

Bills Committee on Securities and Futures (Amendment) Bill 2013

**List of follow-up actions arising from the discussion
at the meeting on 12 November 2013**

Amendments to Part VIII of the Securities and Futures Ordinance ("SFO")

*New Division 3A – Monetary Authority ("MA")'s Powers of Investigation
Section 186A – MA's assistance to regulators outside Hong Kong*

1. The proposed section 186A provides that MA may give assistance to overseas regulators in investigation of contravention of legal or regulatory requirements in relation to transactions of over-the-counter ("OTC") derivative products. Subsections (5) and (6) set out the requirements to be met by the overseas regulators before assistance is provided, and subsection (9) requires MA to publish in the Gazette the names of such overseas regulators if it is satisfied that they meet the requirements (but the matter in the Gazette is not subsidiary legislation as provided in subsection (13)). Subsection (7) sets out the conditions MA has to consider in providing the assistance and subsection (8) sets out the issues MA must take into account in providing assistance in a particular case. The Administration is requested to provide information on the following issues –

- (a) the level of HKMA officer(s) who will be responsible for making decisions on the provision of assistance to overseas regulators under section 186A;
- (b) the rationale and considerations for the different conditions set out in subsection (7)(a) and (b), i.e. MA must be satisfied that it is desirable or expedient that the assistance should be given in the interests of the investing public or in the public interest; or the assistance will enable or assist the recipient of the assistance to perform the recipient's functions and it is not contrary to the interests of the investing public or to the public interest that the assistance should be given;
- (c) how MA will decide whether to provide assistance to an overseas regulator if such assistance will enable the overseas regulator to perform its regulatory functions and is not contrary to the interests of the investing public or to the public interest but may adversely affect the interests of a local company and its investors;

- (d) how subsections (7) and (8) will operate together;
- (e) the reasons for providing subsection (8) in the Bill (i.e. MA must take into account whether the recipient of the assistance will pay to MA the costs and expenses incurred in giving the assistance, and will be able and willing to give reciprocal assistance to Hong Kong) as subsection (7) has already stipulated the conditions MA has to consider in deciding whether to provide the assistance to the overseas regulator;
- (f) under subsection (8), whether and under what circumstances MA will accede to a request for assistance if the recipient will not pay the relevant costs and/or if it is unable/unwilling to give the reciprocal assistance;
- (g) whether MA has to enter into a reciprocal or other legal agreements with the overseas regulator concerned to give effect to the provision of assistance; and if not, to consider amending the Bill to provide that MA can only provide assistance to overseas regulators with whom it has entered into agreements;
- (h) how subsection (9) will operate, specifically, whether the gazettal of the name of the overseas regulator is made on a case-by-case basis upon consideration of each request for assistance, and the mechanism for removing the names of the overseas regulators and factors MA will take into account in doing so;
- (i) the Administration should consider amending subsection (13) to subject the matter under subsection (9) to negative vetting by the Legislative Council;
- (j) the information Securities and Futures Commission ("SFC")/MA will include in the notices issued to the subject person under investigation by the overseas regulator and/or relevant third parties requiring them to produce information, give explanation, and answer questions relating to the investigation (e.g. names of the overseas regulator and the relevant jurisdiction requesting for assistance, reasons for the investigation), and a sample of such notice;

- (k) the rights and protection for the subject person and relevant third parties involved in investigation conducted by overseas regulator in refusing to produce information, give explanation, and answer questions to SFC/MA on grounds of self-incrimination (in the context of either Hong Kong or the overseas jurisdiction), and the legal procedures and mechanism for making and considering such claim; and
- (l) the list of member agencies of the International Organization of Securities Commissions which have signed the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, including whether Russia or its regulator for the securities market is among the signatories.

2. With regard to sovereign wealth funds ("SWF") of overseas jurisdictions (e.g. the Temasek of Singapore) involving in OTC derivative transactions, the Administration is requested to provide information on –

- (a) whether such transactions are/will be subject to the mandatory reporting and clearing obligations under the regulatory regime of OTC derivative transactions of the respective jurisdictions; and
- (b) as SWF may have special set-up structures and may be protected by secrecy provisions in their operation, whether SFC/MA's assistance for overseas regulators or information sharing mechanism between SFC/MA and overseas regulators will cover OTC derivative transactions of SWF.

Amendments to Part XVI of SFO

New Division 1A – Secrecy, etc. Relating to MA's Functions under Specified Provisions

Section 381C – Disclosure if MA considers condition satisfied

3. Section 381C provides that MA may disclose information it has obtained in respect of OTC derivative transactions to entities and overseas regulators if it is satisfied that certain requirements and conditions are met. Subsection (1) of section 381C sets out, among others, entities in Hong Kong where disclosure would be made, and subsections (2) to (5) stipulate the requirements and conditions that MA has to consider in disclosing the information. The Administration is requested to take the following actions –

- (a) to consider including the Equal Opportunities Commission and the Consumer Council in subsection (1);
- (b) to provide information on the considerations for making the disclosure to an overseas regulator, including whether it is a prerequisite that the regulator in question has signed a reciprocal agreement or other legal agreement with MA on exchange of information; and
- (c) to provide information on the overseas regulators which have already signed reciprocal agreements or other legal agreements with MA on exchange of information.

Council Business Division 1
Legislative Council Secretariat
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