

L.N. 61 of 2023

Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) (Amendment) Rules 2023

(Made by the Securities and Futures Commission under sections 101L 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 2 October 2024.

2. Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules amended

The Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (Cap. 571 sub. leg. AL) are amended as set out in rules 3 to 7.

3. Rule 2 amended (interpretation)

Rule 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;

Type 13 intermediary (第13類中介人), in relation to a prescribed person, means a licensed corporation or an authorized financial institution that is licensed or registered for Type 13 regulated activity;”.

4. Rule 10 amended (reporting by licensed corporations)

Rule 10—

Repeal subrule (3)

Substitute

“(3) Subrule (1)(a) does not apply to a prescribed person that is—

- (a) an exempt person; or
- (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.”.

5. Rule 11 amended (reporting by authorized financial institutions incorporated in Hong Kong)

Rule 11—

Repeal subrule (3)

Substitute

“(3) Subrule (1)(a) does not apply to a prescribed person that is—

- (a) an exempt person; or
- (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.”.

6. Rule 12 amended (reporting by authorized financial institutions incorporated outside Hong Kong)

Rule 12—

Repeal subrule (3)

Substitute

- “(3) Subrule (1)(a) does not apply to a prescribed person that is—
- (a) an exempt person; or
 - (b) a Type 13 intermediary that is a counterparty to the transaction in its capacity as a trustee of a relevant CIS.”.

7. Rule 29 amended (records to be kept by prescribed persons)

After rule 29(1)(c)—

Add

- “(ca) if rule 10, 11 or 12 (as applicable) does not apply to the person in relation to the transaction by virtue of rule 10(3)(b), 11(3)(b) or 12(3)(b)—
- (i) the records specified in Schedule 2 relating to the transaction; and
 - (ii) records sufficient to demonstrate that the person is a counterparty to the transaction in the person’s capacity as a trustee of a relevant CIS;”.

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 (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (Cap. 571 sub. leg. AL) (*principal Rules*) to specify that the reporting obligation in respect of specified OTC derivative transactions does not apply to a prescribed person that is an intermediary licensed or registered for Type 13 regulated activity when the intermediary is a counterparty to the transactions in its capacity as a trustee of a relevant CIS.

2. Rule 1 provides for the commencement of these Rules.
3. Rule 3 amends rule 2 of the principal Rules to add new definitions of *relevant CIS* and *Type 13 intermediary*.
4. Rules 4, 5 and 6 respectively amend rules 10, 11 and 12 of the principal Rules to specify that rules 10, 11 and 12 which impose reporting obligations on prescribed persons do not apply to an intermediary licensed or registered for Type 13 regulated activity that is a counterparty to a specified OTC derivative transaction in its capacity as a trustee of a relevant CIS.
5. Rule 7 amends rule 29 of the principal Rules to provide for records that are required to be kept by an intermediary licensed or registered for Type 13 regulated activity where the reporting obligations under rules 10, 11 and 12 of the principal Rules do not apply by virtue of it being a counterparty to a specified OTC derivative transaction in its capacity as a trustee of a relevant CIS.