

**立法會**  
***Legislative Council***

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Tel : 3919 3328

Date : 20 March 2014

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 26 March 2014**

**Securities and Futures (Amendment) Bill 2013**

**Committee stage amendments**

The Second Reading debate on the above Bill will be resumed at the Council meeting of 26 March 2014. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Ms Judy TING)  
for Clerk to the Legislative Council

Encl.

Securities and Futures (Amendment) Bill 2013

**Committee Stage**

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
9	In the proposed section 101A, in the English text, in the definition of <i>prescribed person</i> , in paragraph (b)(iv), by deleting “and”.
9	In the proposed section 101A, in the definition of <i>prescribed person</i> , in paragraph (c)(iv), by adding “and” after the semicolon.
9	In the proposed section 101A, in the definition of <i>prescribed person</i> , by adding—  “(d) in relation to the record keeping obligation, means— (i) an authorized financial institution; (ii) an approved money broker; (iii) a licensed corporation; or (iv) a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation;”.
9	In the proposed section 101A, in the definition of <i>specified OTC derivative transaction</i> , in paragraph (b), by deleting “and”.
9	In the proposed section 101A, in the definition of <i>specified OTC derivative transaction</i> , in paragraph (c), by adding “and” after the semicolon.
9	In the proposed section 101A, in the definition of <i>specified OTC derivative transaction</i> , by adding—  “(d) in relation to the record keeping obligation, means a transaction specified in the record keeping rules for

the purposes of that obligation;”.

9 In the proposed section 101A, by adding in alphabetical order—

“*record keeping obligation* (備存紀錄責任)—

- (a) in relation to a prescribed person that is an authorized financial institution incorporated in Hong Kong, means—
  - (i) an obligation imposed by section 101DA(1); or
  - (ii) an obligation imposed by section 101DA(3); and
- (b) in relation to any other prescribed person, means an obligation imposed by section 101DA(1);

*record keeping rules* (《備存紀錄規則》) means rules made under section 101MA;”.

9 In the proposed Division 2, in the heading, by deleting “**Clearing and Trading**” and substituting “**Clearing, Trading and Record Keeping**”.

9 In the proposed section 101B, by adding—

“(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the reporting obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.”.

9 In the proposed section 101C, by adding—

“(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the clearing obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.”.

9 In the proposed section 101D, by adding—

“(7) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the trading obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.”.

9 By adding—

**“101DA. Record keeping obligation**

- (1) A prescribed person must keep, in accordance with the record keeping rules, records relating to an OTC derivative transaction to which subsection (2) applies.
- (2) This subsection applies to an OTC derivative transaction that—
  - (a) is specified in the record keeping rules—
    - (i) in relation to the prescribed person; and
    - (ii) as a transaction the records of which are required to be kept;
  - (b) falls within the circumstances and the criteria specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) for the application of the requirement to keep record referred to in paragraph (a)(ii); and
  - (c) does not fall within the circumstances specified in those rules—
    - (i) in relation to the prescribed person; and
    - (ii) as circumstances in which the requirement to keep record is taken to have been complied with.
- (3) In addition, a prescribed person that is an

authorized financial institution incorporated in Hong Kong must ensure that a subsidiary of that institution specified under subsection (5) complies in relation to an OTC derivative transaction with the requirement set out in subsection (4).

- (4) The requirement is that the subsidiary keeps, in accordance with the record keeping rules, records relating to an OTC derivative transaction—
  - (a) to which the subsidiary is a counterparty; and
  - (b) that is specified in those rules as a transaction to which subsection (3) applies.
- (5) The Monetary Authority may, by a written notice given to an authorized financial institution incorporated in Hong Kong, specify for the purposes of subsection (3)—
  - (a) a particular subsidiary;
  - (b) more than one subsidiary; or
  - (c) subsidiaries generally.
- (6) The Monetary Authority may specify under subsection (5) a subsidiary incorporated outside Hong Kong or a subsidiary incorporated in Hong Kong.
- (7) A person specified in subsection (9)(a) must, when requested by the Commission—
  - (a) give the Commission access to the records kept under this section; and
  - (b) produce the records to the Commission within the time and at the place specified by the Commission.
- (8) A person specified in subsection (9)(b) must, when requested by the Monetary Authority—
  - (a) give the Monetary Authority access to the records kept under this section; and
  - (b) produce the records to the Monetary Authority within the time and at the place specified by the Monetary

Authority.

- (9) The person specified—
    - (a) for the purposes of subsection (7) is—
      - (i) a prescribed person that is a licensed corporation; or
      - (ii) a prescribed person that is a person of a class or description specified in the record keeping rules as being subject to the record keeping obligation; and
    - (b) for the purposes of subsection (8) is—
      - (i) a prescribed person that is an authorized financial institution; or
      - (ii) a prescribed person that is an approved money broker.
  - (10) Subject to an express agreement to the contrary by the parties to the transaction, a contravention of the record keeping obligation in relation to an OTC derivative transaction does not of itself invalidate the transaction or affect any rights or obligations arising under, or relating to, the transaction.”.
- 9 In the proposed section 101E(1), by deleting “obligation or trading” and substituting “obligation, trading obligation or record keeping”.
- 9 In the proposed section 101F(1), by deleting “obligation or trading” and substituting “obligation, trading obligation or record keeping”.
- 9 In the proposed section 101G(1)(a)(iii), by deleting “and”.
- 9 In the proposed section 101G(1)(a), by adding—  
     “(iv) the record keeping obligation; and”.
- 9 In the proposed section 101H(1), by deleting “obligation or trading” and substituting “obligation, trading obligation or record

keeping”.

9 In the proposed section 101K(7)(b), by adding “or on behalf of”  
after “operated by”.

9 In the proposed section 101K(8)(a), by adding “and” after the  
semicolon.

9 In the proposed section 101K(8)(b), by deleting “; and” and  
substituting a full stop.

9 By deleting the proposed section 101K(8)(c).

9 By adding—

**“101KA. Rule making power—fees**

- (1) The Chief Executive in Council may, after consultation with the Monetary Authority, make rules to require and provide for the payment to the Monetary Authority of the fees for using the electronic system referred to in section 101K(7)(b).
- (2) Rules made under this section may provide—
  - (a) that the amount of any fees may be fixed by reference to a scale set out in the rules;
  - (b) for the payment of different fees by or in relation to persons or cases of different classes or descriptions;
  - (c) for the time and manner of payment of the fees;
  - (d) that the payment of any fees may, either generally or in a particular case, be reduced, waived or refunded;
  - (e) that the Monetary Authority may recover any outstanding amount of the fees as a civil debt due to the Monetary Authority; and
  - (f) for any other matters relating or

incidental to a matter mentioned in paragraph (a), (b), (c), (d) or (e).

- (3) This section is in addition to and not in derogation of sections 29 and 29A of the Interpretation and General Clauses Ordinance (Cap. 1).”.

9 In the proposed section 101L(6)(d), by adding “and” after the semicolon.

9 In the proposed section 101L(6)(e), by deleting “; and” and substituting a full stop.

9 By deleting the proposed section 101L(6)(f).

9 In the proposed section 101M(6)(c), by adding “and” after the semicolon.

9 In the proposed section 101M(6)(d), by deleting “; and” and substituting a full stop.

9 By deleting the proposed section 101M(6)(e).

9 By adding—

**“101MA. Rule making power—record keeping obligation**

- (1) The Commission may, with the consent of the Monetary Authority and after consultation with the Financial Secretary, make rules—
- (a) generally for the purposes of the record keeping obligation; and
  - (b) without limiting paragraph (a), to prescribe the particular matters set out in this section.
- (2) Rules made under this section—
- (a) may specify for the purposes of paragraph (d)(iv) of the definition of



- prescribed person* in section 101A, a class or description of persons; and
- (b) must provide in relation to a person of such a class or description that the person is subject to the record keeping obligation only if the person is a counterparty to a specified OTC derivative transaction.
- (3) Rules made under this section may specify—
- (a) generally, or with reference to a class or description of transactions, the OTC derivative transactions that are subject to the record keeping obligation;
  - (b) the records to be kept;
  - (c) different records to be kept under different circumstances or by different classes or descriptions of prescribed persons;
  - (d) the manner in which, the location at which and the minimum duration for which the records must be kept;
  - (e) the circumstances relating to a specified OTC derivative transaction in which the record keeping obligation—
    - (i) applies;
    - (ii) does not apply; or
    - (iii) is taken to have been complied with; and
  - (f) any other matter relating to the records to be kept.”.

9 In the proposed section 101O(1)(a)(ii), by deleting “or”.

9 In the proposed section 101O(1)(a)(iii), by deleting “and”.

9 In the proposed section 101O(1)(a), by adding—

- “(iv) a recognized exchange company;
- (v) a recognized clearing house; or
- (vi) a person authorized under section 95(2) to provide automated trading services; and”.

9 In the proposed section 101O, by adding—

- “(2A) For the purposes of subsection (2), a reference to a person’s position includes the position of another person to the extent to which the performance of the obligations arising from that other person’s position is guaranteed by the person.”.

9 In the proposed section 101O(6)(a), by adding “and, if the offence is a continuing offence, to a further fine of \$100,000 for every day during which the offence continues, until the cut-off date for the further fine” after “7 years”.

9 In the proposed section 101O(6)(b), by adding “and, if the offence is a continuing offence, to a further fine of \$10,000 for every day during which the offence continues, until the cut-off date for the further fine” after “2 years”.

9 In the proposed section 101O, by adding—

- “(7) For the purposes of subsection (6), the cut-off date for a further fine for which the person is liable is the date on which the person, in writing, notifies the Commission in accordance with subsection (4) of the person’s position in that specific class.”.

9 In the proposed section 101Q, by adding—

- “(6A) For the purposes of subsection (6)(b), a reference to a person’s position includes the position of another person to the extent to which the performance of the obligations arising from that other person’s position is guaranteed by the person.”.

9 In the proposed section 101R, by adding—

“(5) For the purposes of subsections (3) and (4), a reference to the position of a person or a person’s position includes the position of another person to the extent to which the performance of the obligations arising from that other person’s position is guaranteed by the person.”.

9 In the proposed section 101U(2)(a), by deleting “positions” and substituting “exposure arising from its positions”.

9 In the proposed section 101U(2)(d), by deleting “as specified in the notice”.

9 In the proposed section 101U(2), by adding—

“(da) to restrict the type of collateral collected or posted;”.

9 In the proposed section 101U, by adding—

“(2A) For the purposes of subsection (2)(a), a reference to the registered SIP’s exposure arising from its positions is a reference to the risk to which the registered SIP is exposed in respect of—

- (a) the positions of the registered SIP; and
- (b) the positions of another person to the extent to which the performance of the obligations arising from those positions is guaranteed by the registered SIP.”.

9 In the proposed section 101W(a)(ii), by deleting “and”.

9 In the proposed section 101W(a)(iii), by adding “and” after the semicolon.

9 In the proposed section 101W(a), by adding—

“(iv) the conditions, circumstances and criteria for regarding a person’s position as reaching the notification level;”.

- 14 In the proposed section 145A(1), by adding “acts involving” after “engages in”.
- 18(3) In the proposed section 182(1)(b)(vii), by deleting “clearing agency” and substituting “client clearing”.
- 18(5) In the proposed section 182(1)(da), by deleting “obligation or trading” and substituting “obligation, trading obligation or record keeping”.
- 20 In the proposed section 184A(1), by deleting “obligation or trading” and substituting “obligation, trading obligation or record keeping”.
- 37 In the proposed section 203A(6), in the definition of *obligation*, by deleting “obligation or trading” and substituting “obligation, trading obligation or record keeping”.
- 40 In the proposed section 381B(1)(b), by adding “(Winding Up and Miscellaneous Provisions)” after “Companies”.
- 40 In the proposed section 381B(4), by deleting “, or the trading particulars,”.
- 40 In the proposed section 381F(4), by adding “reasonably” before “practicable”.
- 40 In the proposed section 381F, by adding—  
“(5) A matter published under subsection (4) is not subsidiary legislation.”.
- 52(2) By deleting the proposed definition of *market contract* and substituting—  
“*market contract* (市場合約) means—  
(a) a contract that is subject to the rules of a

recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of a transaction in securities or futures contracts that is—

- (i) effected on a recognized stock market or a recognized futures market; or
  - (ii) subject to the rules of a recognized exchange company;
- (b) a contract that is subject to the rules of a recognized clearing house and entered into by the clearing house with a clearing participant, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction; or
- (c) a contract that is—
- (i) subject to the rules of a designated CCP (as defined by section 101A of this Ordinance) that is a provider of authorized automated trading services and specified by the Commission by notice published in the Gazette under section 1C; and
  - (ii) entered into by the designated CCP with any one of its members, whether or not pursuant to a novation, for the purpose of the clearing and settlement of an OTC derivative transaction;”.

52(3) In the proposed definition of *providing clearing agency services for OTC derivative transactions*, by deleting “*clearing agency services for OTC derivative transactions* (為場外衍生工具交易提供結算代理人” and substituting “*client clearing services for OTC derivative transactions* (為場外衍生工具交易提供客戶結算”.

52(3) By adding in alphabetical order to the proposed definitions—

“*record keeping obligation* (備存紀錄責任) has the

meaning given by section 101A of this Ordinance;”.

- 52(5) In the proposed section 1C(1), by deleting “paragraph (b)(ii)” and substituting “paragraph (c)(i)”.
- 53(2) In the proposed entry relating to Type 12, by deleting “clearing agency” and substituting “client clearing”.
- 53 By adding—
- “(6A) Schedule 5, Part 2, definition of *advising on securities*—
- Repeal**
- “such advice that”
- Substitute**
- “such advice or issuing of such analyses or reports that”.”.
- 53(10) In the proposed paragraph (ba)(i), in the Chinese text, by adding “以某種方式” after “從而”.
- 53(20) By adding—
- “(xib) that is an act that constitutes entering into a market contract;”.
- 53(21) In the proposed definition of *advising on OTC derivative products*, by deleting “such advice that” and substituting “such advice or issuing of such analyses or reports that”.
- 53(21) In the proposed definition of *dealing in OTC derivative products*, in paragraph (a), by adding “or” after the semicolon.
- 53(21) In the proposed definition of *dealing in OTC derivative products*, by deleting paragraphs (c) and (d).
- 53(21) By deleting the proposed definition of *providing clearing agency*

*services for OTC derivative transactions* and substituting—

“*providing client clearing services for OTC derivative transactions* (為場外衍生工具交易提供客戶結算服務), in relation to a person and subject to Part 2A, means providing services to another person for the clearing and settlement of OTC derivative transactions through a central counterparty (whether located in Hong Kong or elsewhere), whether or not as a member of the central counterparty;”.

- 53(22) By deleting the proposed section 2(g) and substituting—
- “(g) an act referred to in paragraph (a) of the definition of *dealing in OTC derivative products* in Part 2 that is carried out by a person as a price taker;”.
- 53(22) In the proposed section 4, by deleting “*clearing agency*” and substituting “*client clearing*”.
- 55 In the proposed section 3(1), by deleting “activity if” and substituting “activity concerned if”.
- 55 In the proposed section 3(2), by deleting “activity if” and substituting “activity concerned if”.
- 55 In the proposed section 33(1)(b), by deleting “except to the extent that it also constitutes carrying on the new Type 7 activity”.
- 55 In the proposed section 33(4), by deleting “except to the extent that it also constitutes carrying on the new Type 7 activity”.
- 55 In the proposed section 33(5)(f), by deleting “except to the extent that it also constitutes carrying on the new Type 7 activity”.
- 55 In the proposed section 33(6)(b), by deleting “except to the extent that it also constitutes carrying on the new Type 7 activity”.
- 55 In the proposed section 38(1)(c)(i), in the Chinese text, by

deleting “拒遭” and substituting “遭拒”.

- 55 In the proposed section 42(3)(a)(ii), by deleting “grant registration” and substituting “grant a certificate of registration”.
- 55 In the proposed section 42(3)(a)(iii), by deleting “a regulated activity” and substituting “the regulated activity specified in the licence or certificate of registration”.
- 55 In the proposed section 42(4)(b), by deleting “grant registration” and substituting “grant a certificate of registration”.
- 55 In the proposed section 42(4)(c), by deleting “a regulated activity” and substituting “the regulated activity specified in the licence or certificate of registration”.
- 55 In the proposed section 43(5), in the definition of *specified period*, in paragraph (g)(ii), by deleting “grant registration” and substituting “grant a certificate of registration”.
- 57 By adding—
- “(1A) Section 18(1), definition of *defaulter*—
- Repeal**
- “a clearing participant who”
- Substitute**
- “a recognized clearing house, or a clearing participant, that”.
- 57(2) In the proposed section 18(7)(a), by deleting “the recognized” and substituting “the”.
- 57(2) In the proposed section 18(7)(b)(i), in the English text, by deleting “recognized”.
- 57(2) In the proposed section 18(7)(b)(i)(B), in the Chinese text, by adding “可” after “相當”.



- 57(2) In the proposed section 18(7)(b)(ii), by deleting “recognized”.
- 58 By renumbering the clause as clause 58(1).
- 58(1) In the proposed section 40(2A)(a)(i), by deleting “recognized”.
- 58(1) In the proposed section 40(2A)(a)(ii), in the English text, by deleting “recognized”.
- 58(1) By deleting the proposed section 40(2A)(b) and (c) and substituting—
- “(b) taking proceedings or other action in relation to any contracts entered into between a clearing participant and its clients if—
    - (i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and
    - (ii) those contracts relate to such unsettled or open market contracts recorded in a client account;
  - (c) taking proceedings or other action in relation to any positions or collateral relating to a contract entered into between a clearing participant and its clients referred to in paragraph (b) if—
    - (i) the clearing participant appears to be unable, or likely to become unable, to meet its obligations in respect of all unsettled or open market contracts to which it is a party; and
    - (ii) those positions or collateral relate to such unsettled or open market contracts recorded in a client account.”.
- 58 By adding—
- “(2) After section 40(6)—

**Add**

“(7) In this section—

**client account** (客户帐户), in relation to a clearing participant, means an account held with a recognized clearing house in the name of the clearing participant, other than a house account in which positions or collateral are recorded;

**house account** (結算所帳戶), in relation to a clearing participant, means an account—

- (a) which is held with a recognized clearing house in the name of the clearing participant; and
- (b) in which the following are recorded—
  - (i) the clearing participant’s own positions or collateral;
  - (ii) the positions or collateral of other persons that are regarded by the rules of the recognized clearing house to be the clearing participant’s own positions or collateral.”.

New By adding—

**“58A. Section 45 amended (proceedings of recognized clearing house take precedence over law of insolvency)**

After section 45(1)(d)—

**Add**

“(da) the provision of market collateral;”.

60 By deleting the proposed section 2 and substituting—

“2. If—

- (a) the RCH rules envisage that a clearing participant may record market contracts in separate capacities, as referred to in section 3; and

- (b) the recognized clearing house operates in such a manner that paragraphs (a), (b), (c), (d), (e) and (f) of section 1 may be complied with separately in respect of each of the capacities,

paragraphs (a), (b), (c), (d), (e) and (f) of section 1 must be complied with separately in respect of each capacity.”.

60 By deleting the proposed section 3(a) and substituting—

“(a) a clearing participant will be regarded as recording market contracts in a separate capacity in respect of its house accounts and each of its client accounts if—

- (i) for house accounts—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s house accounts with the recognized clearing house have been so recorded; and
- (ii) for each client account—transactions that are required or permitted by the RCH rules to be recorded in any of the clearing participant’s client accounts with the clearing house have been so recorded;”.

60 In the proposed section 3(b), by deleting “client accounts,” and substituting “a client account,”.

60 In the proposed section 3(b), in the English text, by deleting “set off” and substituting “set-off”.

60 In the proposed section 3(c), in the English text, by deleting “set off” and substituting “set-off”.

60 In the proposed section 3(c), by deleting “permit.” and substituting “permit;”.

60 In the proposed section 3, by adding—

“(d) any net sum payable to the clearing participant in respect of transactions recorded in a client account, as calculated under section 1(c), may not be set-off against any net sum payable by the clearing participant in respect of transactions recorded in any other client account, as calculated under that section, if the RCH rules so provide.”.

60 In the proposed section 4(b), by adding “or permitting” after “authorizing”.

60 By adding—

“5A. In this Part, a reference to a set-off or offset includes a netting arrangement.

5B. For the purposes of this Part, a sum of money payable by, or payable to, a person includes a value to be taken into account under a netting arrangement to which the person is a party.”.

60 In the proposed section 6, in the definition of *client account*, by deleting “recognized clearing house, means an account held by the recognized clearing house in the name of a clearing participant” and substituting “clearing participant, means an account held with a recognized clearing house in the name of the clearing participant,”.

60 In the proposed section 6, in the definition of *house account*, in paragraph (a), by deleting “held by the” and substituting “which is held with a”.

60 In the proposed section 6, in the definition of *house account*, in paragraph (b)(i), by deleting “and” and substituting “or”.

60 In the proposed section 6, in the definition of *house account*, in paragraph (b)(ii), by deleting “positions and” (wherever appearing) and substituting “positions or”.

60 In the proposed section 6, by adding in alphabetical order—

“*netting* (淨額計算) means the determination of a net balance by taking account of the values (whether positive or negative) attributed to an accelerated or terminated payment, or to a delivery obligation or entitlement;”.

60 In the proposed section 6, in the definition of *RCH rules*, by deleting “the recognized” and substituting “the”.