

L.N. 57 of 2023

**Securities and Futures (Keeping of Records)
(Amendment) Rules 2023**

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Securities and Futures (Keeping of Records) (Amendment) Rules 2023

(Made by the Securities and Futures Commission under section 151 of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules come into operation on 2 October 2024.

2. Securities and Futures (Keeping of Records) Rules amended

The Securities and Futures (Keeping of Records) Rules (Cap. 571 sub. leg. O) are amended as set out in sections 3 to 11.

3. Section 2 amended (interpretation)

(1) Section 2—

Repeal the definition of *systems of control*

Substitute

“*systems of control* (監控系統)—

- (a) in relation to an intermediary or an associated entity of an intermediary (except for an intermediary or an associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity), means any internal controls and trading, accounting, settlement and stock holding systems it has implemented to ensure its compliance with—
 - (i) sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and

- (ii) sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); or
 - (b) in relation to an intermediary or an associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity, means any internal controls and accounting, settlement and holding systems for scheme securities it has implemented to ensure its compliance with—
 - (i) sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I); and
 - (ii) sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H).”.
- (2) Section 2—

Add in alphabetical order

“*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 assets (計劃資產) means—

- (a) scheme money; and
- (b) scheme securities;

scheme money (計劃款項), in relation to an intermediary, means any client money—

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

scheme securities (計劃證券), in relation to an intermediary, means any client securities—

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

that constitute relevant CIS property in respect of a relevant CIS;”.

4. Section 3 amended (general record keeping requirements for intermediaries)

- (1) Section 3(1), after “licensed or registered”—

Add

“(except for Type 13 regulated activity)”.

- (2) Section 3(1)(a)(ii)—

Repeal

“profit and loss accounts and balance sheets”

Substitute

“statements of profit or loss and other comprehensive income and statements of financial position”.

- (3) Section 3(2)(a)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

5. Section 3A added

After section 3—

Add

“3A. Record keeping requirements for intermediaries licensed or registered for Type 13 regulated activity

- (1) This section applies to an intermediary licensed or registered for Type 13 regulated activity.
- (2) An intermediary must, in relation to the businesses which constitute Type 13 regulated activity for which it is licensed or registered—
 - (a) keep, where applicable, such accounting, custody and other records as are sufficient to—
 - (i) explain, and reflect the financial position and operation of, such businesses;
 - (ii) enable statements of profit or loss and other comprehensive income and statements of financial position that give a true and fair view of its financial affairs to be prepared from time to time;

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- (iii) account for all relevant CIS property in respect of each relevant CIS for which it provides depositary services;
 - (iv) enable all movements of such relevant CIS property to be traced through its accounting systems and, where applicable, holding systems for the relevant CIS property;
 - (v) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
 - (A) its associated entities;
 - (B) recognized exchange companies;
 - (C) clearing houses;
 - (D) other intermediaries;
 - (E) custodians; and
 - (F) banks,and show how such differences were resolved;
 - (vi) demonstrate—
 - (A) compliance by it with sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
 - (B) compliance by it with sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and

- (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in subparagraphs (A) and (B); and
 - (vii) enable it readily to establish whether it has complied with the Securities and Futures (Financial Resources) Rules (Cap. 571 sub. leg. N);
 - (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
 - (c) make entries in those records in accordance with generally accepted accounting principles.
- (3) Without limiting subsection (2)(a), the records referred to in that subsection must, where applicable, include the records specified in Schedule 2.”.

6. Section 4 amended (record keeping requirements for associated entities)

Section 4(1)—

Repeal

“shall”

Substitute

“(except for an associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity) must”.

7. Section 4A added

Part 2, Division 1, after section 4—

Add

“4A. Record keeping requirements for associated entities of intermediaries licensed or registered for Type 13 regulated activity

- (1) An associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity must, in respect of all scheme assets of the intermediary that it receives or holds—
 - (a) keep, where applicable, such accounting, custody and other records as are sufficient to—
 - (i) account for the scheme assets;
 - (ii) enable all movements of the scheme assets to be traced through its accounting systems and, where applicable, holding systems for scheme securities;
 - (iii) show separately and account for all receipts, payments, deliveries and other uses or applications of the scheme assets effected by it, or on its behalf, and on whose behalf such receipts, payments, deliveries or other uses or applications of the scheme assets have been effected;
 - (iv) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—
 - (A) the intermediary of which it is an associated entity;
 - (B) recognized exchange companies;
 - (C) clearing houses;
 - (D) other intermediaries;
 - (E) custodians; and

- (F) banks,
and show how the differences were resolved; and
- (v) demonstrate—
 - (A) compliance by it with sections 10B, 10C, 10D and 11 of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
 - (B) compliance by it with sections 9B, 10A(1) and 12 of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H); and
 - (C) that it has systems of control in place to ensure compliance with all of the provisions referred to in sub-paragraphs (A) and (B);
- (b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
- (c) make entries in those records in accordance with generally accepted accounting principles.
- (2) Without limiting subsection (1)(a), the records referred to in that subsection must, where applicable, include—
 - (a) contracts entered into by it; and
 - (b) records evidencing any written instruction given to it as referred to in section 9C of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 10E of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).”.

8. Section 10 amended (record retention period)

Section 10(b)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

9. Section 12 amended (penalties)

(1) Section 12(1)—

Repeal

“4,”

Substitute

“3A, 4, 4A,”.

(2) Section 12(2)—

Repeal

“4,”

Substitute

“3A, 4, 4A,”.

10. Schedule renumbered (records to be kept by intermediaries under section 3(2)(a))

The Schedule—

Renumber the Schedule as Schedule 1.

11. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[s. 3A]

Records to be Kept by Intermediaries Licensed or Registered for Type 13 Regulated Activity under Section 3A(3)

1. Records showing particulars of—
 - (a) all money—
 - (i) received by it, whether or not such money—
 - (A) belongs to it; or
 - (B) is paid into accounts maintained by it or on its behalf; and
 - (ii) disbursed by it;
 - (b) all income received by it, whether such income relates to fees and charges made by it for the provision of services, interest or otherwise;
 - (c) all expenses and interest incurred or paid by it;
 - (d) all instructions concerning the relevant CIS property that it receives, including particulars—
 - (i) of each transaction entered into by it or on its behalf to implement any such instruction;
 - (ii) identifying with whom or for whose account it has entered into such transaction; and

- (iii) that enable such transaction to be traced through its accounting, settlement and holding systems for the relevant CIS property;
- (e) all disposals of the relevant CIS property in respect of each relevant CIS, showing in the case of each disposal—
 - (i) the name of the counterparty;
 - (ii) the date on which the disposal was effected;
 - (iii) the name of the intermediary which effected the disposal;
 - (iv) the charges incurred for effecting the disposal; and
 - (v) the proceeds of the disposal and how such proceeds were dealt with;
- (f) all relevant CIS property belonging to it, identifying—
 - (i) with whom such relevant CIS property is held or deposited;
 - (ii) the date on which it became so held or deposited; and
 - (iii) whether it is held or deposited as security for loans or advances or for any other purpose;
- (g) all relevant CIS property, including scheme securities, held by it but not belonging to it, identifying—

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- (i) for whom such relevant CIS property is held or deposited and the date on which it became so held or deposited;
 - (ii) with whom such relevant CIS property is held or deposited and the date on which it became so held or deposited;
 - (iii) securities which are deposited with another person for safe custody; and
 - (iv) securities which are deposited with another person for any other purpose;
- (h) all bank accounts held by it, including segregated accounts maintained in accordance with section 10B(1) of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I);
- (i) all other accounts held by it; and
 - (j) all off-balance sheet transactions or positions.
2. Records of all contracts entered into by it.
3. Records evidencing any written instruction given to it as referred to in section 9C of the Securities and Futures (Client Securities) Rules (Cap. 571 sub. leg. H) or section 10E of the Securities and Futures (Client Money) Rules (Cap. 571 sub. leg. I).”.

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 (Keeping of Records) Rules (Cap. 571 sub. leg. O) (*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.

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 *systems of control* and to add new definitions of *relevant CIS*, *relevant CIS property*, *scheme assets*, *scheme money* and *scheme securities*.
4. Section 4 amends section 3 of the principal Rules to disapply that section 3 to a business which constitutes Type 13 regulated activity and to update the existing descriptions of profit and loss accounts and balance sheets.
5. Section 5 adds a new section 3A to the principal Rules. Section 3A sets out the record keeping requirements for intermediaries licensed or registered for Type 13 regulated activity.
6. Section 6 amends section 4 of the principal Rules to disapply that section 4 to an associated entity of an intermediary in relation to the conduct by the intermediary of Type 13 regulated activity.

7. Section 7 adds a new section 4A to the principal Rules. Section 4A sets out the record keeping requirements for associated entities of intermediaries licensed or registered for Type 13 regulated activity.
8. Section 8 amends section 10 of the principal Rules to reference the existing Schedule to the principal Rules by its new Schedule number.
9. Section 9 amends section 12 of the principal Rules to provide for penalties for contravention of new sections 3A and 4A.
10. Section 10 renumbers the existing Schedule to the principal Rules.
11. Section 11 adds a new Schedule 2 to the principal Rules. Schedule 2 sets out the records to be kept by intermediaries licensed or registered for Type 13 regulated activity under new section 3A(3).