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Banking (Capital) (Amendment) Rules 2014

(Made by the Monetary Authority under section 97C of the Banking Ordinance (Cap. 155) after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

1. Commencement

These Rules come into operation on 1 January 2015.

2. Banking (Capital) Rules amended

The Banking (Capital) Rules (Cap. 155 sub. leg. L) are amended as set out in sections 3 to 20.

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Repeal the definition of *collective provisions*

Substitute

“*collective provisions* (集體準備金), in relation to the exposures of an authorized institution—

- (a) means an allowance for impairment loss for a group of exposures where—
 - (i) the group of exposures is considered by the institution as having similar credit risk characteristics that are indicative of the debtors’ ability to pay all amounts due according to the contractual terms of the group of exposures; and

- (ii) the impairment loss has been assessed by the institution on a collective basis for the group of exposures by reference to historical loss experience in respect of exposures with similar credit risk characteristics, relevant observable data reflecting current market conditions and other relevant factors; but
- (b) does not include any allowance for impairment loss ascribed to identified deterioration of particular assets or known liabilities, whether individual or grouped;”.
- (2) Section 2(1), definition of *Fitch Ratings*—
- Repeal paragraph (a)**
- Substitute**
- “(a) consists of members of the group of companies of which Fitch, Inc. is the ultimate holding company;”.
- (3) Section 2(1), definition of *Standard & Poor’s Ratings Services*, paragraph (a)—
- Repeal**
- “The McGraw-Hill Companies, Inc.”
- Substitute**
- “McGraw Hill Financial, Inc.”.
- (4) Section 2(1)—
- Add in alphabetical order**
- “*investing institution* (投資機構) has the meaning given by section 227(1);”.

4. Section 2A added

Part 1, after section 2—

Add**“2A. Application**

These Rules apply to an authorized institution incorporated in Hong Kong.”.

5. Part 1B added

After Part 1A—

Add**“Part 1B****Additional CET1 Capital Required to be
Maintained before Distribution Payment Allowed****Division 1—General****3E. Interpretation of Part 1B**

(1) In this Part—

buffer level (緩衝水平), in relation to an authorized institution, means the buffer level applicable to the institution under section 3G;

capital conservation buffer ratio (防護緩衝資本比率), in relation to the calculation of an authorized institution’s buffer level, means the ratio set out in section 3M;

CB ratio (CB比率) means a capital conservation buffer ratio;

CCyB ratio (CCyB比率) means a countercyclical capital buffer ratio;

countercyclical capital buffer ratio (逆周期緩衝資本比率), in relation to the calculation of an authorized institution's buffer level, means the ratio calculated under section 3O;

distribution payment (分派付款), in relation to the making of a payment by an authorized institution—

(a) means—

- (i) payment of dividends;
- (ii) payment for purchase of the institution's own shares;
- (iii) discretionary payment on Additional Tier 1 capital instruments;
- (iv) discretionary bonus payment to the directors, senior management and employees of the institution; or
- (v) any other payment that is in substance a distribution of the institution's CET1 capital; but

(b) does not include any payment that does not deplete the institution's CET1 capital;

domestic systemically important authorized institution (具本地系統重要性認可機構) means an authorized institution so designated under section 3U;

D-SIB means a domestic systemically important authorized institution;

earnings (溢利), in relation to an authorized institution, means the amount of the institution's profits calculated by—

(a) adding together—

- (i) the institution's profits after taxation generated in a financial year out of which the institution may make a distribution payment; and
 - (ii) any distribution payment that has been made, and deducted from the institution's income, in the financial year; and
- (b) subtracting from the sum calculated under paragraph (a) any additional tax that would have been reported if no distribution payment had been made in the financial year;

global systemically important authorized institution (具全球系統重要性認可機構) means an authorized institution so designated under section 3S;

G-SIB means a global systemically important authorized institution;

higher loss absorbency ratio (較高吸收虧損能力比率)—

- (a) in relation to the calculation of a D-SIB's buffer level, means the ratio determined under section 3V; or
- (b) in relation to the calculation of a G-SIB's buffer level, means the ratio determined under section 3T;

HLA ratio (HLA比率) means a higher loss absorbency ratio;

maximum distributable amount (最高可分派數額)—see section 3H;

net CET1 capital (淨CET1資本), in relation to an authorized institution, means the institution's CET1 capital less the amount from the CET1 capital that the institution requires for complying with the minimum CET1 capital ratio, Tier 1 capital ratio and Total capital ratio set out in section 3B applicable to it as may be varied by the Monetary Authority under section 97F of the Ordinance.

- (2) The net CET1 capital ratio for an authorized institution is determined in the same way as the institution's CET1 capital ratio under these Rules, except that the institution's net CET1 capital is used in place of the institution's CET1 capital for the determination.
- (3) For the purposes of this Part—
 - (a) where an authorized institution creates an obligation to make a distribution payment, the institution is treated as making a distribution payment; and
 - (b) where an authorized institution intends to create an obligation to make a distribution payment, the institution is treated as intending to make a distribution payment.

Division 2—Constraints on Distribution Payment

3F. Distribution payment requirements

- (1) This section applies in relation to an authorized institution with effect from—
 - (a) 1 January 2016; or
 - (b) if earlier, the date on which the institution's buffer level is greater than 0%.

- (2) No distribution payment may be made by an authorized institution in a financial year unless this section and (where applicable) section 3J or 3K are complied with.
- (3) Without affecting any requirement imposed on an authorized institution under any other Parts, subsection (4), (5) or (6) applies to the institution if it intends to make a distribution payment in a financial year (*relevant payment*).
- (4) If an authorized institution's net CET1 capital ratio is above its buffer level, irrespective of whether the institution has earnings for the immediately preceding financial year, the institution may make the relevant payment.
- (5) If an authorized institution's net CET1 capital ratio is equal to or below its buffer level, and the institution does not have earnings for the financial year immediately preceding the financial year in which notification of the relevant maximum distributable amount is required to be made under section 3K(3)(a) (*year of notification*), the institution must not make the relevant payment.
- (6) If an authorized institution's net CET1 capital ratio is equal to or below its buffer level, and the institution has earnings for the financial year immediately preceding the year of notification, the institution may make the relevant payment, but the relevant payment must not exceed the greater of—
 - (a) zero; and

- (b) the maximum distributable amount notified to the Monetary Authority under section 3K(3)(a) less the aggregate amount of any distribution payments that have been made in the year of notification.

3G. Buffer level

There is applicable to an authorized institution a buffer level that is expressed as a percentage and calculated according to the following formula—

- (a) if the institution is a G-SIB or a D-SIB—
CB ratio + CCyB ratio + HLA ratio; or
- (b) in any other case—
CB ratio + CCyB ratio.

3H. Maximum distributable amount

- (1) The maximum distributable amount for an authorized institution is the product of—
 - (a) the institution's earnings for the financial year immediately preceding the financial year in which notification under section 3K(3)(a) is made; and
 - (b) the maximum distribution percentage determined by reference to the quartile of the institution's buffer level within which the institution's net CET1 capital ratio falls, as listed in Table 1AA.

Table 1AA**Determination of Maximum Distribution Percentage for Calculation of Maximum Distributable Amount**

Quartile of buffer level within which net CET1 capital ratio falls	Maximum distribution percentage
1 st quartile (0% to 25% of buffer level)	0%
2 nd quartile (more than 25% to 50% of buffer level)	20%
3 rd quartile (more than 50% to 75% of buffer level)	40%
4 th quartile (more than 75% to 100% of buffer level)	60%

- (2) For the purposes of subsection (1)(b), an authorized institution must determine the quartile of the institution's buffer level within which the institution's net CET1 capital ratio falls as at the latest practicable date—
- (a) which must be within 2 months before the date on which notification under section 3K(3)(a) is made; and
 - (b) for which the institution has the necessary data readily available for making the determination.

3I. Monetary Authority may require buffer level and maximum distribution percentage to be applied on unconsolidated or consolidated basis where there is subsidiary

- (1) For the purposes of applying the buffer level and the maximum distribution percentage to an authorized institution that has one or more subsidiaries, the Monetary Authority may, by notice in writing given to the institution, require the buffer level and the maximum distribution percentage to be applied—
 - (a) on an unconsolidated basis in respect of the institution;
 - (b) on a consolidated basis in respect of the institution and one or more of the subsidiaries; or
 - (c) on an unconsolidated basis in respect of the institution and on a consolidated basis in respect of the institution and one or more of the subsidiaries.
- (2) An authorized institution must comply with the requirements of a notice given to it under subsection (1).

3J. What authorized institution must do where net CET1 capital ratio above buffer level

- (1) This section applies in relation to an authorized institution with effect from—
 - (a) 1 January 2016; or
 - (b) if earlier, the date on which the institution's buffer level is greater than 0%.

- (2) If an authorized institution's net CET1 capital ratio is above its buffer level, and the institution intends to make a distribution payment that would result in its net CET1 capital ratio being equal to, or falling below, the buffer level, the institution must—
 - (a) consult the Monetary Authority before making the distribution payment; and
 - (b) submit to the Monetary Authority, within such period as the Monetary Authority may specify in writing (being a period reasonable in all the circumstances of the case), for approval a capital plan setting out the measures proposed to be taken by the institution, within such time frame as the Monetary Authority may specify, to manage and improve the institution's capital position.

3K. What authorized institution must do where net CET1 capital ratio not above buffer level

- (1) This section applies in relation to an authorized institution with effect from—
 - (a) 1 January 2016; or
 - (b) if earlier, the date on which the institution's buffer level is greater than 0%.
- (2) If an authorized institution's net CET1 capital ratio is equal to or below its buffer level, the institution must, on becoming aware of the fact, immediately notify the Monetary Authority and specify the quartile of the buffer level within which the net CET1 capital ratio falls.

- (3) If an authorized institution's net CET1 capital ratio is equal to or below its buffer level, and the institution intends to make a distribution payment, the institution must—
 - (a) notify, within 1 month before making the distribution payment, the Monetary Authority of the maximum distributable amount for the institution;
 - (b) provide the Monetary Authority with any particulars that the Monetary Authority requires; and
 - (c) submit to the Monetary Authority, within such period as the Monetary Authority may specify in writing (being a period reasonable in all the circumstances of the case), for approval a capital plan setting out the measures proposed to be taken by the institution, within such time frame as the Monetary Authority may specify, to manage and improve the institution's capital position.

3L. Other requirements

- (1) This section applies in relation to an authorized institution with effect from—
 - (a) 1 January 2016; or
 - (b) if earlier, the date on which the institution's buffer level is greater than 0%.
- (2) An authorized institution must consult the Monetary Authority in advance if—
 - (a) the institution intends to raise capital in the private sector for putting itself into a position to make a distribution payment in excess of the

maximum distributable amount that would have otherwise been applicable to the institution in the absence of such intended capital raising; and

- (b) the amount of such intended capital would not result in any noticeable improvement in the capital position of the institution after the making of the distribution payment.

Division 3—CB Ratio

3M. CB ratio

The CB ratio for calculating an authorized institution's buffer level under section 3G—

- (a) for 2015, is 0%;
- (b) for 2016, is 0.625%;
- (c) for 2017, is 1.25%;
- (d) for 2018, is 1.875%; and
- (e) at any time on or after 1 January 2019, is 2.5%.

Division 4—CCyB Ratio

3N. Interpretation of Division 4

In this Division—

advance announcement period (預告期), in relation to a JCCyB ratio, means the period—

- (a) beginning on the date immediately after the date on which the ratio is announced; and
- (b) ending on the effective date of the ratio;

applicable JCCyB ratio (適用JCCyB比率), in relation to a jurisdiction in which an authorized institution has private sector credit exposures, means—

- (a) (where the jurisdiction is outside Hong Kong) an applicable JCCyB ratio as specified in section 3P; or
- (b) (where the jurisdiction is Hong Kong) an applicable JCCyB ratio as specified in section 3Q;

effective date (生效日期), in relation to a JCCyB ratio or an applicable JCCyB ratio, means the date on which the ratio becomes effective;

JCCyB ratio (JCCyB比率), in relation to a jurisdiction outside Hong Kong in which an authorized institution has private sector credit exposures, means—

- (a) a capital buffer level, expressed as a percentage, announced by the relevant authority of the jurisdiction for the purpose of implementing the provisions concerning the countercyclical capital buffer in the document entitled “Basel III: A global regulatory framework for more resilient banks and banking systems” published by the Basel Committee in December 2010 (revised in June 2011); or
- (b) (if no such announcement has been made) 0%;

private obligor (私人承擔義務人) means an obligor that is not—

- (a) a sovereign;
- (b) a regional, provincial or municipal government;
- (c) a public sector entity;

- (d) a multilateral development bank; or
- (e) a bank;

private sector credit exposures (私人機構信用風險承擔), in relation to an authorized institution, means—

- (a) non-securitization exposures for which the institution calculates a risk-weighted amount for credit risk in accordance with Part 4, 5 or 6, or Division 4 of Part 6A;
- (b) securitization exposures for which the institution calculates a risk-weighted amount for credit risk in accordance with Part 7; or
- (c) exposures for which the institution calculates a market risk capital charge for specific risk in accordance with Part 8,

to the extent that such exposures are to a private obligor only;

ultimate risk basis (最終風險基礎) means the allocation of private sector credit exposures to the jurisdiction where the risk ultimately lies to the best of an authorized institution's knowledge and information.

30. CCyB ratio

- (1) The CCyB ratio for calculating an authorized institution's buffer level under section 3G is calculated by the use of Formula 1A.

Formula 1A**Calculation of CCyB Ratio**

$$\text{CCyB} = \frac{\sum_j (\text{RWA}_j \cdot \text{AJCCyB}_j)}{\sum_j \text{RWA}_j}$$

where—

CCyB = the institution's CCyB ratio for calculating its buffer level under section 3G;

RWA_j = the sum of—

- (a) the risk-weighted amounts for credit risk that relate to the institution's private sector credit exposures in jurisdiction *j* calculated in accordance with—
 - (i) Part 4, 5 or 6, or Division 4 of Part 6A; and
 - (ii) Part 7; and
- (b) the risk-weighted amount for market risk that relates to the institution's private sector credit exposures in jurisdiction *j* derived by multiplying by 12.5 the aggregate of the market risk capital charge for

specific risk for the exposures calculated in accordance with Part 8 (Note: if the institution is exempted by the Monetary Authority under section 22(1) from calculating its market risk under section 17, this paragraph is to be disregarded);

$AJCCyB_j$ = the applicable JCCyB ratio for jurisdiction j that is in effect on the latest practicable date referred to in section 3H(2) as at which the institution calculates its CCyB ratio for calculating its buffer level under section 3G.

- (2) Subject to subsection (3), the jurisdiction in which an authorized institution is considered to have private sector credit exposures must be determined by the institution, where possible, on an ultimate risk basis.
- (3) If, in relation to an authorized institution, it is not possible to determine under subsection (2) the jurisdiction in which the institution has private sector credit exposures, the jurisdiction is taken to be the jurisdiction where the exposures are booked.

3P. Applicable JCCyB ratio for jurisdiction outside Hong Kong

- (1) This section applies in relation to a jurisdiction outside Hong Kong in which an authorized institution has private sector credit exposures (*non-Hong Kong jurisdiction*).

- (2) Before 1 January 2016, the applicable JCCyB ratio for a non-Hong Kong jurisdiction is 0% and it is effective from 1 January to 31 December 2015.
- (3) Subject to subsection (2)—
 - (a) where a JCCyB ratio for a non-Hong Kong jurisdiction is 0% because of paragraph (b) of the definition of *JCCyB ratio* in section 3N—
 - (i) subject to subparagraph (ii), the applicable JCCyB ratio for the jurisdiction is 0%; or
 - (ii) if an announcement is at any time made by the Monetary Authority under subsection (4), the applicable JCCyB ratio is the one as announced by the Monetary Authority;
 - (b) where a JCCyB ratio announced for a non-Hong Kong jurisdiction is not more than 2.5%—
 - (i) subject to subparagraph (ii), the applicable JCCyB ratio for the jurisdiction is equal to the JCCyB ratio; or
 - (ii) if an announcement is at any time made by the Monetary Authority under subsection (4), the applicable JCCyB ratio is the one as announced by the Monetary Authority; or
 - (c) where a JCCyB ratio announced for a non-Hong Kong jurisdiction is more than 2.5%—
 - (i) subject to subparagraph (ii), the applicable JCCyB ratio is 2.5%; or

- (ii) if an announcement is at any time made by the Monetary Authority under subsection (4), the applicable JCCyB ratio is the one as announced by the Monetary Authority.
- (4) Where the Monetary Authority considers that the applicable JCCyB ratio for a non-Hong Kong jurisdiction under subsection (3)(a)(i), (b)(i) or (c)(i) is not sufficient to adequately bolster authorized institutions' resilience in view of the risks posed to the institutions because of the excessive credit growth in the jurisdiction, the Monetary Authority may announce, in accordance with subsection (11), the following to be the applicable JCCyB ratio—
 - (a) (for subsection (3)(a) or (b)) a ratio higher than the JCCyB ratio but not more than 2.5%; or
 - (b) (for subsection (3)(c)) the JCCyB ratio.
- (5) Subject to subsections (2), (6), (7), (8), (9) and (10), the effective date of a JCCyB ratio for a non-Hong Kong jurisdiction is taken to be the effective date of the applicable JCCyB ratio for the jurisdiction unless—
 - (a) where the JCCyB ratio is higher than the previous one, the advance announcement period for the JCCyB ratio is less than 6 months or more than 12 months; or
 - (b) the Monetary Authority considers that, with a view to ensuring adequate resilience of authorized institutions, or the effective working of the banking system of Hong Kong, the effective date of the applicable JCCyB ratio

should be different from that of the JCCyB ratio.

- (6) For subsection (5), if a JCCyB ratio for the jurisdiction is 0% because of paragraph (b) of the definition of **JCCyB ratio** in section 3N, 1 January 2016 is taken to be the effective date of the JCCyB ratio for the jurisdiction.
- (7) Subject to subsections (2) and (10), if an applicable JCCyB ratio for a non-Hong Kong jurisdiction is announced by the Monetary Authority under subsection (4), the Monetary Authority must announce, in accordance with subsection (11), the effective date of the applicable JCCyB ratio to be—
 - (a) (where the announcement is made under subsection (4)(a) and the JCCyB ratio referred to in that subsection is 0% because of paragraph (b) of the definition of **JCCyB ratio** in section 3N) 12 months after the date of the announcement by the Monetary Authority, unless the Monetary Authority announces a different effective date under subsection (9); or
 - (b) (in any other case) a date not less than 6 months, and not more than 12 months, after the date of the announcement by the Monetary Authority.
- (8) For subsection (5)(a), subject to subsections (9) and (10), the effective date of the applicable JCCyB ratio for the jurisdiction is taken to be—
 - (a) (where the advance announcement period is less than 6 months) 6 months after the date of the announcement of the JCCyB ratio by the relevant authority of the jurisdiction; or

- (b) (where the advance announcement period is more than 12 months) 12 months after the date of the announcement of the JCCyB ratio by the relevant authority of the jurisdiction.
- (9) For subsections (5)(b) and (7)(a), subject to subsection (10), the Monetary Authority may announce, in accordance with subsection (11), the effective date of the applicable JCCyB ratio for the jurisdiction to be a date—
 - (a) (subject to paragraph (b)) not more than 12 months after the date of the announcement by the Monetary Authority; and
 - (b) (where the applicable JCCyB ratio is higher than the previous one) not less than 6 months after the date of the announcement by the Monetary Authority.
- (10) The effective date of the applicable JCCyB ratio for a non-Hong Kong jurisdiction—
 - (a) (for subsection (5) or (8)) is taken to be 1 January 2016 if the effective date provided under subsection (5) or (8) falls before 1 January 2016; or
 - (b) (for subsection (9)) must not be earlier than 1 January 2016.
- (11) An announcement under subsection (4), (7) or (9) must be made by the Monetary Authority by—
 - (a) notifying all authorized institutions in writing; and
 - (b) posting a notification on the Monetary Authority's website.

3Q. Applicable JCCyB ratio for Hong Kong

- (1) Before 1 January 2016, subject to this section, the applicable JCCyB ratio for Hong Kong is 0%.
- (2) On and after 1 January 2016, if no applicable JCCyB ratio for Hong Kong is announced by the Monetary Authority under this section, the applicable JCCyB ratio is taken to be 0%.
- (3) Subject to subsections (4) and (5), if the Monetary Authority considers that a period of excessive credit growth in Hong Kong is leading to a build-up of system-wide risks in the financial system of Hong Kong, based on the Monetary Authority's assessment of the extent of risks, the Monetary Authority may announce, in accordance with subsection (10), a ratio of more than 0% to be the applicable JCCyB ratio for authorized institutions that have private sector credit exposures in Hong Kong.
- (4) For subsection (3), the applicable JCCyB ratio—
 - (a) for 2016, must be not more than 0.625%;
 - (b) for 2017, must be not more than 1.25%;
 - (c) for 2018, must be not more than 1.875%; and
 - (d) at any time on or after 1 January 2019, must be not more than 2.5%.
- (5) The Monetary Authority may, after consulting the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The DTC Association, take any of the actions specified in subsections (6) and (7).

- (6) The Monetary Authority may, subject to subsections (7) and (8), vary, by announcement in accordance with subsection (10), the provisions of subsection (4) if—
 - (a) the Monetary Authority considers that the variation is warranted by the extent of any excessive credit growth in Hong Kong before, or during, the period covered by the provisions; and
 - (b) the Monetary Authority considers that the variation would have the effect of increasing authorized institutions' resilience to the risks arising from the excessive credit growth.
- (7) The Monetary Authority may announce, in accordance with subsection (10), a ratio of more than 2.5% to be the applicable JCCyB ratio if—
 - (a) the latest applicable JCCyB ratio is 2.5% and has been in effect for a period of not less than 6 months;
 - (b) the Monetary Authority considers that the pace of credit growth did not slow to any material extent during the period; and
 - (c) the Monetary Authority considers it necessary to determine a ratio of more than 2.5% to be the applicable JCCyB ratio in order to protect authorized institutions from the expected consequences of excessive credit growth and the build-up of system-wide risks in the financial system of Hong Kong.
- (8) Where an applicable JCCyB ratio is higher than the previous one, the Monetary Authority must announce, in accordance with subsection (10), the

applicable JCCyB ratio not less than 6 months, and not more than 12 months, before the effective date of the applicable JCCyB ratio.

- (9) If the Monetary Authority considers that the system-wide risks associated with a period of excessive credit growth are receding, or that the banking sector may be entering a period of stress, the Monetary Authority may reduce, by announcement in accordance with subsection (10), the applicable JCCyB ratio.
- (10) An announcement under subsection (3), (6), (7), (8) or (9) must be made by the Monetary Authority by—
 - (a) notifying all authorized institutions in writing; and
 - (b) posting a notification on the Monetary Authority's website.

3R. Distribution payments made after reduction of applicable JCCyB ratio

- (1) An authorized institution must comply with subsection (2) if—
 - (a) a latest applicable JCCyB ratio for Hong Kong, or for a jurisdiction outside Hong Kong, is lower than the previous one; and
 - (b) the institution intends, within a period of 12 months after the effective date of the latest applicable JCCyB ratio, to use for making a distribution payment any of its earnings that would have been subject to constraint on distribution payments under this Part but for the lower applicable JCCyB ratio.
- (2) For subsection (1), an authorized institution must—

- (a) consult the Monetary Authority before making the payment; and
- (b) provide the Monetary Authority with a written justification regarding the prudence of the intended distribution payment within the context of the institution's capital planning.

Division 5—HLA Ratio

3S. G-SIB

The Monetary Authority may designate an authorized institution as a global systemically important authorized institution if, in the opinion of the Monetary Authority, the risks associated with the institution are such as to render the institution capable of having a significant impact on the effective working and stability of the global financial system were the institution to become non-viable.

3T. HLA ratio as applicable to G-SIB

- (1) Subject to subsection (3) and section 3W, the Monetary Authority may, by reference to the degree of global systemic importance that the Monetary Authority assesses a G-SIB to bear, determine for the institution an HLA ratio as specified in subsection (2).
- (2) The HLA ratio applicable to the G-SIB concerned—
 - (a) for 2015, is 0%;
 - (b) for 2016, must be not less than 0.25% and not more than 0.875%;
 - (c) for 2017, must be not less than 0.5% and not more than 1.75%;

- (d) for 2018, must be not less than 0.75% and not more than 2.625%; and
 - (e) at any time on or after 1 January 2019, must be not less than 1% and not more than 3.5%.
- (3) The Monetary Authority must notify the G-SIB concerned in writing of the HLA ratio determined for the institution, and the institution must apply, within 12 months from the notification, the HLA ratio to the calculation of its buffer level.

3U. D-SIB

The Monetary Authority may designate an authorized institution as a domestic systemically important authorized institution if, in the opinion of the Monetary Authority, the risks associated with the institution are such as to render the institution capable of having a significant impact on the effective working and stability of the banking or financial system of Hong Kong were the institution to become non-viable.

3V. HLA ratio as applicable to D-SIB

- (1) Subject to subsection (3) and section 3W, the Monetary Authority may, by reference to the degree of domestic systemic importance that the Monetary Authority assesses a D-SIB to bear, determine for the institution an HLA ratio as specified in subsection (2).
- (2) The HLA ratio applicable to the D-SIB concerned—
 - (a) for 2015, is 0%;
 - (b) for 2016, must be not less than 0.25% and not more than 0.875%;

- (c) for 2017, must be not less than 0.5% and not more than 1.75%;
 - (d) for 2018, must be not less than 0.75% and not more than 2.625%; and
 - (e) at any time on or after 1 January 2019, must be not less than 1% and not more than 3.5%.
- (3) The Monetary Authority must notify the D-SIB concerned in writing of the HLA ratio determined for the institution, and the institution must apply, within 12 months from the notification, the HLA ratio to the calculation of its buffer level.

3W. Where authorized institution being both G-SIB and D-SIB

If an authorized institution is designated under this Division as both a G-SIB and a D-SIB, the HLA ratio applicable to the institution is the higher of the following—

- (a) the HLA ratio applicable to the institution as a G-SIB; and
- (b) the HLA ratio applicable to the institution as a D-SIB.

3X. Where both authorized institution and its subsidiary being D-SIB

If an authorized institution is a subsidiary of a D-SIB, and the Monetary Authority also designates the institution as a D-SIB, the Monetary Authority may determine under section 3V(1) for the institution an HLA ratio that is different from the one determined for the D-SIB of which the institution is a subsidiary.”.

6. **Section 15 amended (authorized institution shall only use STC(S) approach or IRB(S) approach to calculate its credit risk for securitization exposures)**
- (1) Section 15(3)—
- Repeal**
“the STC(S) approach”
- Substitute**
“the approach or method as specified in subsection (3A)”.
- (2) After section 15(3)—
- Add**
“(3A) The institution under subsection (3) must use—
- (a) (if it is an originating institution) the STC(S) approach; or
- (b) (if it is an investing institution) the ratings-based method.”.
7. **Section 27 amended (authorized institution shall calculate its capital adequacy ratio on solo basis, solo-consolidated basis or consolidated basis)**
- (1) Section 27(3), definition of *relevant financial activity*, paragraph (i)—
- Repeal**
“or”.
- (2) Section 27(3), definition of *relevant financial activity*, paragraph (j)—
- Repeal the full stop**
Substitute
“; or”.

- (3) Section 27(3), definition of *relevant financial activity*, after paragraph (j)—

Add

“(k) custodial and safekeeping services.”.

8. Section 69 amended (application of ECAI ratings)

Section 69(5)—

Repeal

“which falls within paragraph (a) of that subsection”

Substitute

“as described in the chapeau of that subsection”.

9. Section 145 amended (equity exposures)

After section 145(3)—

Add

“(4) In this section—

corporate (法團) means—

- (a) a company; or
- (b) a partnership or any other unincorporated body, that is not a public sector entity.”.

10. Section 149 amended (default of obligor)

Section 149(6)(c)—

Repeal

“internal data or”

Substitute

“internal data (to the extent that such data had come into existence before 1 January 2007) or”.

11. Section 205 amended (recognized financial receivables)

(1) Section 205(2)—

Repeal

everything after “derived from”

Substitute

“the following do not fall within subsection (1)—

- (a) securitization transactions;
- (b) sub-participations;
- (c) credit derivative contracts; and
- (d) any affiliates of the direct obligor of an authorized institution.”.

(2) After section 205(2)—

Add

“(3) For the purposes of subsection (2)—

affiliate (附屬成員), in relation to a direct obligor of an authorized institution, means—

- (a) a subsidiary of the direct obligor;
- (b) a person that belongs to the same group of companies as the direct obligor; or
- (c) an employee of the direct obligor.”.

12. Section 216 amended (provisions supplementary to section 214(1)—substitution framework for corporate, sovereign and bank exposures under foundation IRB approach and for equity exposures under PD/LGD approach)

(1) Section 216(1)—

Repeal

“(5) and (6)”

Substitute

“(5), (6) and (7)”.

- (2) After section 216(6)—

Add

- “(7) Where the credit protection for an authorized institution’s exposure consists of a recognized credit derivative contract providing that, on the happening of a credit event—
- (a) the credit protection provider is not obliged to make a payment for any loss until the loss exceeds a specified amount (*first loss portion*); and
 - (b) the credit protection provider is not obliged to make a payment for any loss except to the extent that the loss exceeds the first loss portion, the institution must, in calculating its capital adequacy ratio, allocate a risk-weight of 1 250% to the first loss portion.”.

13. Section 227 amended (interpretation of Part 7)

- (1) Section 227(1), definition of *excess spread*—

Repeal

everything after “means”

Substitute

“interest and other income derived by the SPE in the transaction from the underlying exposures in the transaction in excess of the transaction costs (including servicing fees and other expenses incurred by the SPE) and any interest payments and charge-offs incurred or

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made by the SPE, as specified in the documentation for the transaction, expressed as a percentage of the underlying exposures;”.

- (2) Section 227(1), definition of *special purpose entity*, paragraph (b)—

Repeal

“insulates the underlying exposures transferred to it”

Substitute

“is insulated”.

14. Section 232A amended (recognized guarantees and recognized credit derivative contracts)

- (1) Section 232A(1)—

Repeal

“(2) and (3)”

Substitute

“(2), (3) and (4)”.

- (2) After section 232A(3)—

Add

“(4) Subsection (1) does not apply to—

(a) a guarantee for which the guarantor is an SPE;
or

(b) a credit derivative contract for which the protection seller is an SPE.”.

15. Section 235 amended (provisions supplementary to section 234)

- (1) Section 235(1)—

Repeal

“to a securitization issue”

Substitute

“for a securitization exposure”.

- (2) Section 235(1)—

Repeal

“the securitization issue”

Substitute

“the transaction”.

16. Section 261 amended (provisions supplementary to section 260)

- (1) Section 261(1)—

Repeal

“to a securitization issue”

Substitute

“for a securitization exposure”.

- (2) Section 261(1)—

Repeal

“the securitization issue”

Substitute

“the transaction”.

17. Section 269 amended (provisions supplementary to section 268)

- (1) Section 269(1)—

Repeal

“to a securitization issue”

Substitute

“for a securitization exposure”.

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(2) Section 269(1)—

Repeal

“the securitization issue”

Substitute

“the transaction”.

18. Schedule 1 amended (specifications for purposes of certain definitions in these Rules)

Schedule 1, Part 10—

Add

“5. European Financial Stability Facility.

6. European Stability Mechanism.”.

19. Schedule 4B amended (qualifying criteria to be met to be Additional Tier 1 capital)

(1) Schedule 4B, section 1(q)(vii)—

Repeal

“; and”

Substitute a semicolon.

(2) Schedule 4B, after section 1(q)(vii)—

Add

“(viiia) the institution obtains the prior consent of the Monetary Authority before including, as Additional Tier 1 capital, any issuance of a capital instrument the terms and conditions of which provide for trigger events in addition to the trigger events specified under this paragraph; and”.

- (3) Schedule 4B, section 1(q)(viii)—

Repeal

“and obtains the prior consent of the Monetary Authority”.

20. Schedule 4C amended (qualifying criteria to be met to be Tier 2 capital)

- (1) Schedule 4C, section 1(k)(vii)—

Repeal

“; and”

Substitute a semicolon.

- (2) Schedule 4C, after section 1(k)(vii)—

Add

“(viiia) the institution obtains the prior consent of the Monetary Authority before including, as Tier 2 capital, any issuance of a capital instrument the terms and conditions of which provide for trigger events in addition to the trigger events specified under this paragraph; and”.

- (3) Schedule 4C, section 1(k)(viii)—

Repeal

“and obtains the prior consent of the Monetary Authority”.

Norman CHAN
Monetary Authority

21 October 2014

Explanatory Note

These Rules are made by the Monetary Authority under section 97C of the Banking Ordinance (Cap. 155) to amend the Banking (Capital) Rules (Cap. 155 sub. leg. L) (*principal Rules*).

2. The main purpose of the Rules is to incorporate into the principal Rules amendments requiring an authorized institution incorporated in Hong Kong (*authorized institution*) to have regulatory capital buffers that consist of—
 - (a) a capital conservation buffer ratio;
 - (b) a countercyclical capital buffer ratio; and
 - (c) (for an authorized institution considered as systemically important in a global or domestic context) a higher loss absorbency ratio.

3. The requirement mentioned in paragraph 2 is imposed in line with the standards promulgated by the Basel Committee on Banking Supervision (*Basel Committee*) in the following documents—
 - (a) “Basel III: A global regulatory framework for more resilient banks and banking systems” published by the Basel Committee in December 2010 (revised in June 2011);
 - (b) “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee in December 2010;
 - (c) “Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement” published by the Basel Committee in July 2013; and

- (d) “A framework for dealing with domestic systemically important banks” published by the Basel Committee in October 2012.
4. The Rules also amend the principal Rules by adding, in alignment with the corresponding announcement made by the Basel Committee in March 2014, to the list of relevant international organizations in the principal Rules the following organizations—
- (a) European Financial Stability Facility; and
 - (b) European Stability Mechanism.
5. The addition mentioned in paragraph 4 enables an authorized institution to accord those 2 organizations a 0% risk-weighting when making calculation to meet the minimum regulatory capital requirement, and the requirement mentioned in paragraph 2.
6. The Rules also provide for a series of miscellaneous amendments to improve the operational clarity of certain provisions in the principal Rules, and to align them more closely with the Basel Committee capital standards following a recent self-assessment by the Monetary Authority of the principal Rules against the text of the Basel Committee capital standards as part of the Regulatory Consistency Assessment Programme, which is an on-going process established by the Basel Committee to assess the extent of compliance of its member jurisdictions with its capital standards.
7. The Rules come into operation on 1 January 2015.