

Bills Committee on Securities and Futures (Amendment) Bill 2013

**List of follow-up actions arising from the discussion
at the meeting on 28 October 2013**

Proposed Part IIIA of the Securities and Futures Ordinance (Cap. 571)
("SFO")

Division 5 – Systematically Important Participants ("SIP")

Section 101V – Application to Court of First Instance

1. The proposed section 101V(3)(a) provides that if the Court of First Instance is satisfied that "there is no reasonable excuse for the registered SIP not to comply with the requirement", it may "order the registered SIP to comply with the requirement..."; but the proposed subsection (3)(b) provides that if the Court of First Instance is satisfied that "the failure was without reasonable excuse," it may "punish the registered SIP...". The Administration is requested to provide information on:

- (a) the background and rationale for adopting different follow-up actions for an inquiry into non-compliance of the requirement by the registered SIP; and
- (b) the background and rationale for using "no reasonable excuse" and "the failure was without reasonable excuse" in the provisions as the considerations for the Court of First Instance in determining the follow-up actions for the non-compliance.

Amendments to Part VIII of SFO

New Division 3A – Monetary Authority ("MA")'s Powers of Investigation

2. With regard to MA's powers to require a person to give an explanation, particulars, answer or statement ("the requested information") for an investigation under the proposed section 184B, and the comparable powers of the Securities and Futures Commission ("SFC") under relevant provisions of SFO, the Administration is requested to provide information on:

- (a) the rights and protection for the person under investigation in respect of refusal to provide the requested information, for example, on grounds of self-incrimination, legal professional privilege, and subject to secrecy or other legal obligations under a foreign law;
- (b) whether there are express provisions in SFO stipulating the rights and protection referred to in (a) above; and if not, to consider including relevant provisions in the Bill; and
- (c) past actions, if any, taken by SFC or MA in response to the claims referred to in (a) above made by the person concerned.

3. In relation to the power to be conferred on MA under the proposed section 184C(2) to publish investigation reports, the Administration is requested to provide information on the cases and circumstances under which SFC or MA have exercised similar powers, given the concern that publication of investigation reports before initiation of prosecution and proof of offence might prejudice the prosecution.

Amendments to Division 4 – Miscellaneous

4. Regarding the assistance by SFC and MA to regulators outside Hong Kong for conducting an investigation under section 186 and the new section 186A, the Administration is requested to provide information on:

- (a) the circumstances under which SFC and MA will exercise the power to assist regulators outside Hong Kong, including the consideration on whether reciprocal assistance will be offered from the regulator concerned; and
- (b) whether SFC or MA has to enter into a reciprocal agreement or other legal agreement with the regulator concerned to give effect to the provision of assistance.

Amendments to Part IX of SFO

New Division 4 – Disciplinary Action by MA

5. On the disciplinary sanction of imposing a pecuniary penalty of the greater of \$10,000,000, or three times the amount of the profit gained or loss avoided by the person as a result of contravention of the mandatory obligations for over-the-counter derivative transactions, the Administration is requested to provide information on:

- (a) when the said level of pecuniary penalty was first adopted in SFO and the rationale for setting the penalty level;
- (b) past cases, if any, whereby the pecuniary penalty imposed by SFC on regulated persons exceeded \$10,000,000; and
- (c) the comparison with the penalties imposed on other offences under SFO.

Council Business Division 1
Legislative Council Secretariat
8 November 2013