

Bills Committee on Securities and Futures (Amendment) Bill 2013

**List of follow-up actions arising from the discussion
at the meeting on 22 November 2013**

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

*New Division 1A – Secrecy, etc. Relating to Monetary Authority ("MA")'s
Functions under the Specified Provisions*

*Section 381F – Disclosure of information to overseas persons with similar
functions*

1. Section 381F provides that MA may disclose information it has received or obtained because of the reporting obligation on over-the-counter ("OTC") derivative transactions to an overseas person. Subsection (2) sets out the requirements to be met by the overseas persons before the disclosure can be made and subsection (4) requires MA to publish in the Gazette the names of such overseas persons if it is satisfied that they meet the requirements (but there is no provision stipulating that the matter in the Gazette is subsidiary legislation). The Administration is requested to take the following actions –

- (a) to provide information on the protection of personal data privacy in the disclosure of information to overseas persons under section 381F, as MA may receive information on OTC derivative transactions conducted by retail investors who are individuals;
- (b) to examine whether the protection in (a) above would meet the requirements of the Personal Data (Privacy) Ordinance (Cap. 486);
- (c) to provide information on international standards or practices in protecting confidentiality and data privacy in the disclosure of information obtained from mandatory reporting of OTC derivative transactions, in particular if there is prohibition or impediment to disclosure (e.g. privacy provisions) under the laws of certain jurisdictions;
- (d) to provide information on the protocols and related trading agreements adopted by the International Swaps and Derivatives Association, Inc. which facilitate industry's compliance with requirements on data sharing among

overseas regulators and trade repositories (e.g. the relevant requirements under the Dodd-Frank Act of the United States and under the European Market Infrastructures Regulation);

- (e) to provide the list of overseas persons which have signed or will sign reciprocal agreements or other legal agreements, e.g. Memorandum of Understanding, with MA on exchange of information in respect of OTC derivative transactions; and
- (f) to consider subjecting the matter under section 381F(4) to negative vetting by the Legislative Council.

Amendments to Schedule 5 to SFO – Regulated Activities

New Part 2A on certain exclusions from the definitions of new regulated activities in respect of OTC derivative transactions

2. Section 1(i) of the new Part 2A provides that the new Type 11 regulated activity of "advising on OTC derivative products" does not include an OTC derivative advising act carried out by a person through (i) a newspaper, magazine, book or other publication that is made generally available to the public; or (ii) a television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise (collectively referred to as "the media" thereafter). The Administration is requested to take the following actions –

- (a) to provide information on the Securities and Futures Commission ("SFC")'s considerations in deciding whether an advising act through the media will constitute a commercial act or a market misconduct, and hence subject to SFC's regulation;
- (b) to provide information on past cases, if any, handled by the Market Misconduct Tribunal on market misconduct acts associated with advising acts through the media;
- (c) given that SFC's Code of Conduct on disclosure of interests when carrying out advising acts only applies to persons licensed by or registered with SFC, SFC is requested to address concerns about the protection for investors in relation to advising acts by non-licensed/registered persons through the media, in particular if such acts would benefit the non-licensed/registered persons; and

- (d) with a view to enhancing investor protection, SFC is requested to review the need of extending the existing legal requirement for licensed/regulated persons to disclose their interests when conducting regulated activities through the media to cover non-licensed/registered persons.

Drafting issue

- 3. The Administration is requested to review the numbering of the new subsection to be added to section 407 of SFO under clause 49 (i.e. whether the subsection number should be (5) instead of (6)).

Council Business Division 1
Legislative Council Secretariat
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