

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 2022**

INTRODUCTION

Pursuant to sections 101N and 101P of the Securities and Futures Ordinance (Cap. 571) (“SFO”), 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 2022** (“Amendment Rules”) at the **Annex**. The main purpose of the Amendment Rules is to introduce additional Calculation Periods¹ such that the mandatory clearing obligation under the over-the-counter (“OTC”) derivatives regime will continue to operate effectively from year 2023 and beyond.

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

¹ See paragraphs 3 to 5 for explanation of a Calculation Period, its corresponding Clearing Threshold and Prescribed Day.

relevant commitments of the Group of Twenty. The mandatory clearing obligation under Hong Kong's OTC derivatives regulatory regime took effect 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 person² arises when its average total position in relevant OTC derivative transactions in a specified period of time reaches the set clearing 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 Clearing Threshold, it must clear the relevant OTC derivative transactions with a designated central counterparty from the corresponding “Prescribed Day” onward if certain conditions are met, and to comply with the record keeping obligation under Rule 12 of the Clearing Rules. 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 interval, and the Clearing Thresholds for all Calculation Periods are set at US\$20 billion. There are twelve Calculation Periods as stipulated in Schedule 2 to the Clearing Rules and the last Calculation Period will end on 30 November 2022. We consider it necessary to add new Calculation Periods to the Clearing Rules to facilitate the continuous operation of the Clearing Rules. The specification of multiple Calculation Periods for the purposes of mandatory clearing, adopting a risk-based approach to monitor large positions of OTC derivatives on a continuous basis while building in flexibility, has been working well over the years.

² 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 SFO.

6. The Amendment Rules provide for eight new Calculation Periods of the same design as the current ones. The proposed Calculation Periods and their corresponding Clearing Threshold and Prescribed Day are set out in the table below –

Calculation Period	Clearing Threshold	Prescribed Day
1 March 2023 to 31 May 2023	US\$20 billion	1 January 2024
1 September 2023 to 30 November 2023	US\$20 billion	1 July 2024
1 March 2024 to 31 May 2024	US\$20 billion	1 January 2025
1 September 2024 to 30 November 2024	US\$20 billion	1 July 2025
1 March 2025 to 31 May 2025	US\$20 billion	1 January 2026
1 September 2025 to 30 November 2025	US\$20 billion	1 July 2026
1 March 2026 to 31 May 2026	US\$20 billion	1 January 2027
1 September 2026 to 30 November 2026	US\$20 billion	1 July 2027

THE AMENDMENT RULES

7. The main object of the Amendment Rules is to introduce eight new Calculation Periods, and their respective Clearing Thresholds and Prescribed Days, to the existing Calculation Periods set out in Schedule 2 to the Clearing Rules. The proposed amendments aim to ensure that the Clearing Rules will continue to operate effectively going forward.

LEGISLATIVE TIMETABLE

8. The Amendment Rules will be published in the Gazette on 30 June 2022 and tabled before LegCo at its sitting on 6 July 2022. The Amendment Rules will come into operation on 1 March 2023.

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

10. The SFC and Hong Kong Monetary Authority (“HKMA”) jointly consulted the market on the proposed amendments to the Clearing Rules from December 2021 to January 2022, and issued a consultation conclusions paper in April 2022. The SFC and HKMA have taken into account the positive responses and comments received before finalising the Amendment Rules.

11. An information paper on the above proposal was circulated to members of the LegCo Panel on Financial Affairs on 22 April 2022. Members have not raised any objection to the proposal.

PUBLICITY

12. The SFC will issue a circular on 30 June 2022 on the making of the Amendment Rules upon its gazettal. A spokesperson will be available to answer media enquiries. The HKMA will inform authorized institutions in parallel.

ENQUIRIES

13. Enquiries relating to this brief can be directed to Mr Larry Chu, 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 Mr George Tam, Director of the Supervision of Markets Division of the SFC, at 2231 1223.

**Financial Services and the Treasury Bureau
Hong Kong Monetary Authority
Securities and Futures Commission
29 June 2022**

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022

Rule 1

1

Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) (Amendment) Rules 2022

(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 2023.

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 12—

Add

Rule 3

2

“13.	1 March 2023 to 31 May 2023	US\$20 billion	1 January 2024
14.	1 September 2023 to 30 November 2023	US\$20 billion	1 July 2024
15.	1 March 2024 to 31 May 2024	US\$20 billion	1 January 2025
16.	1 September 2024 to 30 November 2024	US\$20 billion	1 July 2025
17.	1 March 2025 to 31 May 2025	US\$20 billion	1 January 2026
18.	1 September 2025 to 30 November 2025	US\$20 billion	1 July 2026
19.	1 March 2026 to 31 May 2026	US\$20 billion	1 January 2027
20.	1 September 2026 to 30 November 2026	US\$20 billion	1 July 2027”.



Ashley Alder
Chief Executive Officer,
Securities and Futures Commission

20 June 2022

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 13 to 20.