

L.N. 196 of 2016

**Banking (Specification of Class of Exempted Charges)
(Amendment) Notice 2016**

(Made by the Monetary Authority under section 119A(3) and (6) of
the Banking Ordinance (Cap. 155))

1. Commencement

This Notice comes into operation on 3 March 2017.

**2. Banking (Specification of Class of Exempted Charges) Notice
amended**

The Banking (Specification of Class of Exempted Charges)
Notice (Cap. 155 sub. leg. K) is amended as set out in sections
3, 4 and 5.

3. Title substituted

The title—

Repeal the title

Substitute

**“Banking (Charges Exempted from Section 119A(2))
Notice”.**

4. Section 1A added

Before section 2—

Add

“1A. Interpretation

In this Notice—

assets (資産) has the meaning given by section 119A(1) of the Ordinance;

charge (押記) has the meaning given by section 119A(1) of the Ordinance;

OTC derivative transaction (場外衍生工具交易) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).”.

5. Section 2 substituted

Section 2—

Repeal the section

Substitute

“2. Specification of exempted charges

- (1) Section 119A(2) of the Ordinance does not apply to the following classes of charges—
 - (a) charges created in favour of Euroclear Bank S.A. (acting as operator of the Euroclear System);
 - (b) charges created in favour of Clearstream Banking S.A.;
 - (c) charges—
 - (i) that are created in connection with the relevant authorized institution’s provision of initial margin for any OTC derivative transaction; and
 - (ii) the aggregate current book value of which does not exceed 5% of the current book value of the institution’s total assets (excluding contra items).

- (2) For the purposes of subsection (1)(c)(i), initial margin is provided for an OTC derivative transaction if a party to the transaction provides collateral to the counterparty with a view to mitigating any potential future exposure of the counterparty that arises from a potential change in market value of the transaction following any default of the first-mentioned party.”.

Arthur YUEN
Acting Monetary Authority

23 December 2016

Explanatory Note

Section 119A of the Banking Ordinance (Cap. 155) governs the creation of charges by an authorized institution incorporated in Hong Kong over its assets. The institution is, except with the approval of the Monetary Authority, prohibited from creating charges under certain circumstances (e.g. if the aggregate value of all charges existing over its total assets (excluding contra items) is 5% or more of the value of those total assets). However, the prohibition does not apply to the classes of charges specified in the Banking (Specification of Class of Exempted Charges) Notice (Cap. 155 sub. leg. K) (*principal Notice*).

2. With certain internationally agreed margining and risk mitigation standards being implemented and affecting authorized institutions incorporated in Hong Kong, it is expedient to exempt a certain class of charges relating to the provision of initial margin for transactions in over-the-counter derivative products from the prohibition. This Notice amends the principal Notice to provide for the exemption.
3. This Notice also amends the title of the principal Notice to make it more informative.