

L.N. 54 of 2023

Securities and Futures (Client Securities) (Amendment) Rules 2023

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Part 2A

Scheme Securities Received or Held by Intermediaries in Conduct of Type 13 Regulated Activity and their Associated Entities

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Securities and Futures (Client Securities) (Amendment) Rules 2023

(Made by the Securities and Futures Commission under section 148 of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules come into operation on 2 October 2024.

2. Securities and Futures (Client Securities) Rules amended

The Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) are amended as set out in sections 3 to 10.

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *approved custodian*, after “of an intermediary”—

Add

“, or in relation to an intermediary licensed or registered for Type 13 regulated activity, the safe custody of scheme securities”.

- (2) Section 2—

Add in alphabetical order

“*scheme securities* (計劃證券) means any client securities that are—

- (a) either—

- (i) listed or traded on a recognized stock market; or
- (ii) interests in a collective investment scheme authorized by the Commission under section 104 of the Ordinance; and

- (b) in relation to an intermediary—
 - (i) received or held in Hong Kong by the intermediary in the course of the conduct of Type 13 regulated activity; or
 - (ii) received or held in Hong Kong by any corporation which is in a controlling entity relationship with the intermediary, in relation to such conduct of Type 13 regulated activity,constituting relevant CIS property in respect of a relevant CIS;”.

4. Section 3 amended (application)

- (1) Section 3(1)—

Repeal

“subsection (2)”

Substitute

“subsections (2), (3) and (4)”.

- (2) After section 3(2)—

Add

- “(3) Subsection (2) and sections 4, 5, 6, 7, 8, 8A, 9 and 10 do not apply to—
- (a) an intermediary licensed or registered for Type 13 regulated activity; or
 - (b) an associated entity of the intermediary, in relation to the conduct by the intermediary of that regulated activity.

- (4) Part 2A and section 10A apply only to—
- (a) an intermediary licensed or registered for Type 13 regulated activity; or
 - (b) an associated entity of the intermediary, in relation to the conduct by the intermediary of that regulated activity.”.

5. Part 2 heading amended (treatment of client securities and securities collateral)

Part 2, heading—

Repeal

“Treatment of Client Securities and Securities Collateral”

Substitute

“Client Securities and Securities Collateral Received or Held by Intermediaries other than in Conduct of Type 13 Regulated Activity and their Associated Entities”.

6. Part 2A added

After Part 2—

Add

“Part 2A

Scheme Securities Received or Held by Intermediaries in Conduct of Type 13 Regulated Activity and their Associated Entities

9A. Interpretation of Part 2A

In this Part—

intermediary (中介人) means a licensed corporation, or an authorized financial institution, that is licensed or registered for Type 13 regulated activity;

relevant CIS (相關集體投資計劃) has the meaning given by Part 2 of Schedule 5 to the Ordinance;

relevant CIS property (相關集體投資計劃財產) has the meaning given by Part 2 of Schedule 5 to the Ordinance;

scheme documents (計劃文件) has the meaning given by Part 2 of Schedule 5 to the Ordinance.

9B. Requirement for deposit or registration of scheme securities

Subject to section 9C, an intermediary or an associated entity of an intermediary which receives any scheme securities in respect of a relevant CIS must ensure that, as soon as reasonably practicable, the scheme securities are—

- (a) deposited in safe custody in a segregated account which is designated as a trust account or client account and established and maintained in Hong Kong by the intermediary or associated entity for the purpose of holding scheme securities in respect of the relevant CIS with—
 - (i) an authorized financial institution;
 - (ii) an approved custodian; or
 - (iii) another intermediary licensed for dealing in securities; or
- (b) registered in the name of—
 - (i) the relevant CIS; or
 - (ii) the associated entity on behalf of the relevant CIS.

9C. Dealings with scheme securities

- (1) An intermediary or an associated entity of an intermediary may deal with scheme securities in respect of a relevant CIS that it receives or holds in accordance with—
 - (a) a written instruction to settle an order to sell scheme securities executed on behalf of the relevant CIS; or
 - (b) a written instruction to withdraw the scheme securities from an account referred to in section 9B(a) or to deal with scheme securities that have been registered in accordance with section 9B(b).
- (2) Without limiting subsection (1), in accordance with the scheme documents of a relevant CIS, an intermediary may—
 - (a) dispose; or
 - (b) initiate a disposal by an associated entity of the intermediary,
of any of the scheme securities in respect of the relevant CIS in settlement of any liability incurred by or on behalf of the relevant CIS to the intermediary, the associated entity or a third person.
- (3) In subsection (1)—

written instruction (書面指令) means an instruction that—

 - (a) relates to specified scheme securities in respect of a relevant CIS;
 - (b) is given to the intermediary or an associated entity of the intermediary by or on behalf of the relevant CIS; and

- (c) directs the intermediary or the associated entity to deal with the scheme securities in a particular manner,

where the giving of the instruction and the dealing of scheme securities in the manner as specified in the instruction by the intermediary or the associated entity does not contravene any provisions of the scheme documents of the relevant CIS.”.

7. **Section 10A added**

After section 10—

Add

“10A. Limitations on treatment of scheme securities

- (1) An intermediary in the conduct of Type 13 regulated activity or an associated entity of the intermediary must take reasonable steps to ensure that scheme securities in respect of a relevant CIS are not—
 - (a) deposited;
 - (b) transferred;
 - (c) lent;
 - (d) pledged;
 - (e) repledged; or
 - (f) otherwise dealt with,except as provided in Part 2A.
- (2) Subsection (1) does not require the intermediary or associated entity in question to ensure that the scheme securities in question are not—
 - (a) deposited;
 - (b) transferred;

- (c) lent;
- (d) pledged;
- (e) repledged; or
- (f) otherwise dealt with,
by a person to whom the intermediary or associated entity has lent or with whom the intermediary or associated entity has deposited any of the scheme securities in accordance with Part 2A.”.

8. Section 11 amended (approval of custodians for safe custody of client securities and securities collateral)

- (1) Section 11, heading—

Repeal

“and securities collateral”

Substitute

“, securities collateral and scheme securities”.

- (2) Section 11, after “of an intermediary”—

Add

“, and scheme securities in relation to an intermediary licensed or registered for Type 13 regulated activity”.

9. Section 12 amended (reporting of non-compliance with certain provisions of the Rules)

- Section 12—

Repeal

“or 10(1)”

Substitute

“, 9B, 10(1) or 10A(1)”.

10. Section 13 amended (penalties)

(1) Section 13(3)—

Repeal

“or 10(1)”

Substitute

“, 9B, 10(1) or 10A(1)”.

(2) Section 13(4)—

Repeal

“or 10(1)”

Substitute

“, 9B, 10(1) or 10A(1)”.

Julia LEUNG
Chief Executive Officer,
Securities and Futures Commission

20 March 2023

Explanatory Note

The main object of these Rules is to amend the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) (*principal Rules*) to apply the principal Rules to intermediaries licensed or registered for Type 13 regulated activity (providing depositary services for relevant CISs) and their associated entities in relation to scheme securities.

2. Section 1 provides for the commencement of these Rules.
3. Section 3 amends section 2 of the principal Rules to amend the definition of *approved custodian* and add the definition of *scheme securities*.
4. Section 4 amends section 3 of the principal Rules to disapply sections 3(2), 4, 5, 6, 7, 8, 8A, 9 and 10 of the principal Rules, and apply new Part 2A and section 10A of the principal Rules, to an intermediary licensed or registered for Type 13 regulated activity and an associated entity of such intermediary in relation to the conduct by the intermediary of Type 13 regulated activity.
5. Section 5 amends the heading of Part 2 of the principal Rules.
6. Section 6 adds a new Part 2A to the principal Rules. Part 2A sets out the requirements in respect of the handling of scheme securities received or held by intermediaries in the conduct of Type 13 regulated activity and their associated entities.
7. Section 7 adds a new section 10A to the principal Rules. Section 10A sets out the limitations on the treatment of scheme securities.

8. Section 8 amends section 11 of the principal Rules to provide for the approval of custodians for safe custody of scheme securities.
9. Section 9 amends section 12 of the principal Rules to provide for the requirement to report non-compliance with new sections 9B and 10A(1).
10. Section 10 amends section 13 of the principal Rules to provide for penalties for contravention of new sections 9B and 10A(1).