

**LEGISLATIVE COUNCIL BRIEF**

**SECURITIES AND FUTURES ORDINANCE  
(CAP. 571)**

**SECURITIES AND FUTURES  
(OTC DERIVATIVE TRANSACTIONS –  
CLEARING AND RECORD KEEPING OBLIGATIONS AND  
DESIGNATION OF CENTRAL COUNTERPARTIES)  
(AMENDMENT) RULES 2018**

**INTRODUCTION**

Pursuant to sections 101N and 101P of the Securities and Futures Ordinance (Cap. 571), the Securities and Futures Commission (“SFC”), with the consent of the Monetary Authority and after consultation with the Financial Secretary, made the **Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018** (“Amendment Rules”) at Annex. The main purpose of the Amendment Rules is to introduce additional Calculation Periods<sup>1</sup> to capture new significant dealers in the over-the-counter (“OTC”) derivatives market so as to ensure that the scope of persons subject to clearing obligation under the OTC derivatives regulatory regime in Hong Kong remains appropriate.

**JUSTIFICATIONS**

**The Regulatory Framework**

2. The Legislative Council (“LegCo”) enacted the Securities and Futures (Amendment) Ordinance 2014 to provide for a regulatory framework for the OTC derivatives market in Hong Kong to ensure our regulatory regime is compatible with market development and to meet the

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<sup>1</sup> See paragraphs 3 to 6 for explanation of a Calculation Period, its corresponding Clearing Threshold and Prescribed Day.

relevant commitments of the Group of Twenty. Among other things, the framework introduces mandatory obligations that require the reporting, clearing and trading of OTC derivative transactions. In line with other major jurisdictions, the mandatory obligations are being implemented in phases. Under Hong Kong's OTC derivatives regulatory regime, Phase 1 and Phase 2 reporting were implemented in July 2015 and July 2017 respectively, while Phase 1 clearing was implemented in September 2016.

### **Addition of new Calculation Periods**

3. Pursuant to Rule 6 of the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571AN) (“Clearing Rules”), the clearing obligation of a prescribed person<sup>2</sup> arises when its average total position in relevant OTC derivative transactions in a specified period of time reaches a prescribed threshold (“Clearing Threshold”) for that period. The specified periods of time for calculating the average total position are stipulated in the Clearing Rules as “Calculation Periods”.

4. If a prescribed person's average total position during any Calculation Period reaches the corresponding Clearing Threshold, it must clear relevant OTC derivative transactions with a designated central counterparty from the corresponding “Prescribed Day” onward. The Prescribed Day is set on the day that is seven months after the end of the corresponding Calculation Period, to allow preparation time for the prescribed person to meet its new clearing obligation.

5. Under the existing Clearing Rules, there are two Calculation Periods in a calendar year. Each Calculation Period is set at a three-month period and between three-month intervals, and the Clearing Thresholds for all Calculation Periods are set at US\$20 billion. There are four Calculation Periods as stipulated in Schedule 2 to the Clearing Rules and the last Calculation Period ended on 31 May 2018. We consider it necessary to add new Calculation Periods to the Clearing Rules to capture new significant dealers in the market in the coming years.

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<sup>2</sup> A Prescribed Person is an authorized institution under the Banking Ordinance, an approved money broker under the Banking Ordinance or a licensed corporation under the Securities and Futures Ordinance.

6. The Amendment Rules provide for eight new Calculation Periods. Their corresponding Clearing Threshold and Prescribed Day are set out in the table below –

<b>Calculation Period</b>	<b>Clearing Threshold</b>	<b>Prescribed Day</b>
1 March 2019 to 31 May 2019	US\$20 billion	1 January 2020
1 September 2019 to 30 November 2019	US\$20 billion	1 July 2020
1 March 2020 to 31 May 2020	US\$20 billion	1 January 2021
1 September 2020 to 30 November 2020	US\$20 billion	1 July 2021
1 March 2021 to 31 May 2021	US\$20 billion	1 January 2022
1 September 2021 to 30 November 2021	US\$20 billion	1 July 2022
1 March 2022 to 31 May 2022	US\$20 billion	1 January 2023
1 September 2022 to 30 November 2022	US\$20 billion	1 July 2023

## **THE AMENDMENT RULES**

7. The main object of the Amendment Rules is to amend the existing Clearing Rules in order to introduce eight new Calculation Periods and their respective Clearing Thresholds and Prescribed Days. For any prescribed person with average total position during any Calculation Period reaches the corresponding Clearing Threshold, they are subject to the clearing and record keeping obligations as set out in Rules 6 and 12 of the Clearing Rules.

## **LEGISLATIVE TIMETABLE**

8. The Amendment Rules will be published in the Gazette on 7 December 2018 and tabled before LegCo at its sitting on 12 December 2018 for negative vetting. The Amendment Rules will come into operation on 1 March 2019.

## **FINANCIAL AND STAFFING IMPLICATIONS**

9. There are no financial or staffing implications for the Government or the SFC.

## **PUBLIC CONSULTATION**

10. The SFC and the Hong Kong Monetary Authority (“HKMA”) jointly consulted the market on, among other things, the proposed amendments to the Clearing Rules between March and April 2018, and issued a consultation conclusions paper in June 2018. The SFC has taken into account the positive responses and comments received in finalizing the Amendment Rules.

11. An information paper on the above proposal was circulated to members of the LegCo Panel on Financial Affairs on 2 November 2018. Members did not raise any objection to the proposal.

## **PUBLICITY**

12. The SFC will issue a circular to licensed corporations on 7 December 2018 on the making of the Amendment Rules upon its gazettal. The HKMA will inform authorized institutions separately.

## **ENQUIRIES**

13. Enquiries relating to this brief can be directed to Mr. George Tsoi, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2056; Ms Pansy Pang, Senior Manager of the Financial Stability Surveillance Division of the HKMA, at 2878 1206; or Ms Daphne Doo, Senior Director of the Supervision of Markets Division of the SFC, at 2231 1795.

**Financial Services and the Treasury Bureau  
Hong Kong Monetary Authority  
Securities and Futures Commission  
5 December 2018**

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018

Rule 1

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**Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018**

(Made by the Securities and Futures Commission under sections 101N and 101P of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary)

**1. Commencement**

These Rules come into operation on 1 March 2019.

**2. Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules amended**

The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571 sub. leg. AN) are amended as set out in rule 3.

**3. Schedule 2 amended (calculation periods, clearing thresholds and prescribed days)**

Schedule 2, after item 4—

**Add**

“5. 1 March 2019 to 31 May 2019 US\$20 billion 1 January 2020

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2018

Rule 3

2

6.	1 September 2019 to 30 November 2019	US\$20 billion	1 July 2020
7.	1 March 2020 to 31 May 2020	US\$20 billion	1 January 2021
8.	1 September 2020 to 30 November 2020	US\$20 billion	1 July 2021
9.	1 March 2021 to 31 May 2021	US\$20 billion	1 January 2022
10.	1 September 2021 to 30 November 2021	US\$20 billion	1 July 2022
11.	1 March 2022 to 31 May 2022	US\$20 billion	1 January 2023
12.	1 September 2022 to 30 November 2022	US\$20 billion	1 July 2023”.



Ashley Alder  
Chief Executive Officer,  
Securities and Futures Commission

30 November 2018

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### Explanatory Note

The main object of these Rules is to amend the Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571 sub. leg. AN) (*principal Rules*) to add 8 calculation periods and their respective clearing thresholds and prescribed days for the purposes of the clearing and record keeping obligations set out in rules 6 and 12 respectively of the principal Rules.

2. Rule 1 provides for commencement.
3. Rule 3 adds to Schedule 2 to the principal Rules 8 calculation periods and their respective clearing thresholds and prescribed days for the purposes of the clearing and record keeping obligations set out in rules 6 and 12 respectively of the principal Rules by adding new items 5 to 12.