

**Bills Committee on
Securities and Futures and Companies Legislation
(Uncertificated Securities Market Amendment) Bill 2014
("the Bill")**

Committee Stage Amendments ("CSAs")

Members are invited to examine the mark-up version of the relevant parts of the Bill at **Annex**, with the Administration's proposed CSAs marked thereto. The reasons for these amendments are set out in the footnotes.

**Financial Services Branch
Financial Services and the Treasury Bureau
21 January 2015**

Clause 1

- (1) This Ordinance may be cited as the Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Ordinance 2014.
- ~~(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.~~
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Section 2(2) and (3), Part 2 (except section 17(7)) and Parts 3 and 4 come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.¹

¹ This is a technical amendment. Section 17(7) of this Ordinance adds a new section 14 to Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) ("SFO"). The new section 14 aims to provide flexibility in drafting subsidiary legislation. It is proposed that it comes into effect upon enactment of the Bill, so as to make available the flexibility provided by the new section 14 early.

Proposed section 101AAO in clause 12

- (1) For the purposes of this Part, the Commission may make rules—
 - (a) providing for activities and matters involving or relating to prescribed securities or issuers of prescribed securities (*issuers*), including—
 - (i) the allotment, issue and holding of prescribed securities;
 - (ii) the transfer of prescribed securities, including the circumstances under which the transfer may be effected without an instrument;
 - (iii) the conversion of prescribed securities in certificated form into uncertificated form; and
 - (iv) the conversion of prescribed securities in uncertificated form into certificated form; and
 - (b) providing for matters relating to title to prescribed securities, including the evidencing, recording and passing of such title.
- (2) Without limiting subsection (1), rules made under that subsection (*rules*) may provide for the following—
 - (a) the regulation of—
 - (i) the procedures and operations of an uncertificated securities market system; or
 - (ii) any matters relating to the carrying out, execution or processing of activities, instructions or other things by or through an uncertificated securities market system;

- (b) the registration of prescribed securities, and the registration of issuers' shares that are not prescribed securities, including—
 - (i) the registration of the allotment, transfer and transmission of such securities or shares;
 - (ii) the registration of holders of such securities or shares; and
 - (iii) the keeping of registers or other records or documents for such securities or shares;
- (c) the rights, duties and liabilities, including the exemption from liabilities, of persons responsible for keeping the registers or other records or documents mentioned in paragraph (b)(iii);
- (d) the making and provision of statements, by persons described in paragraph (c), and the issue of certificates or other documents by those persons;
- (e) the rectification of the registers or other records or documents mentioned in paragraphs (b)(iii) and (d);
- (f) the inspection, or withholding from inspection, of any or all parts of those registers, records or documents;
- (g) the making of copies of any or all parts of those registers, records or documents;
- (h) the authorization of persons—
 - (i) to engage or participate in activities involving or relating to prescribed securities; or
 - (ii) to engage or participate in activities involving or relating to any of the matters mentioned in paragraphs (a), (b), (d), (e), (f) and (g),

other than to operate and maintain an uncertificated securities market system;

- (i) the regulation of the persons mentioned in paragraph (h);
- (j) the consequences of the insolvency or incapacity of a system operator, or any other person authorized under the rules to engage or participate in activities described in paragraph (h);
- (k) the rights, duties and liabilities, including exemption from liabilities, of persons mentioned in paragraph (j) and of persons who are system participants;²
- (l) the charging or collecting of fees, by a person (other than the Commission) specified in the rules—
 - (i) in respect of any things done, or services provided, by the person in performing their functions under the rules; or
 - (ii) in respect of any things done, or services provided, by the person in connection with any other matters specified in the rules; and
- (m) the admissibility in evidence in legal proceedings of documents specified in the rules and proof of the matters contained in those documents.

² The CSA is proposed having reviewed the new section 101AAO(2)(k). The proposed amendment aims to extend the applicability of the section to brokers and custodians who, together with share registrars, fall under the definition of system participants in the Bill, so that the rule-making power under that provision can be used comprehensively to provide for the rights, duties and liabilities of the system operator and all system participants.

- (2A) Without limiting subsection (1), rules made under that subsection may also—
- (a) provide for a court's functions in relation to any of the activities or matters mentioned in subsection (1) or (2); and
 - (b) provide for activities and matters that are related or incidental to any of the activities, matters or functions mentioned in subsection (1) or (2) or paragraph (a).³
- (3) Rules made under subsection (1) may prescribe offences for contravention of the rules punishable (whether on conviction on indictment or on summary conviction), by a fine, imprisonment or both.
- (4) For an offence punishable on conviction on indictment, the maximum fine that may be prescribed is \$1,000,000 and the maximum imprisonment that may be prescribed is 7 years. In addition, in the case of a continuing offence, a further fine not exceeding \$100,000 for each day during which the offence continues may be prescribed.
- (5) For an offence punishable on summary conviction, the maximum fine that may be prescribed is \$500,000 and the maximum imprisonment that may be prescribed is 2 years. In addition, in the case of a continuing offence, a

³ This CSA is proposed to address the concerns raised by the Assistant Legal Adviser ("ALA") of the Legislative Council Secretariat. The proposed new subsection 2A(a) seeks to make explicit, and thus put beyond doubt, that rules made by the Securities and Futures Commission under the new section 101AAO of SFO may provide for the making of applications to the Court in respect of allotments, transfers and transmissions, and for the Court's powers on receiving such applications. For further clarity, the proposed new subsection 2A(b) seeks to make explicit that rules made under the new section 101AAO may cover matters that relate or are incidental to the matters described in section 101AAO(1), (2) or 2A(a).

further fine not exceeding \$10,000 for each day during which the offence continues may be prescribed.

(6) In subsection (2)(a)(ii)—

instruction (指示) means any instruction, election, acceptance or other message of any kind.”.

New Division 4A to be added to Part 4

**“Division 4A—Amendments to Electronic
Transactions Ordinance (Cap. 553)**

**60A. Schedule 1 amended (matters excluded from application of
sections 5, 5A, 6, 7, 8 and 17 of this Ordinance under
section 3 of this Ordinance)**

Schedule 1, section 4—

Repeal

“other than a contract note to which an agreement under
section 5A of that Ordinance relates.”

Substitute

“, other than—

- (a) a contract note to which an agreement under
section 5A of that Ordinance relates; and
- (b) a contract note that is to be stamped under
section 5AA(2) of that Ordinance.”⁴

⁴ This CSA is proposed having considered the concerns raised by the ALA. The amendment will provide legal certainty that contract notes which are to be stamped under the new section 5AA(2) of the Stamp Duty Ordinance (Cap. 117) (“SDO”) (i.e. pursuant to a new stamping arrangement approved by the Collector of Stamp Revenue (“the Collector”)) can be made and executed in electronic form. This is consistent with the existing provision under section 4 of Schedule 1 to the Electronic Transactions Ordinance (Cap. 553) which renders similar effect to other contract notes to which an agreement under section 5A of the SDO (i.e. a collection agreement between the Collector and a recognized exchange company or an authorized Automated Trading Services provider) relates.