

L.N. 55 of 2023

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

Contents

Section	Page
1. Commencement	B589
2. Securities and Futures (Client Money) Rules amended	B589
3. Part 1 heading added	B589

Part 1

Preliminary

4. Section 2 amended (interpretation).....	B589
5. Section 3 amended (application).....	B589
6. Part 2 heading added	B591

Part 2

Client Money Received or Held by Licensed Corporations other than in Conduct of Type 13 Regulated Activity and their Associated Entities

7. Part 3 added.....	B593
----------------------	------

Part 3

Scheme Money Received or Held by Licensed Corporations in Conduct of Type 13 Regulated Activity and their Associated Entities

10A. Interpretation of Part 3.....	B593
------------------------------------	------

Section	Page
10B. Payment of scheme money into segregated accounts and relevant CIS accounts.....	B597
10C. Payment of scheme money out of segregated accounts and relevant CIS accounts.....	B603
10D. Treatment of interest on scheme money held in segregated accounts and relevant CIS accounts	B605
10E. Requirements in respect of written instruction	B605
10F. Receipt of cheques for scheme money	B607
8. Part 4 heading added	B607

Part 4

Miscellaneous

9. Section 11 amended (reporting of non-compliance with certain provisions of these Rules)	B607
10. Section 12 amended (penalties).....	B609

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

(Made by the Securities and Futures Commission under section 149 of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules come into operation on 2 October 2024.

2. Securities and Futures (Client Money) Rules amended

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

3. Part 1 heading added

The Rules—

Add

“Part 1

Preliminary”.

4. Section 2 amended (interpretation)

Section 2, definition of *segregated account*, after “section 4(1) and (2)”—

Add

“or, where Part 3 applies, section 10B(1), (2), (3) and (4)”.

5. Section 3 amended (application)

(1) Section 3(1)—

Repeal

“and (3)”

Substitute

“, (3), (4) and (5)”.

(2) After section 3(3)—

Add

“(4) Subsection (3) and Part 2 do not apply to—

(a) a licensed corporation licensed for Type 13 regulated activity; or

(b) an associated entity of the licensed corporation, in relation to the conduct by the licensed corporation of that regulated activity.

(5) Part 3 applies only to—

(a) a licensed corporation licensed for Type 13 regulated activity; or

(b) an associated entity of the licensed corporation, in relation to the conduct by the licensed corporation of that regulated activity.”.

6. Part 2 heading added

After section 3—

Add

“Part 2

Client Money Received or Held by Licensed Corporations other than in Conduct of Type 13 Regulated Activity and their Associated Entities”.

7. **Part 3 added**

After section 10—

Add

“Part 3

Scheme Money Received or Held by Licensed Corporations in Conduct of Type 13 Regulated Activity and their Associated Entities

10A. Interpretation of Part 3

In this Part—

licensed corporation (持牌法團) means a corporation licensed for Type 13 regulated activity;

open-ended fund company (開放式基金型公司) has the meaning given by section 112A of the Ordinance;

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 account (相關集體投資計劃帳戶) means an account—

- (a) established and maintained by the board of directors of a relevant CIS that is constituted in the form of an open-ended fund company or any other corporate form in the name of the relevant CIS in accordance with section 10B(6) and (7); and
- (b) in respect of which a licensed corporation or an associated entity of a licensed corporation (as the case may be) has control;

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;

scheme money (計劃款項), in relation to a licensed corporation, means any client money—

- (a) received or held in Hong Kong by the licensed corporation in the course of the conduct of Type 13 regulated activity; or
- (b) received or held in Hong Kong by any corporation which is in a controlling entity relationship with the licensed corporation, in relation to such conduct of Type 13 regulated activity,

that constitutes relevant CIS property in respect of a relevant CIS, and includes any accretions to it whether as capital or income;

sub-fund (子基金)—

- (a) in relation to a relevant CIS that is constituted in the form of an open-ended fund company, means a sub-fund within the meaning of section 112R of the Ordinance and is a relevant CIS;
- (b) in relation to a relevant CIS that is constituted in the form of a trust, means the separate part of relevant CIS property that is subject to or established as a separate trust and is a relevant CIS; or

- (c) in relation to a relevant CIS that is constituted in any other form, means the separate part of relevant CIS property that is divided in accordance with the scheme documents of the relevant CIS and is a relevant CIS;

written instruction (書面指令)—see section 10E.

10B. Payment of scheme money into segregated accounts and relevant CIS accounts

- (1) Subject to subsection (5), a licensed corporation or an associated entity of a licensed corporation that receives or holds scheme money in respect of a relevant CIS must establish and maintain in Hong Kong 1 or more segregated accounts for the scheme money in accordance with subsections (2), (3) and (4), each of which must be designated as a trust account or client account for the relevant CIS.
- (2) Each segregated account for scheme money must be established and maintained with—
 - (a) an authorized financial institution; or
 - (b) any other person approved by the Commission for the purposes of this section, either generally or in a particular case.
- (3) Subject to subsection (4), each segregated account for scheme money referred to in subsection (1) must be established and maintained for only 1 relevant CIS.
- (4) For the purposes of subsection (3), where a relevant CIS consists of 1 or more sub-funds, a licensed corporation or an associated entity of a licensed corporation may establish and maintain 1 segregated account for scheme money in respect of the relevant CIS and all of its sub-funds or separate segregated

accounts for scheme money in respect of the relevant CIS and each of its sub-funds.

- (5) For a relevant CIS that is constituted in the form of an open-ended fund company or any other corporate form, a licensed corporation or an associated entity of a licensed corporation that receives or holds scheme money in respect of the relevant CIS is not required to comply with subsection (1) if the scheme money is received or held in a relevant CIS account that is established and maintained in accordance with subsections (6) and (7).
- (6) Each relevant CIS account for scheme money must be established and maintained with—
 - (a) an authorized financial institution; or
 - (b) any other person approved by the Commission for the purposes of this section, either generally or in a particular case.
- (7) For the purposes of subsection (5), each relevant CIS account for scheme money must be established and maintained for only 1 relevant CIS, unless a relevant CIS consists of 1 or more sub-funds, in which case 1 relevant CIS account for scheme money may be established and maintained in respect of the relevant CIS and all of its sub-funds or separate relevant CIS accounts for scheme money may be established and maintained in respect of the relevant CIS and each of its sub-funds.
- (8) All amounts of scheme money in respect of a relevant CIS that are received or held by a licensed corporation or an associated entity of a licensed corporation must be dealt with in accordance with subsection (9), except—

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- (a) proper charges that may be deducted by the licensed corporation in connection with Type 13 regulated activity;
 - (b) those amounts that the licensed corporation is required to pay within the following business day to meet settlement or margin requirements or redemption requests on behalf of the relevant CIS; and
 - (c) those amounts that are reimbursements to the licensed corporation of money that the licensed corporation has paid at any time before the day of receipt in order to meet settlement or margin requirements on behalf of the relevant CIS,
- in each case in accordance with the scheme documents of the relevant CIS.
- (9) Within 3 business days after a licensed corporation or an associated entity of a licensed corporation receives any amount of scheme money in respect of a relevant CIS as referred to in subsection (8), the licensed corporation or associated entity must—
 - (a) where subsection (1) applies, pay it into a segregated account for scheme money in respect of the relevant CIS;
 - (b) where subsection (5) applies, pay it into a relevant CIS account for scheme money in respect of the relevant CIS; or
 - (c) subject to subsection (10), pay it in accordance with a written instruction.
 - (10) Neither a licensed corporation nor an associated entity of a licensed corporation may pay, or permit to be paid, any amount of scheme money in respect of a relevant CIS to—

- (a) any of its officers or employees; or
- (b) any officer or employee of any corporation with which the licensed corporation is in a controlling entity relationship or in relation to which the associated entity is a linked corporation,

unless the scheme money is paid to that officer or employee in accordance with the scheme documents of the relevant CIS.

10C. Payment of scheme money out of segregated accounts and relevant CIS accounts

- (1) A licensed corporation or an associated entity of a licensed corporation that holds any amount of scheme money in respect of a relevant CIS in a segregated account or a relevant CIS account must not pay scheme money out of the account unless it is—
 - (a) paid by the licensed corporation in accordance with the scheme documents of the relevant CIS to—
 - (i) meet payment, distribution, redemption, settlement or margin requirements on behalf of the relevant CIS;
 - (ii) settle any proper charges due to any person who has provided a service in respect of the relevant CIS; or
 - (iii) settle any other liabilities incurred by or on behalf of the relevant CIS; or
 - (b) subject to subsection (2), paid in accordance with a written instruction.

- (2) Neither a licensed corporation nor an associated entity of a licensed corporation may pay, or permit to be paid, any amount of scheme money in respect of a relevant CIS to—
- (a) any of its officers or employees; or
 - (b) any officer or employee of any corporation with which the licensed corporation is in a controlling entity relationship or in relation to which the associated entity is a linked corporation,
- unless the scheme money is paid to that officer or employee in accordance with the scheme documents of the relevant CIS.

10D. Treatment of interest on scheme money held in segregated accounts and relevant CIS accounts

A licensed corporation or an associated entity of a licensed corporation that holds scheme money in respect of a relevant CIS must deal with amounts of interest derived from the holding of the scheme money in a segregated account or a relevant CIS account in accordance with section 10C(1).

10E. Requirements in respect of written instruction

For the purposes of section 10B(9)(c) or 10C(1)(b), a written instruction is a written notice that—

- (a) relates to an amount of scheme money in respect of a relevant CIS referred to in that section;
- (b) is given to the licensed corporation or an associated entity of the licensed corporation by or on behalf of the relevant CIS; and

- (c) directs the licensed corporation or the associated entity to deal with the scheme money in a particular manner,

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

10F. Receipt of cheques for scheme money

For the purposes of section 10B(1) and (8), a licensed corporation or an associated entity of a licensed corporation that receives a cheque for an amount of scheme money is regarded as having received such amount only on receipt by it of the proceeds of that cheque.”.

8. Part 4 heading added

Before section 11—

Add

“Part 4

Miscellaneous”.

9. Section 11 amended (reporting of non-compliance with certain provisions of these Rules)

Section 11—

Repeal

“or 5(1)”

Substitute

“, 5(1), 10B(1) or (9) or 10C(1)”.

10. Section 12 amended (penalties)

(1) Section 12(1)—

Repeal

“or 5”

Substitute

“, 5, 10B or 10C”.

(2) Section 12(2)—

Repeal

“or 5”

Substitute

“, 5, 10B or 10C”.

(3) Section 12(3), after “section 6, 8(4), 10”—

Add

“, 10D”.

(4) Section 12(4), after “section 6, 8(4), 10”—

Add

“, 10D”.

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 Money) Rules (Cap. 571 sub. leg. I) (*principal Rules*) to apply the principal Rules to licensed corporations licensed for Type 13 regulated activity (providing depository services for relevant CISs) and their associated entities in relation to scheme money.

2. Section 1 provides for the commencement of these Rules.
3. Section 3 adds a new Part 1 heading to the principal Rules.
4. Section 4 amends section 2 of the principal Rules to amend the definition of *segregated account*.
5. Section 5 amends section 3 of the principal Rules to disapply section 3(3) and Part 2 of the principal Rules, and apply new Part 3 of the principal Rules, to a licensed corporation licensed for Type 13 regulated activity and its associated entities in relation to the conduct by the licensed corporation of Type 13 regulated activity.
6. Section 6 adds a new Part 2 heading to the principal Rules.
7. Section 7 adds a new Part 3 to the principal Rules. Part 3 sets out the requirements in respect of the handling of scheme money received or held by licensed corporations in the conduct of Type 13 regulated activity and their associated entities.
8. Section 8 adds a new Part 4 heading to the principal Rules.

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

Explanatory Note
Paragraph 9

L.N. 55 of 2023
B613

9. Section 9 amends section 11 of the principal Rules to provide for the requirement to report non-compliance with new sections 10B(1) and (9) and 10C(1).
10. Section 10 amends section 12 of the principal Rules to provide for penalties for contravention of new sections 10B, 10C and 10D.