities and ASRs concerned, etc. Any

[55] The term "issuer" under the ASR Rules will bear the same meaning as in the USM Rules. As discussed in paragraphs 89 to 90 above, the term "issuer" may cover multiple entitles depending on the type of prescribed securities involved. Where the term covers multiple entities, it will suffice for the ROM and related records to be passed to any one of them.

subsequent change to the matters notified must also be notified to both the SFC and SEHK. These obligations are reflected in section 29. Limited exceptions are also proposed to cater for situations where the matter may already be known to the SFC or SEHK (as the case may be) so that requiring notification becomes unnecessary. As to why notification must also be given to the SEHK, this is discussed in paragraph 138 below.

Variation of requirements in the case of warrants and rights

125. A final point to note is that the requirements discussed in paragraphs 123 and 124 above are proposed to work slightly differently in respect of prescribed securities that are subscription warrants or rights under a rights issue. Such products are expected to cease to be prescribed securities within a short period and in the ordinary course of events, ie, upon their lapse or expiry. In view of this, it would be too onerous, and also unnecessary, to impose these requirements whenever any warrants or rights lapse or expire. Secondly, we understand that the ROM for warrants or rights is typically kept by the same person that keeps the ROM for the underlying securities (ie, the securities that may be acquired by exercising the warrants or rights). For these reasons, our proposed approach in respect of warrants and rights is as follows.

(a) The requirement to transfer records (described in paragraph 123 above) will not apply where the warrants or rights have lapsed or expired, *and* the ASR is still the ASR for the underlying securities. This is reflected in section 28(4). In proposing this, we have considered that records relating to lapsed or expired warrants or rights would likely be kept for a period after the lapse or expiry, and the most logical person to keep them would be the issuer of the underlying securities or its ASR.

(b) The requirement to notify the SFC and SEHK in advance (described in paragraph 124 above) will not apply if:

(i) the warrants or rights have lapsed or expired;

(ii) the ASR is still the ASR for the underlying securities; *and*

(iii) the underlying securities are prescribed securities.

The above is reflected in section 29(6). In proposing this, we have considered that so long as the ASR remains the ASR for the underlying securities, and those securities remain prescribed securities, the records relating to any lapsed or expired warrants or rights will remain with the same ASR (as discussed in paragraph (a) above). Notification to the SFC in such circumstances is therefore unnecessary. However, if the ASR *subsequently* ceases to be the ASR of the underlying securities, then both the ROM and related records for the underlying securities, and the ROM and related records for the expired or lapsed warrants or rights (if they are still kept by the ASR), will have to be passed to the incoming ASR (as reflected in section 28(3)), and the SFC should be notified at that point.

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.

Code of conduct for ASRs

126. The ASR Rules will be supplemented by the ASR Code, which will build on the SFC's existing Code of Conduct for Share Registrars. The ASR Code will expand on the standards and practices expected of ASRs, including (as appropriate) the requirements set out in the ASR Rules as discussed above. The code will also set out the principles by which the SFC will assess an ASR's suitability to remain approved. A draft of the revised code will be exposed for public consultation in due course.

Penalties for breach

127. We propose that the breach of any obligations under the ASR Rules (and the ASR Code) should generally lead to disciplinary or other regulatory action being taken against the ASR concerned, but not constitute criminal offences. To that end:

    (a) the SFC's powers under Parts VIII, IX and X of the SFO[56] were extended under sections 8 to 26 of the USM Amendment Ordinance; and

    (b) breaches of only two provisions of the proposed ASR Rules (ie, sections 13 and 32) are proposed to constitute criminal offences, and both relate to the falsification or destruction of records or documents and other fraud.

Q28. Do you have any other comments or concerns about the proposed ASR Rules? If so, please elaborate.

[56] Parts VIII, IX and X of the SFO deal with the SFC's supervision and investigation powers, disciplinary powers and powers to intervene or institute legal proceedings, respectively.

V. Proposed amendments to the SML Rules

Current requirements under Part 4

128. Currently, Part 4 of the SML Rules requires each listing applicant and listed corporation to be or employ an "approved share registrar" (ie, a share registrar that is a member of the FSR) to maintain its register of members. The SEHK cannot approve a listing applicant's application for listing if it does not have an approved share registrar. Similarly, if a listed corporation fails to have an approved share registrar, the SEHK can issue a notice requiring the company to appoint such a person or risk having its securities suspended from trading. These arrangements will need to be expanded and amended to cater for the new USM environment. Our proposed changes are discussed in more detail below and reflected in the proposed amendments to the SML Rules set out at Annex 4.

Changes proposed

ROMs to be maintained by ASRs

129. First, it will no longer suffice for ROMs of prescribed securities to be maintained by persons who are only members of the FSR but not subject to direct regulation by the SFC. The ROM will take on a greater significance in the absence of title instruments. In view of this, and given the proposal to introduce a new ASR regime, we propose to require that ROMs be maintained by ASRs. This is reflected in the proposed amendments to sections 13 and 14 of the SML Rules, ie, both refer to the requirement for an ASR to act as the securities registrar. A point to note here is that issuers will not be precluded from maintaining their own ROMs provided that they are also ASRs.

Expand scope to cover all prescribed securities

130. Secondly, given that the USM initiative will apply not only to listed shares but also to other prescribed securities, it would be reasonable and logical to expand the scope of Part 4 of the SML Rules correspondingly. We accordingly propose that the requirement to appoint ASRs apply in respect of all issuers of prescribed securities. Again, this is reflected in the proposed amendments to sections 13 and 14 of the SML Rules, ie, both apply in respect of prescribed securities.

131. We have considered whether the scope should be limited to participating securities only. Our view is that all prescribed securities should be covered given that the aim is for all prescribed securities to eventually come under the USM regime. We would add that there is no downside to this as issuers of prescribed securities that are not yet participating securities can still appoint ASRs to maintain their ROMs. It is just that the ASRs will not provide and operate a UNSRT system in respect of those securities until they become participating securities. They will, however, be able to provide other securities registrar services in respect of such securities.

Maintenance of ROM in Hong Kong

132. A point worth noting is that we propose to retain the requirement that ROMs be maintained in Hong Kong. By this we mean that any changes to the ROM should be initiated and controlled in Hong Kong and by persons located in Hong Kong. Moreover,

such changes should be final, and not dependent on the need for further input or adjustments elsewhere.

133. Given that ROMs are typically electronic, and securities registrars may be part of a larger group with operations in a number of jurisdictions, it is possible that the servers that store ROM data may be physically located outside Hong Kong. The question arises whether the requirement to maintain ROMs in Hong Kong can be satisfied if the servers are outside Hong Kong. We propose to assess this on a case-by-case basis, taking into account all relevant facts and circumstances, including the actual systems set-up, any arrangements and interdependencies between the ASR's systems in Hong Kong and its systems outside Hong Kong, the data that will be stored in Hong Kong, the extent to which matters relating to ROM maintenance will be controlled and decided in Hong Kong, the respective roles of the ASR's senior management and IT personnel in Hong Kong and overseas, etc, as well as all related risk management and contingency arrangements. We will expand on these matters in more detail in the ASR Code. A key focus, however, will be to ensure that notwithstanding the design and location of related systems and servers, the ROM will be fully controlled from Hong Kong, and any systems issues that arise can be resolved promptly and with minimal impact to investors in Hong Kong.

No period without ASR

134. Currently, the SEHK may suspend trading in the shares of a listed company if the company does not have an "approved share registrar" to maintain its ROM. The SEHK must, however, allow the company at least three months to find a new "approved share registrar". This arrangement will not be feasible in the USM environment.

    (a) In the USM environment, it will be possible for legal title to participating securities to be evidenced and transferred without paper, but only by or through a UNSRT system. Such systems can only be operated by an ASR. It follows that if there is no ASR appointed in respect of such securities, it will not be possible to evidence or transfer legal title to those securities without paper.

    (b) Not only will the above defeat a core objective of the USM regime, it will also unfairly prejudice investors who hold securities in their own names rather than through a CP in the HKEX System. This is because investors holding securities in their own names have to transfer their securities into the name of HKSCC-NOMS (as central nominee) before the securities can be used to settle trades effected on the SEHK. Without access to a UNSRT system operated by an ASR, these investors will be unable to effect such transfers, which means they will essentially be unable to trade their securities on the SEHK. In contrast, investors holding securities in the HKEX System already have their securities registered in the name of HKSCC-NOMS and hence will not be affected.

135. In view of the above, we propose that an issuer of prescribed securities must ensure that an ASR is appointed in respect of the securities at all times. If no ASR is appointed, the SEHK must:

    (a) in the case of securities to be listed, reject the listing application; and

    (b) in the case of securities already listed, suspend trading in the securities before the next trading session, unless the SFC has permitted otherwise.

The above is reflected in the proposed amendments to sections 13 and 14 of the SML Rules. With respect to paragraph (b) above, we expect permission to be granted only in highly exceptional cases, and (for the reasons discussed in paragraph 134(b) above) only where the prescribed securities concerned are not participating securities.

136. It is worth noting also that if (for whatever reason) an issuer does cease to have an ASR for any period, then its securities will cease to be participating securities during that period. However, this will not affect the form of any securities held, ie, securities in uncertificated form will remain so, as will securities in certificated form[57].

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.

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.

Notification of change in ASR and related matters

137. To ensure any change in ASR is effected smoothly, we propose to require that:

(a) issuers notify the SFC and SEHK if they expect or intend to change their ASRs;

(b) such notifications include certain details, and be given at least three months in advance or (if that is not possible) as soon as reasonably practicable;

(c) if there is any change to the details provided, details of such change should also be notified to both the SFC and SEHK; and

(d) the SFC also be able to seek further information from issuers regarding the change in ASR.

The above is reflected in the proposed amendments to section 15 of the SML Rules.

138. As may be appreciated, notification to the SEHK as described above is necessary so that it can monitor any intended or expected change in ASR, and take steps to suspend trading should that become necessary.

139. We do, however, propose two exceptions to the notification requirement, both of which are also reflected in the proposed amendments to section 15 of the SML Rules.

(a) First, we propose not to require notification to the SEHK where the securities in question cease to be prescribed securities because this will mainly occur when the securities in question are delisted, and the SEHK will always be aware of a delisting. Notification in such circumstances is therefore unnecessary.

[57] This is because the pre-requisites to prescribed securities being in uncertificated form do not include that they be participating securities – see paragraph 48 above.

(b) Secondly, in the case of subscription warrants and rights issued under a rights issue, we propose not to require notification to the SFC if:

(i) the ASR ceases to act only by virtue of the warrants or rights having lapsed or expired;

(ii) the ASR continues to act as securities registrar for the underlying securities (ie, the securities that can be acquired by exercising the warrants or rights); and

(iii) such underlying securities are prescribed securities.

In such cases, the ASR's ceasing to act as securities registrar will be in the ordinary course of events and hence notification is considered unnecessary. Notification to the SEHK will also not be required. However, this is because the lapse or expiry of the warrants or rights will result in their ceasing to be listed, and hence ceasing to be prescribed securities. They will thus come under the exception mentioned in paragraph (a) above.

Q31. Do you have any comments or concerns about the proposed notification requirements relating to changes in ASRs? If so, please elaborate.

Breach to constitute an offence

140. Additionally, we propose that any breach of the notification requirements described in paragraph 137 above constitute a criminal offence. A main reason for this is that the SFC does not have broader disciplinary or regulatory powers over listed issuers. The only option therefore is to provide for criminal penalties. However, we propose to limit these to fines only, and at level 5 only (ie, up to $50,000).

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.

Related ASR obligations

141. The proposed amendments to the SML Rules are intended to complement, and work together with, the proposed handover requirements under the ASR Rules (discussed in paragraphs 119 to 125 above) so that:

(a) the SFC has sufficient regulatory oversight of any changes in the ASR of an issuer of prescribed securities; and

(b) the SEHK is able to take prompt action to suspend trading where no ASR is appointed.

Q33. Do you have any other comments or concerns about the proposed amendments to the SML Rules? If so, please elaborate.

VI. Other amendments

Proposed amendments to the OFC Rules

142. The proposed amendments to the OFC Rules (at Annex 5) seek to enable listed OFCs to participate in the USM initiative and are essentially similar in nature to amendments made to the CO under the USM Amendment Ordinance.

143. The proposed amendments touch on mainly three aspects, ie, transfers, the keeping of registers of shareholders and the closure of such registers. More specifically:

(a) The proposed amendments to rule 58 are similar to those made to section 134 of the CO[58], and seek to provide that the transfer provisions in the instrument of incorporation of an OFC are to apply, subject to Part IIIAA of the SFO and rules made under that Part. The amendments are intended to apply only in respect of transfers of shares or other interests in an OFC that are prescribed securities.

(b) The proposed amendments to rules 60, 61 and 62 are similar to those made to sections 150 and 151 of the CO[59], and seek to enable transfers to be effected by means of either an instrument of transfer or a specified request where the transfer is of shares that are prescribed securities.

(c) The proposed addition of a note to rule 67 is similar to the one added to section 627 of the CO[60]. It seeks to flag that rules made under Part IIIAA of the SFO may prescribe additional requirements relating to the register of shareholders of an OFC[61]. The Part IIIAA rules (in this context) refer to the USM Rules, which are discussed in paragraphs 37 to 100 above.

(d) The proposed amendments to rule 70 are similar to those made to section 632 of the CO[62], and seek to limit closures of the register of shareholders of an OFC. This is to ensure that investors who hold shares in OFCs in their own names are not unfairly prejudiced[63].

Q34. Do you have any comments or concerns about the proposed amendments to the OFC Rules? If so, please elaborate.

Proposed amendments to Schedule 5 to the SFO

144. As discussed in paragraphs 102(c) and 103 above, we propose that the scope of securities registrar services include the provision of certain services relating to public offers. In particular, we intend that this should include the provision and operation of an electronic platform for receiving applications and the handling of application monies.

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[58] See section 31 of the USM Amendment Ordinance.

[59] See sections 33 and 34 of the USM Amendment Ordinance.

[60] See section 71 of the USM Amendment Ordinance.

[61] For details of the additional requirements, see paragraphs 58 to 61 above.

[62] See section 72 of the USM Amendment Ordinance.

[63] For details of how OFC shareholders may be unfairly prejudiced, see paragraph 66(b) above.

145. Such activities could, however, also come within the scope of "dealing in securities" given how that term is defined under Part 2 of Schedule 5 to the SFO. As we do not intend such activities to be regulated under both the licensing regime and the ASR regime, we propose that activities coming within the scope of section 3(1)(a) of the proposed ASR Rules be carved out from the definition of "dealing in securities" under Schedule 5.

146. Consequent to the above, it will be necessary to review and amend the SFC's EIPO Guidelines. These Guidelines provide guidance on the use of electronic means to display or provide access to prospectuses and applications forms, and to collect applications or application instructions from the public. As with the ASR Code, a draft of the amended EIPO Guidelines will be exposed for public consultation in due course.

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.

Proposed amendments to Schedule 8 to the SFO

147. We propose that the following decisions under the proposed subsidiary legislation should be made "specified decisions" under Part XI of the SFO, and thus subject to review by the SFAT on application by an aggrieved person:

(a) a decision by the SFC under section 31 of the proposed ASR Rules to require an ASR to appoint a skilled person to make a report, or to pay for the costs of a skilled person appointed by the SFC (as discussed in paragraphs 114 to 115 above); and

(b) a decision by the SFC under section 27 of the proposed ASR Rules to refuse an ASR permission to cease to act as an issuer's securities registrar (as discussed in paragraph 120(b) above).

148. Given the nature of these decisions and the potential impact they may have on the issuer or ASR concerned, we consider it appropriate that they should be subject to review by the SFAT. We also propose that decisions under section 27 should take effect immediately and notwithstanding any application for review, but that decisions under section 31 should not come into effect until the withdrawal or completion of any review in respect of them. Schedule 8 to the SFO will then be amended accordingly.

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.

Proposed amendments to the Companies (Winding-up) Rules

149. A minor technical amendment is needed to Form 73 of the Appendix to the Companies (Winding-up) Rules.

150. That form refers to the need to produce share certificates. Amendments are needed to cater for the fact that there may be no share certificate where the shares in question are prescribed securities held in uncertificated form.

Q37. Do you have any comments or concerns about the proposed amendments to the Companies (Winding-up) Rules? If so, please elaborate.

VII. Comments invited

151. The USM initiative will introduce a major change in our markets. The subsidiary legislation supporting this initiative will therefore have a significant impact on investors, issuers and other market participants. We urge interested parties to submit written comments to the proposals discussed in this paper. The deadline for submissions is **Friday, 30 June 2023**.

152. For easy reference, we set out below a full list of the questions raised in this Consultation Paper.

Q1.	***Do you have any comments or concerns about deferring implementation of the USS option? If so, please elaborate.***
Q2 .	***Do you have any comments or concerns about the proposed concept of "authenticated message" and how it will work? If so, please elaborate.***
Q3.	***Do you have any comments or concerns about any of the other proposed concepts discussed above? If so, please elaborate.***
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.***
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.***
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.***
Q7.	***Do you have any comments or concerns about the proposals concerning dematerialization at an investor's request? If so, please elaborate.***
Q8.	***Do you have any comments or concerns about the proposals concerning dematerialization at the issuer's initiative? If so, please elaborate.***
Q9.	***Do you have any comments or concerns about the proposals concerning limited rematerialization at the issuer's initiative? If so, please elaborate.***
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.***
Q11.	***Do you have any comments or concerns about the proposed definition of "issuer"? If so, please elaborate.***
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.

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.*

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.*

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.*

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?

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?*

Q18. *Do you have any other comments or concerns about the proposed USM Rules? If so, please elaborate.*

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.*

Q20 *Do you have any comments or concerns about the proposals regarding the systems requirements to be imposed on ASRs? If so, please elaborate.*

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.*

Q22. *Do you have any comments or concerns about the operational and business requirements proposed to be imposed on ASRs? If so, please elaborate.*

Q23. *Do you have any comments or concerns about the notification and reporting requirements proposed to be imposed on ASRs? If so, please elaborate.*

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.*

Q25.	*Do you have any comments or concerns about the proposals regarding the appointment of skilled persons? If so, please elaborate.*
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.*
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.*
Q28.	*Do you have any other comments or concerns about the proposed ASR Rules? If so, please elaborate.*
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.*
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.*
Q31.	*Do you have any comments or concerns about the proposed notification requirements relating to changes in ASRs? If so, please elaborate.*
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.*
Q33.	*Do you have any other comments or concerns about the proposed amendments to the SML Rules? If so, please elaborate.*
Q34.	*Do you have any comments or concerns about the proposed amendments to the OFC Rules? If so, please elaborate.*
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.*
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.*
Q37.	*Do you have any comments or concerns about the proposed amendments to the Companies (Winding-up) Rules? If so, please elaborate.*

Glossary

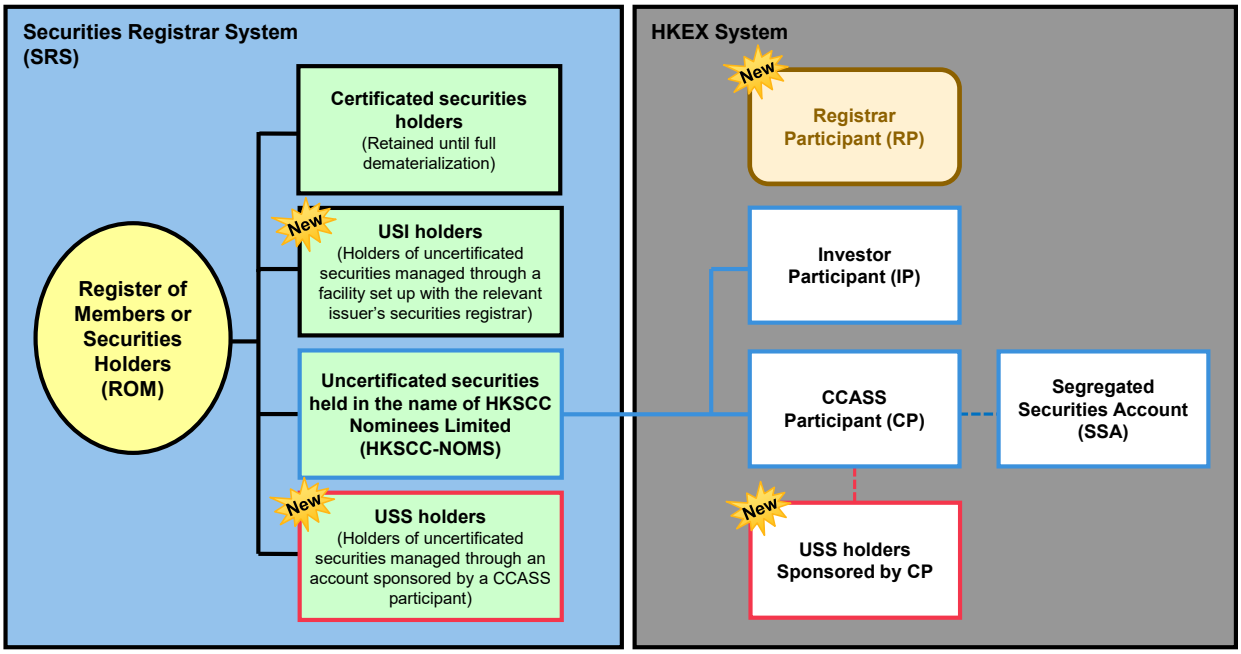
ASR	an approved securities registrar, ie, a person approved by the SFC to provide securities registrar services under new section 101AAG of the SFO introduced under section 7 of the USM Amendment Ordinance
ASR Code	the Code of Conduct for Securities Registrars, which is currently being developed and will build on the SFC's current Code of Conduct for Share Registrars – see paragraph 126 above
ASR Rules	the Securities and Futures (Approved Securities Registrars) Rules, an indicative draft of which is at Annex 3
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 above
authorized CIS	a collective investment scheme (as defined in the SFO) that is authorized by the SFC under section 104 of the SFO
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 above
CO	the Companies Ordinance (Cap 622)
CP	a clearing participant or a custodian participant in any HKEX System, including CCASS
dematerialize / dematerialization	the conversion of prescribed securities from certificated form to uncertificated form
EIPO Guidelines	the SFC's Guidelines for Electronic Public Offerings
ETF	an exchange-traded fund
FSR	the Federation of Share Registrars Limited
HKEX	Hong Kong Exchanges and Clearing Limited
HKEX System	any central clearing and settlement system operated by HKSCC, including CCASS
HKSCC	Hong Kong Securities Clearing Company Limited
HKSCC-NOMS	HKSCC Nominees Limited
OFC	an open-ended fund company (as defined in section 112A of the SFO)
OFC Rules	the Securities and Futures (Open-ended Fund Companies) Rules (Cap 571AQ)
Operational Model for USM	the operational model for implementing USM that has been endorsed – see Annex 1
participating securities	prescribed securities that are USM-enabled in the sense that the issuer has completed all relevant procedures and formalities for

	the securities to be held and transferred without paper – see paragraph 50 above
prescribed securities	the six categories of securities that may participate in the USM regime – see paragraph 23(a) above
provisional system-member	an investor in respect of whom an ASR has set up a temporary or provisional USI facility to enable the investor to hold (but not otherwise manage) prescribed securities electronically through a UNSRT system operated by that ASR – see paragraphs 41 to 46 above
RCH	a recognized clearing house (as defined in the SFO)
REIT	a real estate investment trust
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)
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 above
SEHK	the Stock Exchange of Hong Kong Limited
SFAT	the Securities and Futures Appeals Tribunal
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 that will replace the traditional instrument of transfer in the USM environment – see paragraphs 51 to 53 above
sponsoring CP	in relation to a USS facility, the CP with which the USS facility is set up
system-member	an investor who has set up a USI facility with an ASR, and is able to hold and manage prescribed securities electronically through a UNSRT system operated by that ASR – see paragraphs 41 to 46 above
title instrument	the paper certificate or other document issued as evidence of title to any prescribed securities
uncertificated form	prescribed securities are in uncertificated form if they meet certain criteria including that no *current* title instrument has been issued in respect of them and that the securities are recorded in the ROM as being held in uncertificated form – see paragraphs 47 to 49 above

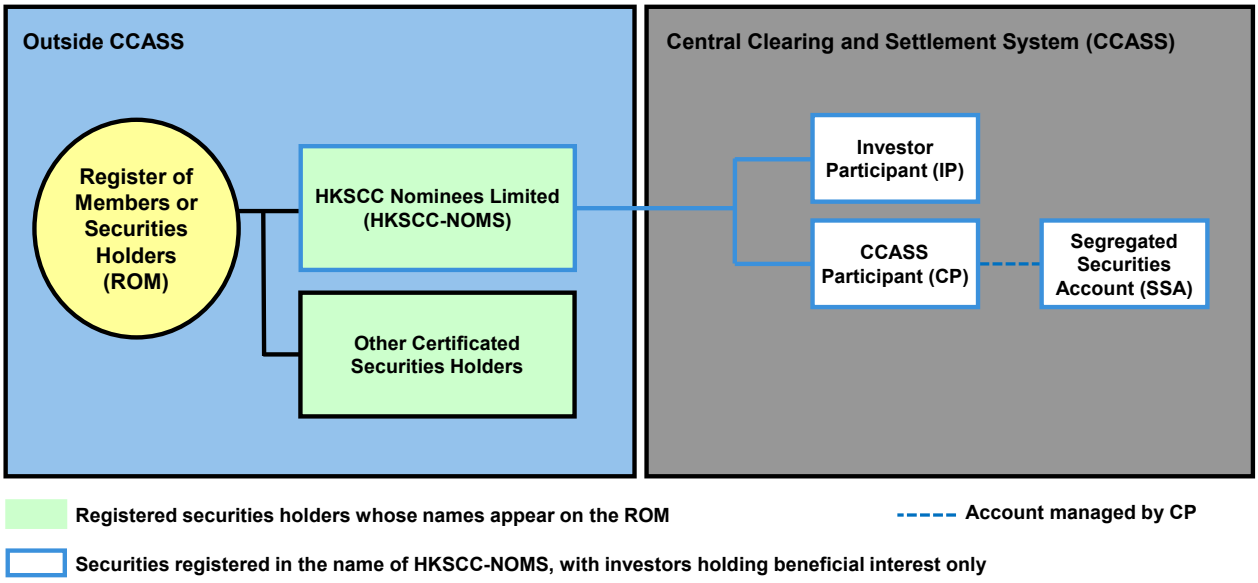
UNSRT system	a computer-based system, together with procedures and other facilities, that: (a) enables title to prescribed securities to be evidenced and transferred without paper documents; and (b) facilitates supplementary and incidental matters – see new section 101AAB of the SFO introduced under 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) above
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, an indicative draft of which is at Annex 2
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 the sponsoring CP and through the HKEX System – see paragraph 23(d)(ii) above

Annex 1: Operational model for USM

Operational Model for USM endorsed following the 2019 / 2020 consultation



Current operational model



Annex 2: Proposed USM Rules

Securities and Futures (Uncertificated Securities Market) Rules

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

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*].

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[64] (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 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[65];

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[66] (發行人), in relation to any prescribed securities, means—

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[64] Paragraph 54 of this Consultation Paper expands on the concept of "authenticated message".

[65] The term "corresponding UNSRT system" aims to identify the particular UNSRT system through which securities may be held and transferred without paper. The reference to "arrangement" in this definition refers to the "arrangement" mentioned in the definition of "participating securities".

[66] The proposed definition of "issuer" aims to cater for different structures and the fact that, consequently, more than one entity may be the mind behind the structure. Paragraphs 89 to 93 of this Consultation Paper expand on this further.

(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 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[67] (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;

provisional system-member[68] (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

(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[69] 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;

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[67] Paragraph 50 of this Consultation Paper expands on the concept of "participating securities".

[68] Paragraphs 45 and 46 of this Consultation Paper expand on the concept of "provisional system-member".

[69] The reference here to "applicable law" rather than "enactment" is deliberate as the intention is to cover non-Hong Kong law as well.

(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[70] (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[71] (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 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—

(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

(b) 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.

[70] Paragraphs 51 to 53 of this Consultation Paper expand on the concept of "specified request".

[71] Paragraphs 41 to 44 of this Consultation Paper expand on the concept of "system-member", and how it differs from the concept of a registered holder.

(3) For the purposes of these Rules, where more than one person is the issuer of any prescribed securities[72]—

(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).

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[72] See paragraphs (b) and (d) of the definition of "issuer" for examples of where the "issuer" may comprise more than one person.

Part 2

Register of Holders[73]

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***)[74].

Note—
For the purposes of this 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 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—

(a) reflect a change as required under section 20(5)(b), 21(6)(c), 23(5)(b), 24(3)(b) or 26(2)(b); or

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

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[75] after receiving sufficient information and documents to do so.

(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.

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[73] Paragraphs 56 to 70 of this Consultation Paper explain the provisions under this Part 2 in more detail.

[74] The provision does not require the ROM to include a record indicating the number of units held in *certificated* form. This is deliberate for two reasons. First, it would be unduly onerous to impose such a requirement on issuers. Secondly, such a requirement is unnecessary as "certificated form" is not defined by reference to whether it is so recorded in the ROM.

[75] The ASR Code will set out more specific and detailed timelines in respect of the updating of ROMs.

(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.

5. Inspection of entries in register of holders

(1) A person[76] 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[77]; 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.

[76] The reference here to a "person" rather than a "registered holder" is deliberate so as to enable inspection by persons who have ceased to be registered holders.

[77] The requirement that the entries must relate to the person seeks to limit inspection so that a person may only access the records of the person's own holdings and not records of any other person's holdings.

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.

(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[78].

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

[78] The proposed definition of "specified fee" has been cast by reference to section 12 of the Company Records (Inspection and Provision of Copies) Regulation (Cap 622I). It is cast as an upper limit (rather than a prescribed level) to allow for the possibility that prescribed securities may also be subject to non-Hong Kong laws which prescribe lower fee levels.

(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); 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) 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.

(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 any unit of those securities is, without sufficient cause—

(i) recorded in the register as being held by any person; or

(ii) omitted from a record in the register of the units held by any person.

(2) The persons specified for subsection (1) are—

(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.

(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 transfer[79]

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 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[80] 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[81];

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

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[79] Paragraph 71 of this Consultation Paper explains the provisions under this Part 3 in more detail.

[80] Subsection (2) seeks to ensure that issuers and their ASRs are able to ask for any relevant information, including in particular personal identity information that enables them to establish the transferor and transferee's identity with reasonable certainty.

[81] The term "in certificated form" has a technical meaning – see paragraphs 47 to 49 of this Consultation Paper. Units of securities may therefore still be "in certificated form" even if no certificate or other title instrument has been issued in respect of them.

(d) it is not reasonably practicable for the transfer to be registered on the basis of a specified request[82].

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

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

(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[83] 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[84]; 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[85]

(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

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[82] Subsection (1)(d) is intended to cater for exceptional circumstances, such as transfers to an offeror relating to a hostile takeover – see paragraph 32(c) of this Consultation Paper. The provision requires an objective assessment of whether the use of a specified request is reasonably practicable or not in a particular situation.

[83] Subsection (2)(b) seeks to ensure that issuers and their ASRs are able to ask for any relevant information, including in particular personal identity information that enables them to establish the transferor and transferee's identity with reasonable certainty.

[84] Subsection (3) is intended to cater for situations where the registered holder cannot send instructions electronically. The main situations currently envisaged are: (i) where the securities are held jointly by more than one person; and (ii) where the holder may be elderly and not tech-savvy. (See generally paragraph 32(a) of this Consultation Paper.)

[85] This provision is cast broadly similar to sections 10 and 11. It also allows the offeror to submit the transfer instructions by way of an instrument of transfer or a specified request. This is deliberate to allow for maximum flexibility, taking into account the particular facts and circumstances of the situation.

acquire any shares in a company that are prescribed securities from the holder of those shares (***transferor***).

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

(a) be executed by an appointee; 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.

(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; and

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

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Part 4

Authenticated Message[86]

Division 1—Requirement for Authenticated Message

13. What is authenticated message

(1) A message[87] is an authenticated message if—

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

(b) the message is sent using messaging facilities[88] provided by—

(i) a recognized clearing house; or

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

(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

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[86] Paragraphs 54 and 55 of this Consultation Paper explain the provisions under this Part 4 in more detail.

[87] The term “message” is defined in section 2. Its scope is deliberately cast widely so as to cover not only communications that are in the nature of instructions, but also those that are in the nature of confirmations or notifications. The protections and responsibilities under this Part therefore apply to all such communications provided they satisfy the criteria in section 13.

[88] The requirement for authenticated messages to be sent via messaging facilities (which is defined in section 2 to mean electronic facilities) means the messages must be electronic, ie, paper communications can never be authenticated messages.

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;

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[89] attaching to, or arising from, the prescribed securities to which the message relates; or

(b) the particulars of a registered holder[90] of those securities (whether such particulars are required to be entered into the register of holders of those securities or not).

[89] The reference here to "right, benefit or privilege" is intended to include the right to transfer, dematerialize or rematerialize prescribed securities as permitted and provided for in the USM Rules. It also includes rights under a corporate action, eg, the right to make elections in respect of dividends or other entitlements, the right to exercise rights under a rights issue, etc.

[90] The reference here to "particulars of a registered holder" is intended to include particulars such as the holder's name, address, bank account details for receiving entitlements, etc.

(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 by another person (***agent***) and, accordingly, also attributable to the agent.

(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[91] 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[92] 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

(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.

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[91] The reference here to "any of the matters" means that if an addressee has actual notice that a particular piece of information is incorrect, the addressee cannot assume *other* information contained in the authenticated message is correct or that the sender sent or gave authority to send the message.

[92] The requirement here for actual notice means constructive notice will not suffice.

Part 5

Dematerialization on Request[93]

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[94] (***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[95] issued to the registered holder covering the subject units[96].

(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[97].

(5) If the issuer decides to accept the dematerialization request, the issuer must—

(a) give the registered holder a notice of the decision;

(b) reflect 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—

(i) cancel the title instrument received in relation to the request or that is lost or damaged; and

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[93] Paragraphs 73 to 76 of this Consultation Paper explain the provisions under this Part 5 in more detail.

[94] See footnote 81 regarding the term “in certificated form”.

[95] The phrase “*valid* title instrument” is to exclude any title instruments that may have been issued earlier but are no longer valid, eg, title instruments that have been cancelled on the basis of having been declared lost.

[96] The reference here to “covering the subject units” recognizes that the title instrument provided may represent more units than the number requested to be dematerialized. It also recognizes that a registered holder may be seeking to dematerialize only some of their holdings, in which case they only need to provide title instruments representing the portion that they are seeking to dematerialize.

[97] Where an issuer receives a dematerialization request to dematerialize only a portion of the units of securities represented by a title instrument, it may accept that request and also dematerialize the portion not covered by the request. This would be pursuant to either section 23 or section 29. (See also paragraph 82(a) and footnote 38 of this Consultation Paper.)

(ii) record the cancellation of the title instrument in the register.

(6) If the issuer decides to refuse the dematerialization request[98], the issuer must—

(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.

(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) are in certificated form[99] (***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 [100] from the transferor to another person (***transferee***).

(2) The issuer of the prescribed securities may, at the request of the transferee, dematerialize the 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[101] issued to transferor that are sufficient to cover the subject units[102]; 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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[98] A possible ground for refusal is that one or more of the pre-requisites mentioned in section 20(2) have not been satisfied or that the dematerialization request does not comply with section 22.

[99] See footnote 81 regarding the term “in certificated form”.

[100] The reference here to “any number of the certificated units” recognizes that the transfer may be in respect of only a portion of the units held by the transferor.

[101] See footnote 95 regarding the phrase “*valid* title instruments”.

[102] The reference here to “sufficient to cover the subject units” recognizes that the title instruments received in respect of the transfer may represent more than the number of units sought to be transferred, but must not in any event represent less than such number.

(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)[103].

(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[104].

(6) If the issuer decides to accept the dematerialization request, the issuer must—

(a) give the transferee a notice of the decision;

(b) register the transfer;

(c) reflect 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—

(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[105], the issuer must—

(a) give the transferee a notice of the decision with reasons;

(b) refuse to register the transfer; and

(c) return any title instruments received in relation to the request to the person from whom[106] they are received[107].

(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

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[103] Section 21(4) is added for avoidance of doubt given that dematerialization requests under section 21 may cover multiple title instruments. In such cases, it is possible that section 21(3) applies in respect of only some (but not all) of the units to be transferred, eg, the title instruments in respect of only some (but not all) of the units to be transferred may be lost. Section 21(4) seeks to put beyond doubt that the title instruments for the remaining units (eg, those that are not lost) must still be submitted to the issuer.

[104] Where the title instruments cover more than the number of units to be transferred, the issuer may accept the transferee's dematerialization request, and *also* dematerialize any remaining securities that are to be retained by the transferor. This would be pursuant to either section 23 or section 29. (See also paragraph 82(c) and footnotes 40 and 41 of this Consultation Paper.)

[105] A possible ground for refusal is that one or more of the pre-requisites mentioned in section 21(2) have not been satisfied or that the dematerialization request does not comply with section 22.

[106] The reference here to "the person from whom" is to allow for the possibility that the title instruments may have been received from the transferor or transferee. For prudence sake, it is proposed that the instruments be returned to whoever submitted them to the issuer.

[107] If the dematerialization request is refused, any title instruments received in connection with the request will have to be returned. As a result, the issuer will be unable to register the transfer, which will therefore have to be refused as well. That said, it is not anticipated that an issuer would refuse dematerialization but have no problems with the transfer. (See also paragraph 75 of this Consultation Paper.)

(b) the fee, if any, to accompany such a request, which must not exceed […[108]].

(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—

(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)[109].

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[108] The fee amount has yet to be determined, pending feedback on whether fees for dematerialization should be standardised and an upper limit specified in respect of them. For more details, see paragraphs 97 to 100 of this Consultation Paper.

[109] An issuer's ability to refuse a dematerialization request on the basis of the requisite fee not having been paid will apply only if that fee is within the limit specified under section 22(2).

Part 6

Issuer's Authority on Dematerialization etc.[110]

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 by, or to be transferred to, a person (***subject person***) are in certificated form[111] (***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[112] covering the subject units that was issued to—

(i) the subject person; or

(ii) the person from whom 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 subject units under that subsection in any of the following circumstances[113]—

(a) where the issuer is requested to register a transfer of the prescribed securities involving the subject units or any related 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;

(c) where an event occurs that, but for this section, 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—

(a) give the subject person a notice of the decision;

(b) reflect 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—

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[110] Paragraphs 77 to 83 of this Consultation Paper explain the provisions under this Part 6 in more detail.

[111] See footnote 81 regarding the term "in certificated form".

[112] See footnote 95 regarding the phrase "*valid* title instruments".

[113] Section 23(4) sets out examples of situations where an issuer may exercise its prerogative to dematerialize. These examples, and others, are explained in more detail in paragraph 82 of this Consultation Paper.

(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.

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 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.

(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

(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

(1) If any prescribed securities are in the process of delisting, 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), the issuer must, before the prescribed securities cease to be listed—

(a) give the registered holder a notice of the decision;

(b) amend the register of holders of those securities to reflect that the registered holder no longer holds the subject units in uncertificated form; and

(c) if the governing provisions of those securities so require[114], issue to the registered holder a title instrument covering the subject units.

(3) 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 during each day that the offence continues.

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[114] The words “so require” are added here because the governing provisions of some prescribed securities may not require or provide for the issue of title documents to registered holders.

Part 7

Transition to Full Dematerialization[115]

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.

(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 1 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 1 of the Schedule.

28. New units not to be issued in certificated form

(1) Subject to section 32, the issuer of any specified securities must not issue any number of units of those securities (***new units***) as units in certificated form[116] 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[117]

(1) Subject to section 32, the issuer of any specified 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.

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[115] Paragraphs 84 to 88 of this Consultation Paper explain the provisions under this Part 7 in more detail.

[116] See footnote 81 regarding the term “in certificated form”.

[117] This provision applies in all situations where new title instruments could be issued. For examples of these, please see paragraph 82 of this Consultation Paper.

(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 securities—

(a) the registered holder of which is a recognized clearing house or its nominee; and

(b) covered by a valid title instrument[118] held in the custody of the recognized clearing house in accordance with its rules[119].

(2) Subject to section 32, each of the following persons must ensure that the units of specified securities mentioned in subsection (1) (***target units***) are dematerialized before the specified date for those 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.

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[118] See footnote 95 regarding the phrase "*valid* title instruments".

[119] Section 30 applies to securities that satisfy the criteria in both subsections (1)(a) and (b). The latter is necessary as securities may have been withdrawn from CCASS but not yet registered into the name of the withdrawing-investor, ie, they may still be registered in the name of HKSCC-NOMS.

(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, exempt any specified securities mentioned in a provision in this Part (***subject securities***) from that provision for a period specified in the exemption.

(3) An exemption under subsection (2)—

(a) must be given by a written notice 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.

(4) The Commission may, by a written notice 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.

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Schedule

[ss. 27, 28, 29, 30, 31 & 32]

Specified Securities and Dates for Full Dematerialization

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]*

Annex 3: Proposed 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

Part 6

Handling of Client Money

Part 7

Communication in respect of Prescribed Securities in Uncertificated Form

Part 8

Duties in respect of Change in Securities Registrar

Part 9

Supervision of Approved Securities Registrars

Schedule

Notification of Change

Securities and Futures (Approved Securities Registrars) 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*].

2. Interpretation

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;

client (客戶), in relation to an approved securities registrar[120]—

(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;

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;

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)[121];

external borrowings (外部借貸), in relation to an approved securities registrar, means the amount calculated in accordance with the following formula—

$$A - B$$

where—

A = the amount of the registrar's total outstanding borrowings; and

B = the amount of the registrar's outstanding borrowings from its members;

[120] This definition aims to reflect that an ASR provides services to both issuers and investors. This is notwithstanding that it only acts as agent for the issuer and not investors.

[121] The term "corresponding exchange company" is intended to identify, in relation to any prescribed securities, the operator of the stock market on which those securities are or are to be listed.

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. [ ]);

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 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)[122];

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[123];

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;

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;

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;

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[122] The term "securities registrar" is intended to refer to, in relation to any prescribed securities, the person appointed to maintain the ROM in respect of those securities.

[123] The term "service facilities" would include any electronic channels used for receiving applications in respect of any public offer of prescribed securities as mentioned in paragraph 103 of this Consultation Paper.

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. [ ]).

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[124], 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[125], 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.

(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.

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[124] Paragraphs 103 and 104 of this Consultation Paper expand on the services to be covered under paragraph (a) here.

[125] Paragraph 105 of this Consultation Paper expands on the services to be covered under paragraph (b) here.

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[126] for being used for that purpose—

(a) providing securities registrar services;

(b) processing or storing information or data relating to its SRS business;

(c) keeping records or documents required under these Rules.

(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

(b) any premises at which it processes or stores information or data relating to its SRS business are at all times adequate and properly equipped for maintaining the security, integrity and ready accessibility of such information or data.

5. Service facilities[127]

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[128]

(1) An approved securities registrar must ensure that there are at all times—

(a) competent personnel for managing and supervising its SRS business;

(b) effective internal control procedures, as well as risk management systems and policies, for ensuring that risks associated with its SRS business are managed prudently; and

(c) effective contingency measures and business continuity arrangements for minimizing disruption to its SRS business.

(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

[126] The ASR Code is expected to expand on what is meant by “suitable” premises.

[127] The ASR Code is expected to expand on the requirements under section 5.

[128] The ASR Code is expected to expand on the requirements under section 6.

(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 insurance that is—

(a) necessary to provide reasonable protection against risks associated with its SRS business; and

(b) adequate having regard to the size, structure and nature of all of its businesses and operations.

(2) 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 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 of any property or information received from, or held on behalf of, a client of 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 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(1) 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, 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 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(1);

(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 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[129]; 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[130].

(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.

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[129] This requirement would apply in addition to, and hence would not affect, obligations under any other law (whether Hong Kong or otherwise) that require the records to be kept for a longer period, eg, the obligation under section 627(5) of the Companies Ordinance not to delete certain ROM entries relating to a person for 10 years after the person ceases to be a member.

[130] Where an outgoing ASR has transferred an issuer's records to the issuer's incoming ASR before the expiration of the 7-year period, the outgoing ASR is no longer under any obligation to retain those records. The records will instead have to be kept by the incoming ASR, and for a period of at least 7 years from receiving them.

(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[131] 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.

———————

[131] The term “audit” here includes an internal audit.

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 an independent auditor[132] 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

[132] It is expected that a person who is an officer or employee of an ASR will not be eligible to be an "independent auditor" of the ASR. The ASR Code will expand on the criteria for being an "independent auditor".

(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 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 return

(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

(b) is signed on behalf of the registrar by 2 of its designated signatories.

(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 (1) 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;

(e) the registrar's external borrowings as at the end of that quarter; and

(f) information concerning—

(i) the clients of the registrar during that quarter;

(ii) the activities, transactions, communications, instructions or other things in respect of prescribed securities that were carried out, executed or processed by or through the registrar's service facilities during that quarter;

(iii) any enquiries and complaints in relation to the registrar's provision of securities registrar services that are relevant to that quarter;

(iv) any service facilities incidents that are relevant to that quarter;

(v) any operational incidents that are relevant to that quarter; and

(vi) any cases during that quarter where the registration of a transfer of prescribed securities was refused while the registrar was acting as the securities registrar for those securities.

(4) In this section, a reference to enquiries, complaints or incidents that are relevant to a quarter includes enquiries, complaints or incidents arising, outstanding or resolved during that quarter.

(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

(c) designated by the registrar, and notified to the Commission, as the person responsible for signing a return under subsection (1);

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 explaining the matter.

(2) A report under subsection (1)(b) must—

(a) contain the information specified by the Commission[133]; 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 the adverse effect of which is serious or significant[134]—

(a) a service facilities incident (as defined by section 17(5));

(b) an operational incident (as defined by section 17(5)).

19. Notification of 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[135].

[133] Matters to be specified by the SFC under this section 18(2) will be specified on a case-by-case basis, taking into account the particular facts and circumstances of the reportable matter concerned.

[134] The ASR Code will expand and provide guidance on when adverse effects are to be regarded as serious or significant.

[135] Our current expectation is that the information to be submitted by a person when applying to become an ASR will be broadly similar to the matters specified in Part 2 of the Schedule. It follows that the changes to be notified under this section 19(1) will include changes to information provided at the time of such application.

(2) The approved securities registrar must, within 7 business days after becoming aware of the change mentioned in subsection (1)(a), notify the Commission of the change by notice in writing containing a full description of the change[136].

(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.

———————

[136] We propose that the obligation to notify the SFC of a change under section 19 be triggered by reference to when the ASR concerned becomes aware of the matter concerned, and not by reference to when the change occurs. It follows that the obligation may, in some cases, be triggered *before* the change occurs, eg, a change in the address of an ASR's registered office.

Part 6

Handling of Client Money

20. Application of Part 6

(1) Subject to subsections (2) and (3), this Part applies to client 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 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 money of an approved securities registrar that is in a bank account established and maintained by a client of the registrar in that client's name.

21. Segregation of client 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 money; and

(b) designate each such account as a trust account or client account.

(2) An approved securities registrar must, within 1 business day after any client money is received in respect 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 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 money that is received from or on behalf of a client in respect 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 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 money to a connected person unless that person is the client of the registrar on whose behalf such client 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 money of an approved securities registrar, means a written notice that—

(a) is given to the registrar by the client of the registrar—

(i) from whom or on whose behalf that amount of client money was received; or

(ii) on whose behalf that amount of client money is being held; and

(b) directs the registrar to pay that amount of client money in a particular manner.

22. Payment of money out of segregated account

(1) An approved securities registrar that holds any amount of client 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 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 money to a connected person (as defined by section 21(5)) unless that person is the client of the registrar on whose behalf such client 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 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

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[137].

(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[138].

25. Annual statement of uncertificated holding

(1) This section applies if—

(a) an approved securities registrar is acting 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 the 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[139] in Hong Kong for acting as the securities registrar for those securities;

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[137] Written confirmations pursuant to section 24(2) may need to be sent to more than one person. For example, a transfer of prescribed securities will affect the ROM entries of both the transferor and transferee, and hence written confirmations will have to be sent to both.

[138] The requirements under section 24(3) are minimum requirements regarding confirmations. An ASR may, voluntarily, include additional information in a confirmation. It may also send confirmations to holders of prescribed securities in certificated form.

[139] The "registrar's principal place of business" refers to the address where investors can go to make enquiries or submit instructions at an ASR's office.

(c) the name and address of the recipient that are or were entered on the register of holders of those securities;

(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; and

(g) the number of uncertificated units held by the recipient as at the beginning and as at the end of that period.

(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

(1) An approved securities registrar that is required under section 24(2) or 25(2) to send a statement (***required statement***) to a person must send it—

(a) in electronic form by—

(i) making it available for access by the person electronically; or

(ii) sending it to an electronic address specified by the person; or

(b) if the person so requests—in hard copy form by post to the address specified by the person.

(2) An approved securities registrar must not charge a person to whom a required statement is sent—

(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—

(i) recovering the cost of sending the statement in hard copy form; and

(ii) providing a reasonable disincentive for using paper documents.

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[140]), 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.

[140] The qualification here is deliberately cast widely, ie, by reference to the termination being "otherwise than by the registrar" rather than by reference to the termination being "by the issuer". This is because the term "issuer" is specifically defined, and the person appointing the ASR may not be any of the persons falling within that definition. (For example, in the case of an authorized CIS, the person appointing, and hence terminating, the ASR may not be the issuer, ie, it may be the trustee of the CIS rather than the operator or manager of the CIS.)

(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[141]—

(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[142]—

(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;

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[141] Paragraph 125(b) of this Consultation Paper expands on why this provision refers specifically to records in respect of subscription warrants and rights.

[142] Paragraph 125(a) of this Consultation Paper explains why the obligation to transfer records does not apply in respect of subscription warrants and rights in certain cases.

(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[143].

(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[144]; and

(b) where the prescribed securities are subscription warrants or rights under a rights issue, is also[145] not required to notify the Commission of the cessation if[146]—

(i) it ceases to act as the securities registrar for those warrants or rights by reason of their having lapsed or expired;

(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.

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.

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[143] As the SFC will have become aware of the intended change when receiving an application under section 27(2), it is unnecessary for it to be notified again under section 29(1). Section 29(5) is accordingly added to make this clear.

[144] Section 27(4) will apply where the securities have become delisted. As the exchange company concerned will be aware of a potential delisting, it is unnecessary for it to be notified again under this section 29(1). Section 29(6)(a) seeks to make this clear.

[145] The inclusion of the word “also” here is deliberate. It reflects that in *all* cases where notification to the SFC is not necessary by virtue of section 29(6), notification to the exchange company concerned will also be unnecessary, albeit for different reasons. (See footnotes 143 and 144 above which explain, respectively, why notification to the SFC and notification to the exchange company is unnecessary.)

[146] Section 27(4) will also apply where the securities are subscription warrants or rights that have lapsed or expired. In such cases, notification to the SFC may not always be necessary. Paragraph 125(b) of this Consultation Paper expands on when such notification may be unnecessary and why.

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.

(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[147]; 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[148], 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

[147] It is proposed that an SFC decision requiring the appointment of a skilled person should be reviewable by the SFAT. For more details, see paragraphs 147 and 148 of this Consultation Paper.

[148] It is proposed that an SFC decision requiring an ASR to pay for a report by a skilled person should be reviewable by the SFAT. For more details, see paragraphs 147 and 148 of this Consultation Paper.

(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—

(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);

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.

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)—

(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;
   (e) a subsidiary of the registrar that carries on any business activity that is related to the registrar's provision of securities registrar services (***related business activity***); or
   (f) a related corporation of the registrar that carries on any related business activity.
2. Any change in the persons mentioned in item 1(b), (c), (d) and (e).
3. Any change in the name, correspondence address, contact telephone or fax number or email address of—
   (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.
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.

8. Any significant change in—

    (a) the nature of the 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. 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.

10. Any significant change in the services facilities of the approved securities registrar, including its operations, functions, capabilities, performance, availability and security.

11. Any change in—

    (a) the 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.

12. For an approved securities registrar that is a member of a group of companies—any change in the group structure.

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

    (e) whether the account is or was a trust account.

14. Any change in the circumstances concerning any premises mentioned in section 4 that are relevant to the approved securities registrar's compliance with that section.

15. Any change in the address of any premises used by the approved securities registrar for keeping records or documents under these Rules.

16. Any change in any insurance maintained or previously maintained by the approved securities registrar in accordance with these Rules.

———————

Annex 4: Proposed amendments to the SML Rules[149]

2. Interpretation

In these Rules, unless the context otherwise requires—

applicant (申請人) means a corporation or other body which has submitted an application under section 3;

application (申請) means an application submitted under section 3 and all documents in support of or in connection with the application including any replacement of and amendment and supplement to the application;

~~***approved share registrar*** (認可股份登記員) means a share registrar who is a member of an association of persons approved by the Commission under section 12;~~

issuer (發行人)—

(a) except in Part 4—means a corporation or other body the securities of which are listed, or proposed to be listed, on a recognized stock market; and

(b) in Part 4—see section 12(1).

~~***share registrar*** (股份登記員) means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market.~~

Part 4

~~Approved Share Registrars~~

Securities Registrar for Prescribed Securities

~~**12. Approval of share registrars**~~

~~(1) The Commission may approve an association of persons as an association each of whose members shall be an approved share registrar for the purposes of these Rules.~~

~~(2) The Commission may cancel the approval of any association of persons approved under subsection (1).~~

~~(3) The Commission shall maintain a list of associations of persons approved under subsection (1).~~

12. Interpretation of Part 4

(1) In this Part—

corresponding exchange company (相應交易所), in relation to any prescribed securities, means the recognized exchange company operating the recognized stock market on which those securities are listed or proposed to be listed;

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. [ ]);

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[149] Proposed amendments are shown marked up on the existing provisions.

securities registrar (證券登記機構), in relation to any prescribed securities, means the person appointed to maintain in Hong Kong the register of holders of those securities that the issuer of those securities is required to keep under Part 2 of the Securities and Futures (Uncertificated Securities Market) Rules (Cap. 571 sub. leg. [ ]).

~~**13. Securities not to be listed where approved share registrar not employed**~~

~~No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant shall be approved by the recognized exchange company unless the applicant is an approved share registrar or employs an approved share registrar as its share registrar.~~

13. Prescribed securities to be listed only if approved securities registrar acting as securities registrar

A corresponding exchange company may approve an application for the listing of any prescribed securities only if it is satisfied that an approved securities registrar is acting as the securities registrar for those securities[150].

~~**14. Suspension of dealings on cessation of employment, etc. of approved share registrar**~~

~~(1) Where—~~

~~(a) the securities of a corporation are listed on a recognized stock market; and~~

~~(b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar as its share registrar,~~

~~the recognized exchange company shall give the corporation a notice of its intention to suspend dealings in the securities of the corporation unless, before the date specified in the notice, being 3 months after the date on which the recognized exchange company first learned of such cessation or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.~~

~~(2) Where the corporation fails to comply with the requirement stated in the notice given under subsection (1), the recognized exchange company shall suspend dealings in the securities of the corporation.~~

~~(3) The Commission may require a recognized exchange company to give notice under subsection (1) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar as its share registrar if, in the opinion of the Commission, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company shall comply with the requirement without delay.~~

~~(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (2) shall permit the recommencement of dealings in those securities when it is satisfied that the corporation has become an approved share registrar or has employed an approved share registrar as its share registrar.~~

[150] The person appointed to maintain the ROM of prescribed securities can be the issuer itself or another person but in either case the person maintaining the register must be an ASR.

14. Dealings in prescribed securities to be suspended if no approved securities registrar acting as securities registrar

(1) If there is no approved securities registrar acting as the securities registrar for any prescribed securities, the corresponding exchange company must, unless the Commission has given a permission under subsection (3)(a) in respect of the vacancy, suspend dealings in those securities no later than the beginning of the first trading session after the vacancy arises or its becoming aware of the vacancy, whichever is the later.

(2) Where dealings in any prescribed securities are suspended under subsection (1), the corresponding exchange company may permit the recommencement of dealings in those securities if—

(a) it is satisfied that an approved securities registrar is acting as the securities registrar for those securities; or

(b) the Commission has given a permission under subsection (3)(b) in respect of the vacancy concerned.

(3) If the Commission is of the opinion that exceptional circumstances exist to justify the continuation or recommencement of dealings in any prescribed securities despite a vacancy mentioned in subsection (1), the Commission may, by notice to the corresponding exchange company—

(a) if dealings in those securities are yet to be suspended under subsection (1)—permit the continuation of dealings in those securities despite that vacancy; or

(b) if dealings in those securities are suspended under subsection (1)—permit the recommencement of dealings in those securities despite that vacancy.

(4) The Commission may, in a notice under subsection (3) or by another notice to the corresponding exchange company—

(a) impose any condition in respect of a permission given by the notice; or

(b) amend or revoke any such condition.

(5) The Commission may, by notice to the corresponding exchange company, withdraw a permission given under subsection (3) in respect of any prescribed securities if it is of the opinion that—

(a) the exceptional circumstances mentioned in subsection (3) no longer exist in respect of those securities; or

(b) there has been a failure to comply with any condition imposed or amended under subsection (4).

(6) If a notice is given under subsection (5), the corresponding exchange company must suspend dealings in those securities no later than the beginning of the first trading session after the notice is given or, if a direction regarding such suspension is specified in the notice, in accordance with the direction.

(7) The Commission must notify the issuer of any prescribed securities of—

(a) a permission given under subsection (3) in respect of a vacancy concerning those securities;

(b) any condition imposed, and any amendment or revocation of a condition, under subsection (4) in respect of such a permission; and

(c) the withdrawal of such a permission under subsection (5).

(8) In this section—

trading session (交易時段), in relation to any prescribed securities, means a separate

period of a day during which the recognized stock market on which those securities are listed is open for trading.

~~**15. Power to exempt**~~

~~(1) The Commission may exempt all or any particular class of securities issued by a corporation specified in a notice under subsection (2) from all or any of the provisions of this Part.~~

~~(2) An exemption granted under subsection (1) shall be notified by the Commission to the corporation specified in the notice and to the recognized exchange company which operates the recognized stock market on which the exempted class of securities is, or is proposed to be, listed.~~

~~(3) The Commission may withdraw any exemption granted under subsection (1), and the withdrawal shall be notified in the same manner as an exemption is required to be notified under subsection (2).~~

~~(4) Where an exemption in respect of any securities of a corporation has been withdrawn under subsection (3), the recognized exchange company shall suspend dealings in those securities unless—~~

~~(a) at the date of notification of the withdrawal, the corporation is an approved share registrar or employs an approved share registrar as its share registrar; or~~

~~(b) within 3 months after the date of notification of the withdrawal, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.~~

15. Notification of change in securities registrar

(1) Subject to subsection (5), the issuer of any prescribed securities must notify the Commission and the corresponding exchange company in writing of each of the following changes in accordance with subsection (2)—

(a) a person's ceasing to act as the securities registrar for those securities;

(b) a person's beginning to act as the securities registrar for those 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 issuer 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 person ceasing or beginning to act as the securities registrar.

(3) The issuer of any prescribed securities must notify the Commission and the corresponding exchange company in writing of any change in the information specified in a notification given by the issuer 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 the issuer of any prescribed securities to provide any information relating to a change notified under subsection (1) or (3) it reasonably requires for performing its functions.

(5) For a cessation mentioned in subsection (1)(a), if the person ceases to act only because the securities are no longer prescribed securities, the issuer—

(a) is not required to notify the corresponding exchange company of the cessation[151]; and

(b) where the securities are subscription warrants or rights under a rights issue, is also not required to notify the Commission of the cessation if[152]—

(i) the person ceases to act as the securities registrar for those warrants or rights by reason of their having lapsed or expired;

(ii) the securities that the holders of those warrants or rights are entitled to subscribe for (***underlying securities***) are prescribed securities; and

(iii) the person is, and continues to be, the securities registrar for the underlying securities.

(6) An issuer that, without reasonable excuse, contravenes subsection (1) or (3), or a requirement made under subsection (4), commits an offence and is liable on conviction to a fine at level 5.

Note—

See section 29 of the Securities and Futures (Approved Securities Registrars) Rules (Cap. 571 sub. leg. [ ]) for the requirement on an approved securities registrar to give notification of a change in its status as the securities registrar for any prescribed securities.

~~16. Appeal against suspension~~

~~(1) Where a recognized exchange company suspends dealings in the securities of a corporation under section 14 or 15(4) the corporation may, within 21 days of the suspension, appeal in writing to the Commission against the suspension.~~

~~(2) An appeal under subsection (1) shall be accompanied by such submissions in writing as the corporation wishes to make.~~

~~(3) On any appeal under subsection (1), the Commission may—~~

~~(a) dismiss the appeal;~~

~~(b) direct the recognized exchange company to permit the recommencement of dealings in the securities; or~~

~~(c) direct the recognized exchange company to permit the recommencement of dealings in the securities subject to such conditions as the Commission thinks fit.~~

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[151] Securities are expected to cease to be prescribed securities mainly when they are delisted, or in the case of subscription warrants or rights under a rights issue, when the securities lapse or expire. It is unnecessary for issuers to notify the relevant exchange company as the relevant exchange company will be aware of such matters. Section 15(5)(a) is accordingly added to make this clear.

[152] Section 15(5)(b) clarifies when notification to the SFC and/or the exchange company is unnecessary. For more details, see paragraph 139 of this Consultation Paper.

Annex 5: Proposed amendments to the OFC Rules[153]

58. Nature and transferability of shares

(1) A share or other interest of a shareholder of an open-ended fund company is personal property.

(2) A share or other interest of a shareholder of an open-ended fund company is transferable in accordance with the company's instrument of incorporation.

(3) However, shares or other interests that are prescribed securities are transferable in accordance with the company's instrument of incorporation, subject to—

(a) Part IIIAA of the Ordinance; and

(b) the Part IIIAA rules.

60. Requirement for ~~instrument~~ registration of transfer

(1) An open-ended fund company must not register a transfer of shares in the company ~~unless a proper instrument of transfer has been delivered to the company.~~ unless—

(a) if the shares are not prescribed securities—a proper instrument of transfer has been delivered to the company; or

(b) if the shares are prescribed securities—either of the following as required under the Part IIIAA rules in respect of the shares has been delivered to the company in accordance with those rules—

(i) a proper instrument of transfer;

(ii) a specified request.

(2) Subrule (1) does not affect any power of an open-ended fund company to register as a shareholder a person to whom the right to shares has been transmitted by operation of law.

(3) In subrule (1)—

specified request (指明請求), in relation to shares in an open-ended fund company, means a request that complies with the requirements set out in the Part IIIAA rules for registration of the transfer of the shares.

61. Registration of transfers

(1) The transferee or transferor of shares in an open-ended fund company ~~may lodge the instrument of transfer with the company.~~ may, in respect of the transfer of the shares—

(a) if the shares are not prescribed securities—lodge with the company the instrument of transfer; or

(b) if the shares are prescribed securities—lodge with the company either of the following as required under the Part IIIAA rules in respect of the shares—

(i) the instrument of transfer;

(ii) a specified request as defined by rule 60(3).

(2) The company must, within 2 months after the instrument of transfer ~~is lodged~~ or specified request is lodged under subrule (1)(a) or (b), either—

(a) register the transfer; or

[153] Proposed amendments are shown marked up on the existing provisions.

(b) send the transferee and the transferor notice of refusal to register the transfer.

(3) If an open-ended fund company refuses to register the transfer, the transferee or transferor may request a statement of the reasons for the refusal.

(4) The company must, within 28 days after receiving a request under subrule (3)—

(a) send the person who made the request a statement of the reasons; or

(b) register the transfer.

(5) ~~This rule does~~Subrules (2), (3) and (4) do not apply if the open-ended fund company is entitled to refuse to register the transfer under rule 62(1) or (3).

(6) If an open-ended fund company contravenes subrule (2) or (4), the company 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.

62. Refusal to register transfer of shares

(1) An open-ended fund company may, within 2 months after the instrument of transfer ~~is lodged~~ or specified request is lodged under rule 61(1)(a) or (b), refuse to register the transfer if—

(a) there exists a minimum requirement as to the number or value of shares that are to be held by a shareholder of the open-ended fund company, and the transfer would result in either the transferor or the transferee holding less than the required minimum; or

(b) the transfer would result in a contravention of a provision of the open-ended fund company's instrument of incorporation, or would produce a result inconsistent with any provision of the company's offering documents.

(2) If an open-ended fund company refuses to register a transfer under subrule (1), the company must, within 2 months after the instrument of transfer ~~is lodged~~ or specified request is lodged under rule 61(1)(a) or (b), give the transferor and the transferee notice in writing of the refusal.

(3) However, an open-ended fund company is not required to register a transfer or to give notice to any person if registering the transfer or giving the notice would result in a contravention of any applicable law.

(4) If an open-ended fund company contravenes subrule (2), the company 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.

67. Register of shareholders

(1) An open-ended fund company must keep in the English or Chinese language a register of shareholders.

(2) An open-ended fund company must enter in the register of shareholders—

(a) the names and addresses of its shareholders;

(b) the date on which each person is entered in the register as a shareholder; and

(c) the date on which any person ceases to be a shareholder.

(3) An open-ended fund company must enter in the register of shareholders, with the names and addresses of the shareholders, a statement of—

(a) the shares held by each shareholder, distinguishing each share by its number (if it has one), and the sub-fund (if any) and share class (if any) of such sub-fund to which the share belongs; and

(b) the amount paid or agreed to be considered as paid on the shares of each shareholder.

(3A) An open-ended fund company that is a re-domiciled OFC must, within 2 months after the re-domiciliation date, enter in the register of shareholders, in respect of each shareholder as at that date, the particulars required under subrules (2) and (3).

(4) If an open-ended fund company issues a share to any person and the name of the person is not already entered in the register of shareholders, the company must, within 2 months after the date of issue of the share, enter in the register, in respect of the person, the particulars required under subrules (2) and (3).

(5) An open-ended fund company must enter in the register of shareholders the particulars required under subrules (2) and (3) within 2 months after the company has received notice of the particulars concerned.

(6) In the case of a person mentioned in subrule (2)(c), all entries in the register relating to the person on the date on which the person ceased to be a shareholder may be destroyed after the end of 10 years from that date.

(7) If an open-ended fund company contravenes subrule (1), (3A), (4) or (5), the company 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.

Note—

For matters relating to the register of shareholders of an open-ended fund company any shares in which are prescribed securities, see also the Part IIIAA rules.

70. Power to close register of shareholders

An open-ended fund company may, on giving notice in accordance with the provisions of its instrument of incorporation, close its register of shareholders, or the part of it relating to shareholders holding shares of any class, for any period or periods ~~not exceeding in the whole 30 days in each year.~~in each year—

(a) for a company other than a company referred to in paragraph (b)—not exceeding in the whole 30 days; or

(b) for a company any shares in which are prescribed securities—

(i) not exceeding in the whole 30 days; or

(ii) if a number of days is specified in the Part IIIAA rules for the purposes of this rule—not exceeding in the whole that number of days.