

L.N. 28 of 2016

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

Contents

Rule	Page
Part 1	
Preliminary	
1.	CommencementB527
2.	Interpretation.....B527
3.	Designation as a financial services provider.....B531
4.	Transactions that are specified OTC derivative transactions for purposes of clearing obligation.....B533
5.	Transactions that are specified OTC derivative transactions for purposes of record keeping obligation.....B533
Part 2	
Clearing Obligation	
6.	When clearing obligation arisesB535
7.	Clearing obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong.....B541
8.	Clearing obligation does not apply to transactions with exempt affiliate.....B541

Rule	Page
9.	Clearing obligation does not apply to transactions recorded in exempt jurisdiction books.....B547
10.	Clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle.....B551
11.	Clearing obligation taken to have been complied with if transaction cleared under laws of designated jurisdiction.....B553

Part 3

Record Keeping Obligation

12.	Prescribed persons to keep records in relation to transactions.....B557
13.	Prescribed persons to keep records even if counterparty is, or transaction was entered into, outside Hong Kong.....B557
14.	Records to be kept by prescribed persons.....B557
15.	Manner in which records to be keptB559

Part 4

Designation as Central Counterparty

16.	Designation as central counterpartyB561
17.	Refusal to designateB565
18.	Revocation of designationB565
Schedule 1	Specified OTC Derivative Transactions for the Purposes of Clearing Obligation and Record Keeping ObligationB569

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

L.N. 28 of 2016
B525

Rule	Page
Schedule 2 Calculation Periods, Clearing Thresholds and Prescribed Days	B581

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

(Made by the Securities and Futures Commission under section 101N, 101P and 101Q of the Securities and Futures Ordinance (Cap. 571) with the consent of the Monetary Authority and after consultation with the Financial Secretary)

Part 1

Preliminary

1. Commencement

These Rules come into operation on 1 September 2016.

2. Interpretation

In these Rules—

deliverable FX forward (交收外匯遠期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange, on a single day in the future, an agreed amount of a currency for—

- (a) an agreed amount of another currency; or
- (b) an amount in another currency calculated by reference to an agreed exchange rate;

deliverable FX swap (交收外匯掉期) means an OTC derivative transaction under the terms and conditions of which the 2 counterparties to the transaction agree to exchange 2 currencies (***currency A*** and ***currency B***) in the following manner—

- (a) on a specified day, a counterparty (*counterparty 1*) will give to the other counterparty (*counterparty 2*) an agreed amount of currency A and will receive from counterparty 2—
 - (i) an agreed amount of currency B; or
 - (ii) an amount in currency B calculated by reference to an agreed exchange rate; and
- (b) on another specified day that is after the day referred to in paragraph (a), counterparty 1 will give to counterparty 2 an agreed amount of currency B and will receive from counterparty 2—
 - (i) an agreed amount of currency A; or
 - (ii) an amount in currency A calculated by reference to an agreed exchange rate;

designated CCP (指定中央對手方) has the meaning given by section 101A of the Ordinance;

financial services provider (金融服務提供者) means a person designated by the Commission in accordance with rule 3;

local AFI (本地認可財務機構) means an authorized financial institution that is incorporated in Hong Kong;

local AMB (本地核准貨幣經紀) means an approved money broker that is incorporated in Hong Kong;

local LC (本地持牌法團) means a licensed corporation that is incorporated in Hong Kong;

overseas AFI (海外認可財務機構) means an authorized financial institution that is incorporated outside Hong Kong;

overseas AMB (海外核准貨幣經紀) means an approved money broker that is incorporated outside Hong Kong;

overseas LC (海外持牌法團) means a licensed corporation that is incorporated outside Hong Kong;

outstanding trade (未完結交易), in relation to a person and at a particular time, means an OTC derivative transaction (except a deliverable FX forward and a deliverable FX swap)—

- (a) to which the person is a counterparty; and
- (b) that—
 - (i) has not matured; and
 - (ii) before the transaction matures, has not been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction;

specified OTC derivative transaction (指明場外衍生工具交易) has the meaning given by section 101A of the Ordinance;

total position (總持倉量), in relation to a person, means the aggregate of the notional amounts of every outstanding trade of the person.

3. Designation as a financial services provider

- (1) For the purposes of these Rules, the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any person (whether incorporated in Hong Kong or outside Hong Kong) as a financial services provider if the Commission is satisfied that it is likely that the person is actively engaged in activities relating to OTC derivative transactions or OTC derivative products outside Hong Kong.

- (2) For the purposes of subrule (1), the Commission may designate a person by name, or by reference to a class or description of persons to which the person belongs, or both.
- (3) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a person made under subrule (1).
- (4) In deciding whether to designate a person under subrule (1) or to revoke the designation of a person under subrule (3), the Commission may have regard to any information in its possession.
- (5) A notice published under subrule (1) or (3) is not subsidiary legislation.

4. Transactions that are specified OTC derivative transactions for purposes of clearing obligation

For the purposes of paragraph (b) of the definition of *specified OTC derivative transaction* in section 101A of the Ordinance, an OTC derivative transaction that is specified in section 2 of Schedule 1 is specified for the purposes of the clearing obligation.

5. Transactions that are specified OTC derivative transactions for purposes of record keeping obligation

For the purposes of paragraph (d) of the definition of *specified OTC derivative transaction* in section 101A of the Ordinance, an OTC derivative transaction that is specified in section 2 of Schedule 1 is specified for the purposes of the record keeping obligation.

Part 2

Clearing Obligation

6. When clearing obligation arises

- (1) Subject to rules 8(1), 9(1) and 10(1), a prescribed person must clear a specified OTC derivative transaction with a designated CCP (whether directly or through a third party) within 1 business day after the transaction is entered into if—
 - (a) the person is a counterparty to the transaction and—
 - (i) the transaction is entered into on or after—
 - (A) the prescribed day for the first calculation period in respect of which the person reached the clearing threshold; or
 - (B) if the person gave an exit notice, the prescribed day for the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice; and
 - (ii) if the person is an overseas AFI or an overseas AMB, the transaction is recorded in the form of an entry in the Hong Kong books of the person; and
 - (b) the other counterparty to the transaction—
 - (i) is also a prescribed person and the requirements referred to in paragraph (a)(i) are met in relation to the counterparty; or
 - (ii) is a financial services provider.

- (2) For the purposes of subrule (1), a prescribed person is regarded as having reached the clearing threshold at all times after—
 - (a) subject to paragraph (b), the first calculation period in respect of which the person reached the clearing threshold, even if the person has not reached the clearing threshold for a subsequent calculation period; or
 - (b) if the person gave an exit notice, the first calculation period in respect of which the person reached the clearing threshold after giving the exit notice, even if the person has not reached the clearing threshold for a subsequent calculation period.
- (3) An exit notice may be given by a prescribed person if—
 - (a) the person is a local AFI, a local AMB or a local LC and the total position of the person on the last day of each month in a period of 12 consecutive months is less than US\$14 billion; or
 - (b) the person is an overseas AFI, an overseas AMB or an overseas LC and the local total position of the person on the last day of each month in a period of 12 consecutive months is less than US\$14 billion.
- (4) An exit notice given under subrule (3) must—
 - (a) be in writing;
 - (b) be given to—
 - (i) the Monetary Authority, if the person is an authorized financial institution or an approved money broker; or
 - (ii) the Commission, if the person is a licensed corporation; and
 - (c) specify—

- (i) the period of 12 consecutive months (*period*) during which the total position or the local total position (as applicable) of the person on the last day of each month was less than US\$14 billion;
 - (ii) the total position or the local total position (as applicable) of the person on the last day of each month within the period; and
 - (iii) that the total position or the local total position (as applicable) of the person has not equalled or exceeded US\$14 billion between the last day of the last month included in the period and the day on which the exit notice is given.
- (5) For the purposes of this rule, a prescribed person reached the clearing threshold if—
- (a) where the person is a local AFI, a local AMB or a local LC, the average total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period; or
 - (b) where the person is an overseas AFI, an overseas AMB or an overseas LC, the average local total position of the person for a calculation period equals or exceeds the clearing threshold specified in column 3 of Schedule 2 for the calculation period.

- (6) In this rule—

average local total position (平均本地總持倉量), in relation to a prescribed person that is an overseas AFI, an overseas AMB or an overseas LC for a calculation period, means the amount which is equal to the sum of the person's local total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

average total position (平均總持倉量), in relation to a person for a calculation period, means the amount which is equal to the sum of the person's total positions on the last day of each month within the calculation period, divided by the number of months in the calculation period;

calculation period (計算期間) means a period specified in column 2 of Schedule 2;

exit notice (退出通知) means a notice given under subrule (3);

local total position (本地總持倉量), in relation to a person, means the total position of the person excluding every outstanding trade of the person that is recorded in the form of an entry in the overseas books of the person;

prescribed day (訂明日期), in relation to a calculation period, means the day specified in column 4 of Schedule 2.

7. Clearing obligation applies even if counterparty is, or transaction was entered into, outside Hong Kong

For the purposes of this Part, a prescribed person must clear a specified OTC derivative transaction with a designated CCP even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into wholly or partially outside Hong Kong.

8. Clearing obligation does not apply to transactions with exempt affiliate

- (1) Rule 6(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if, on the day on which the transaction is entered into—

- (a) the other counterparty to the transaction is an affiliate of the person;
 - (b) the affiliate is an exempt affiliate, within the meaning of subrule (3); and
 - (c) the requirements referred to in subrule (2) are met.
- (2) The requirements are that—
- (a) the person and the exempt affiliate are accounted for on a full basis in the consolidated financial statements of the holding company of the group of companies to which they belong, for the purposes of and in compliance with—
 - (i) the Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants;
 - (ii) the International Financial Reporting Standards issued by the International Accounting Standards Board; or
 - (iii) the standards of accounting practices applicable to the holding company in the place in which it is incorporated; and
 - (b) the risk evaluation, measurement and control procedures applicable to the person and the exempt affiliate are centrally overseen and managed within the group of companies to which they belong.
- (3) For the purposes of subrule (1)(b), an affiliate of a prescribed person is an exempt affiliate on and after the effective day specified in an exemption notice until the day before the effective day specified in a cessation notice (if any).
- (4) An exemption notice or a cessation notice given by a prescribed person must—

- (a) be in writing;
- (b) be given to the Commission or the Monetary Authority;
- (c) specify the affiliate (or if more than one, each affiliate) of the person that is to be regarded as, or is to cease to be regarded as, an exempt affiliate for the purposes of this rule; and
- (d) specify the effective day, being a day that is not earlier than the day on which the notice is received by the Commission or the Monetary Authority.

(5) In this rule—

affiliate (聯屬公司), in relation to a prescribed person, means a corporation that is in the same group of companies as the person, except a corporation that is a collective investment scheme;

cessation notice (停止通知), in relation to an exemption notice given by a prescribed person in respect of an affiliate specified in the exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the affiliate is to cease to be regarded as an exempt affiliate for the purposes of this rule;

effective day (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

exemption notice (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of an affiliate of the person to the effect that the affiliate is to be regarded as an exempt affiliate for the purposes of this rule.

9. Clearing obligation does not apply to transactions recorded in exempt jurisdiction books

- (1) Rule 6(1) does not apply to a prescribed person that is a licensed corporation, a local AFI or a local AMB in relation to a specified OTC derivative transaction to which the person is a counterparty if—
 - (a) on the day on which the transaction is entered into, the jurisdiction is an exempt jurisdiction in relation to the person, within the meaning of subrule (3);
 - (b) the transaction is recorded in the form of an entry in the exempt jurisdiction books of the person; and
 - (c) at the end of the day on which the transaction is entered into, taking into account every outstanding trade of the person (including the transaction), the requirements referred to in subrule (2) are met.
- (2) The requirements are that—
 - (a) the jurisdiction position of the person for each jurisdiction that is an exempt jurisdiction in relation to the person does not exceed 5% of the total position of the person; and
 - (b) the aggregate of the person's jurisdiction positions for all jurisdictions that are exempt jurisdictions in relation to the person does not exceed 10% of the total position of the person.
- (3) Subject to subrule (5), for the purposes of subrule (1)(a), a jurisdiction outside Hong Kong is an exempt jurisdiction in relation to a prescribed person on and after the effective day specified in an exemption notice in respect of the jurisdiction until the day before the effective day specified in a cessation notice (if any) in respect of the jurisdiction.

- (4) An exemption notice or a cessation notice given by a prescribed person must—
 - (a) be in writing;
 - (b) be given to the Monetary Authority, if the person is a local AFI or a local AMB;
 - (c) be given to the Commission, if the person is a licensed corporation;
 - (d) specify the jurisdiction (or if more than one jurisdiction, each jurisdiction) that is to be regarded as, or is to cease to be regarded as, an exempt jurisdiction in relation to the person for the purposes of this rule; and
 - (e) specify the effective day, being a day that is not earlier than the day on which the notice is received by the Monetary Authority or the Commission.
- (5) A prescribed person that has given an exemption notice and a cessation notice in respect of a jurisdiction is permitted to give only 1 more exemption notice in respect of the jurisdiction.

- (6) In this rule—

cessation notice (停止通知), in relation to an exemption notice given by a prescribed person in respect of a jurisdiction specified in the exemption notice, means a notice given by the person in accordance with subrule (4) to the effect that the jurisdiction is to cease to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

effective day (生效日期), in relation to an exemption notice or a cessation notice, means the day on which the notice is to take effect as specified in the notice;

exemption notice (豁免通知) means a notice given by a prescribed person in accordance with subrule (4) in respect of a jurisdiction to the effect that the jurisdiction is to be regarded as an exempt jurisdiction in relation to the person for the purposes of this rule;

jurisdiction position (司法管轄區持倉量), in relation to a prescribed person and an exempt jurisdiction, means the aggregate of the notional amounts of every outstanding trade of the person that is recorded in the form of an entry in the exempt jurisdiction books of the person.

10. Clearing obligation does not apply to transactions resulting from multilateral portfolio compression cycle

- (1) Rule 6(1) does not apply to a prescribed person in relation to a specified OTC derivative transaction to which the person is a counterparty if—
 - (a) the transaction is entered into by the person—
 - (i) as a result of a multilateral portfolio compression cycle that meets the requirements referred to in subrule (2); and
 - (ii) with a participant in the multilateral portfolio compression cycle that was a counterparty to one or more of the compressed transactions; and
 - (b) rule 6(1) did not apply to the person in relation to any of the compressed transactions, under the multilateral portfolio compression cycle.
- (2) The requirements are that the multilateral portfolio compression cycle—
 - (a) was conducted in accordance with the rules of an operator of multilateral portfolio compression cycles;

- (b) involved more than 2 participants, none of which was the operator of the cycle; and
- (c) was conducted in compliance with the counterparty credit risk tolerance levels set by the participants in the cycle.

(3) In this rule—

compressed transaction (壓縮交易), in relation to a multilateral portfolio compression cycle, means an OTC derivative transaction that was modified, or terminated and replaced, under the cycle;

multilateral portfolio compression cycle (多邊投資組合壓縮周期) means a process applied to portfolios of OTC derivative transactions between participants in the process—

- (a) under which some or all of the transactions are—
 - (i) modified to reduce their notional value; or
 - (ii) terminated and replaced with one or more new OTC derivative transactions which have the effect of reducing exposures between or among the participants; and
- (b) that is conducted for the purposes of reducing operational risk or counterparty credit risk for the participants.

11. Clearing obligation taken to have been complied with if transaction cleared under laws of designated jurisdiction

- (1) A prescribed person is taken to have complied with rule 6(1) in relation to a specified OTC derivative transaction to which the person is a counterparty if—

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

Part 2
Rule 11

L.N. 28 of 2016
B555

- (a) under the laws of a jurisdiction that is designated by the Commission in accordance with subrule (2) (*designated jurisdiction*), the transaction is required to be cleared with a central counterparty;
 - (b) the transaction has been cleared with a central counterparty in accordance with the laws of the designated jurisdiction; and
 - (c) the central counterparty referred to in paragraph (b) is a designated CCP.
 - (2) For the purposes of subrule (1), the Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, designate any jurisdiction outside Hong Kong if the Commission is satisfied that the laws of the jurisdiction—
 - (a) provide for requirements that are similar to, or serve similar purposes as, the clearing obligation; and
 - (b) are appropriately administered and enforced in the jurisdiction.
 - (3) The Commission may, with the consent of the Monetary Authority and by notice published in the Gazette, revoke the designation of a jurisdiction made under subrule (2).
 - (4) A notice published under subrule (2) or (3) is not subsidiary legislation.
-

Part 3

Record Keeping Obligation

12. Prescribed persons to keep records in relation to transactions

A prescribed person must, in relation to a specified OTC derivative transaction to which it is a counterparty, keep the records specified in rule 14 in the manner specified in rule 15 until no earlier than 5 years after the transaction has—

- (a) matured; or
- (b) before the transaction matures, been terminated in accordance with the terms and conditions of the transaction or by agreement between the counterparties to the transaction.

13. Prescribed persons to keep records even if counterparty is, or transaction was entered into, outside Hong Kong

Rule 12 applies to a specified OTC derivative transaction even if—

- (a) a counterparty, or more than one counterparty, to the transaction is a person outside Hong Kong; or
- (b) the transaction was entered into wholly or partially outside Hong Kong.

14. Records to be kept by prescribed persons

The records that a prescribed person must keep in relation to a specified OTC derivative transaction are records sufficient to demonstrate that—

- (a) rule 6(1) applied to the person in relation to the transaction and—

- (i) the person complied with rule 6(1); or
- (ii) the person was taken to have complied with rule 6(1) because rule 11(1) applied to the person in relation to the transaction; or
- (b) rule 6(1) did not apply to the person in relation to the transaction because—
 - (i) rule 6(1)(a)(i) was not satisfied;
 - (ii) rule 6(1)(b) was not satisfied;
 - (iii) rule 6(3) applied to the person and the person gave a notice under rule 6(3);
 - (iv) rule 8(1) applied to the person in relation to the transaction;
 - (v) rule 9(1) applied to the person in relation to the transaction; or
 - (vi) rule 10(1) applied to the person in relation to the transaction.

15. Manner in which records to be kept

A prescribed person must, in relation to a specified OTC derivative transaction, keep the records specified in rule 14 in a manner that enables the records to be readily accessible.

Part 4

Designation as Central Counterparty

16. Designation as central counterparty

- (1) The Commission may, if it is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest—
 - (a) designate a person under section 101J(1) of the Ordinance as a central counterparty for the purposes of Part IIIA of the Ordinance; and
 - (b) do the following with regard to a designation—
 - (i) impose conditions;
 - (ii) amend or revoke a condition;
 - (iii) impose additional conditions.
- (2) An application under section 101J(1) of the Ordinance for designation must—
 - (a) be in writing;
 - (b) specify the class or description of OTC derivative transactions in respect of which the applicant seeks to be designated;
 - (c) if the applicant is a person outside Hong Kong—
 - (i) specify each authority or regulatory organization outside Hong Kong that is responsible for regulation of the applicant in its capacity as a central counterparty (*overseas regulators*); and

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

Part 4
Rule 16

L.N. 28 of 2016
B563

- (ii) be accompanied by information that is sufficient to demonstrate that the applicant meets legal or regulatory requirements enforced or administered by the overseas regulators, and that those requirements meet generally recognized international principles and standards applicable to central counterparties; and
 - (d) contain or be accompanied by any other information that the Commission may reasonably require.
- (3) The Commission may, in considering an application for designation—
 - (a) by a written notice served on the applicant, request the applicant to submit any additional information that the Commission reasonably considers may be relevant to the Commission's consideration of the application; and
 - (b) have regard to any information in the possession of the Commission, whether provided by the applicant or not.
- (4) A notice of designation given by the Commission to a person under section 101J(1)(a) of the Ordinance must specify—
 - (a) the class or description of OTC derivative transactions in respect of which the person is designated;
 - (b) the conditions (if any) imposed with regard to the designation; and
 - (c) the time at which the designation is to take effect.

- (5) The Commission may, in considering whether to exercise any of the powers referred to in subrule (1)(b) with regard to a designation, have regard to any information in the possession of the Commission, whether provided by the designated person or not.

17. Refusal to designate

If the Commission, under section 101J(1)(b) of the Ordinance, refuses to designate a person as a central counterparty for the purposes of Part IIIA of the Ordinance, the Commission must, by a written notice served on the person, inform the person of the refusal and the reasons for the refusal.

18. Revocation of designation

- (1) The Commission may revoke a designation of a person under section 101J(5)(d) of the Ordinance—
- (a) if the Commission is satisfied that it is appropriate to do so in the interests of the investing public or in the public interest; or
 - (b) at the request, in writing, of the person.
- (2) If the Commission revokes a designation of a person under section 101J(5)(d) of the Ordinance—
- (a) it must include in the notice the reasons for the revocation, except where the revocation is at the request of the person; and
 - (b) it may include in the notice any directions to the person that it considers appropriate for the purpose of—
 - (i) ceasing the designation of the person; or
 - (ii) protecting the interests of the investing public or the public interest.

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

Part 4
Rule 18

L.N. 28 of 2016
B567

- (3) The Commission may, in considering whether to revoke a designation of a person under section 101J(5)(d) of the Ordinance, have regard to any information in the possession of the Commission, whether provided by the person or not.
-

Schedule 1

[rr. 4 & 5]

Specified OTC Derivative Transactions for the Purposes of Clearing Obligation and Record Keeping Obligation

1. Interpretation

In this Schedule—

basis swap (基準掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties are to be calculated by reference to a floating interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to another floating interest rate applied to the same notional amount;

features (特點), in relation to an interest rate swap, and as applicable depending on whether the swap is a basis swap (see Table 1), a fixed-to-floating swap (except an overnight index swap) (see Table 2) or an overnight index swap (see Table 3), means the following—

- (a) the currency in which the notional amount and payments are denominated as specified under column 2 with the heading of “Currency” in Table 1, 2 or 3;
- (b) the floating rate index on which the floating interest rate (or rates) for the swap is based as specified under column 3 with the heading of “Floating rate index” in Table 1, 2 or 3;

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

Schedule 1
Section 1

L.N. 28 of 2016
B571

- (c) the tenor of the swap is within the range as specified under column 4 with the heading of “Tenor” in Table 1, 2 or 3;
- (d) whether or not the swap has optionality as specified under column 5 with the heading of “Optionality” in Table 1, 2 or 3;
- (e) whether or not the notional amount of the swap is constant during the tenor of the transaction as specified under column 6 with the heading of “Constant notional” in Table 1, 2 or 3;

fixed-to-floating swap (固定對浮動掉期) means an interest rate swap under the terms and conditions of which—

- (a) the payments to be made by one of the 2 counterparties are to be calculated by reference to a fixed interest rate applied to a notional amount; and
- (b) the payments to be made by the other counterparty are to be calculated by reference to a floating interest rate applied to the same notional amount;

interest rate swap (掉期息率) means an OTC derivative transaction under the terms and conditions of which—

- (a) the 2 counterparties to the transaction agree to exchange interest rate cash flows (***payments***) at specified intervals while the transaction is still outstanding; and
- (b) the payments are to be calculated by reference to—
 - (i) a notional amount that is denominated in a single currency; and
 - (ii) agreed fixed interest rates or agreed floating interest rates;

optionality (授予選擇權), in relation to an interest rate swap, means a counterparty to the swap is granted an option which, if exercised, would or might affect the amount, timing or form of the payments that would otherwise be made under the swap;

overnight index swap (隔夜指數掉期) means a fixed-to-floating swap where the floating interest rate referred to in paragraph (b) of the definition of ***fixed-to-floating swap*** in this section is based on an overnight interest rate index.

2. Specified OTC derivative transactions

The following OTC derivative transactions are specified for the purposes of rules 4 and 5—

- (a) a basis swap that has all of the features specified for an item in a row of Table 1;
- (b) a fixed-to-floating swap (except an overnight index swap) that has all of the features specified for an item in a row of Table 2;
- (c) an overnight index swap that has all of the features specified for an item in a row of Table 3.

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

Schedule 1

L.N. 28 of 2016

B575

Table 1

Basis Swaps

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	LIBOR	28 days to 10 years	No	Yes
2.	EUR	EURIBOR	28 days to 10 years	No	Yes
3.	GBP	LIBOR	28 days to 10 years	No	Yes
4.	JPY	LIBOR	28 days to 10 years	No	Yes
5.	HKD	HIBOR	28 days to 10 years	No	Yes

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

Schedule 1

L.N. 28 of 2016

B577

Table 2

Fixed-to-Floating Swaps (except Overnight Index Swaps)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	LIBOR	28 days to 10 years	No	Yes
2.	EUR	EURIBOR	28 days to 10 years	No	Yes
3.	GBP	LIBOR	28 days to 10 years	No	Yes
4.	JPY	LIBOR	28 days to 10 years	No	Yes
5.	HKD	HIBOR	28 days to 10 years	No	Yes

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

Schedule 1

L.N. 28 of 2016
B579

Table 3

Overnight Index Swaps

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Currency	Floating rate index	Tenor	Optionality	Constant notional
1.	USD	Fed Funds	7 days to 2 years	No	Yes
2.	EUR	EONIA	7 days to 2 years	No	Yes
3.	GBP	SONIA	7 days to 2 years	No	Yes

Schedule 2

[r. 6]

Calculation Periods, Clearing Thresholds and Prescribed Days

Column 1 Item	Column 2 Calculation period	Column 3 Clearing threshold	Column 4 Prescribed day
1.	1 September 2016 to 30 November 2016	US\$20 billion	1 July 2017
2.	1 March 2017 to 31 May 2017	US\$20 billion	1 January 2018
3.	1 September 2017 to 30 November 2017	US\$20 billion	1 July 2018
4.	1 March 2018 to 31 May 2018	US\$20 billion	1 January 2019

Ashley ALDER
Chief Executive Officer,
Securities and Futures Commission

2 February 2016

Explanatory Note

The main object of these Rules is, for the purposes of the clearing obligation (the obligation to clear specified OTC derivative transactions with a designated central counterparty) imposed on prescribed persons (licensed corporations (**LC**), authorized financial institutions (**AFI**) and approved money brokers (**AMB**)) by section 101C of the Securities and Futures Ordinance (Cap. 571) (**Ordinance**) and the record keeping obligation (to keep records relating to specified OTC derivative transactions) imposed on prescribed persons by section 101E of the Ordinance, to specify—

- (a) the transactions that are subject to the obligations;
 - (b) the circumstances relating to the transactions in which the obligations apply to prescribed persons;
 - (c) the circumstances in which the Securities and Futures Commission (**SFC**) may designate persons as central counterparties under section 101J(1) of the Ordinance and procedural matters relating to the designations.
2. Rule 2 sets out the definitions to be used in the Rules.
 3. Rule 3 sets out when a counterparty to a specified OTC derivative transaction may be designated as a financial services provider.
 4. Rules 4 and 5 specify the OTC derivative transactions that are subject to the clearing and record keeping obligations.

Rules relating to clearing obligation

5. Part 2 sets out the circumstances in which the clearing obligation arises, does not apply or is taken to have been complied with.
6. Rule 6 requires a prescribed person to clear a specified OTC derivative transaction to which it is a counterparty if it has reached the clearing threshold (and in the case of an AFI or AMB incorporated outside Hong Kong, if it records the transaction in its Hong Kong books) and the other counterparty meets equivalent requirements (if it is a prescribed person) or is a financial services provider.
7. Rule 7 applies the clearing obligation to the specified OTC derivative transactions even if a counterparty to the transaction is outside Hong Kong or the transactions were entered into outside Hong Kong.
8. Rule 8 provides that the clearing obligation does not apply to specified OTC derivative transactions between a prescribed person and an affiliate of the person, if the requirements set out in the rule relating to exempt status for the affiliate are satisfied.
9. Rule 9 provides that the clearing obligation does not apply to specified OTC derivative transactions that an LC, or a Hong Kong incorporated AFI or AMB, records in its exempt jurisdiction books, if the requirements set out in the rule relating to exempt status for the jurisdiction are satisfied.

10. Rule 10 provides that the clearing obligation does not apply to specified OTC derivative transactions that are entered into by a prescribed person as a result of a multilateral portfolio compression cycle, if the requirements set out in the rule relating to the cycle are satisfied.
11. Rule 11 provides that the clearing obligation is taken to have been complied with by a prescribed person if a specified OTC derivative transaction has been cleared with a designated central counterparty in accordance with the laws of a jurisdiction designated by the SFC.

Rules relating to record keeping obligation

12. Part 3 sets out the rules relating to the record keeping obligation.
13. Rule 12 requires a prescribed person to keep records of a specified OTC derivative transaction until no earlier than 5 years after the transaction has matured or been terminated.
14. Rule 13 applies the record keeping obligation to specified OTC derivative transactions even if a counterparty to the transaction is outside Hong Kong or the transactions were entered into outside Hong Kong.
15. Rule 14 sets out the records that a prescribed person must keep.
16. Rule 15 sets out the manner in which a prescribed person must keep the records.

Rules relating to designation as central counterparty

17. Part 4 sets out matters relating to the designation by the SFC of persons as central counterparties under section 101J(1) of the Ordinance.
18. Rule 16 sets out the circumstances in which the SFC may designate persons as central counterparties, requirements relating to applications for designation, and procedural requirements relating to the designations.
19. Rule 17 sets out the procedural requirements to be followed by the SFC if it refuses to designate a person as a central counterparty.
20. Rule 18 sets out the circumstances in which the SFC may revoke the designation of a central counterparty and procedural requirements relating to the revocations.

Transactions that are specified OTC derivative transactions

21. Schedule 1 specifies the OTC derivative transactions that are specified under rules 4 and 5 for the purposes of the clearing and record keeping obligations. Interest rate swap transactions which have the features set out in tables 1, 2 or 3 are so specified.

Clearing thresholds

22. Schedule 2 specifies the clearing thresholds that a prescribed person must exceed, for the purposes of the clearing obligation set out in rule 6.