

L.N. 30 of 2016

**Securities and Futures (OTC Derivative Transactions—
Reporting and Record Keeping Obligations)
(Amendment) Rules 2016**

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Securities and Futures (OTC Derivative Transactions— Reporting and Record Keeping Obligations) (Amendment) Rules 2016

(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 1 July 2017.

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 (L.N. 96 of 2015) are amended as set out in rules 3 to 24.

3. Rule 2 amended (interpretation)

(1) Rule 2—

Repeal the definition of *starting day*

Substitute

“*starting day* (開始日期), in relation to a prescribed person, means the later of—

- (a) the specification day;
- (b) the day on which the person becomes a prescribed person; and
- (c) if applicable, the day on which the person ceases to be regarded as an exempt person;”.

- (2) Rule 2, definition of *transaction information*—

Repeal

everything after “in relation to a specified OTC derivative transaction,”

Substitute

“has the meaning given by rule 2A;”.

- (3) Rule 2, Chinese text, definition of 聯屬公司—

Repeal the full stop

Substitute a semicolon.

- (4) Rule 2—

- (a) definition of *product class*;
- (b) definition of *product class specification day*;
- (c) definition of *product type*;
- (d) definition of *product type specification day*;
- (e) definition of *regulated prescribed person*—

Repeal the definitions.

- (5) Rule 2—

Add in alphabetical order

“*excluded currency contract* (豁除貨幣合約) means an OTC derivative product that is a forward contract for the sale or purchase of a currency which—

- (a) is entered into for the purpose of settling a sale or purchase of securities denominated in that currency; and
- (b) is intended to be settled by the actual delivery of that currency, by the earlier of the following days—

- (i) the last day of the customary settlement period for the securities referred to in paragraph (a);
- (ii) the seventh business day after the day on which the forward contract is executed;

grace period (寬限期), in relation to a prescribed person, means the period of 3 months beginning on the starting day;

previous Rules (先前的規則) means the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules as in force immediately before the specification day;

specification day (指明日期) means 1 July 2017;

valuation transaction information (交易估值資料), in relation to a specified OTC derivative transaction, means the information and particulars which are within the category of information and particulars specified in item 11 of Schedule 1, and which satisfy the requirement referred to in paragraph (b)(ii) of the definition of **transaction information** in rule 2A(1).”.

4. Rule 2A added

After rule 2—

Add

“2A. Meaning of *transaction information*

(1) In these Rules—

transaction information (交易資料), in relation to a specified OTC derivative transaction, means the information and particulars relating to the

transaction (including information and particulars relating to a subsequent event and valuation transaction information), and to the persons involved in the transaction, which—

- (a) must be submitted to the Monetary Authority for complying with the reporting obligation; and
- (b) are—
 - (i) within a category of information and particulars specified in column 2 of Schedule 1; and
 - (ii) required for completing a data field that is specified by the Monetary Authority in accordance with subrule (2) in relation to the class or description of specified OTC derivative transactions to which the transaction belongs.
- (2) For the purposes of paragraph (b)(ii) of the definition of *transaction information* in subrule (1), the Monetary Authority may, after consultation with the Commission and by notice published in the Gazette, specify in relation to a class or description of specified OTC derivative transactions, the data fields that must be completed by a prescribed person in relation to a specified OTC derivative transaction for complying with the reporting obligation.
- (3) A notice published under subrule (2) is not subsidiary legislation.”.

5. Rule 3 amended (when prescribed person to be regarded as exempt person)

- (1) Rule 3(1)—

Repeal

“in relation to a specified OTC derivative transaction within a product class”.

- (2) Rule 3(2)—

Repeal

“after the product class”

Substitute

“after the”.

- (3) Rule 3(2)(a)—

Repeal

everything after “outstanding” and before “to which the prescribed person”

Substitute

“specified OTC derivative transactions”.

- (4) Rule 3(2)(b) and (c)—

Repeal

“a specified OTC derivative transaction within the product class”

Substitute

“any specified OTC derivative transaction”.

- (5) Rule 3—

Repeal subrule (4)

Substitute

“(4) Despite subrule (1), the prescribed persons referred to in subrule (4A) are not eligible to be regarded as exempt persons for the purposes of rule 10(1)(a), 11(1)(a), 12(1)(a) or 13(1)(a) (as applicable).”.

- (6) After rule 3(4)—

Add

“(4A) The prescribed persons are persons that, under the previous Rules—

- (a) reported a specified OTC derivative transaction to the Monetary Authority;
- (b) under rule 17(1) or 18(1), were taken to have reported a specified OTC derivative transaction to the Monetary Authority; or
- (c) were required to report a specified OTC derivative transaction to the Monetary Authority but had not reported the transaction to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(7) Rule 3(5)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) is not eligible to again be regarded as an exempt person; and
- (b) ceases to be regarded as an exempt person on the day on which the person ceases to satisfy the requirement.”.

6. Rule 7 amended (transactions that are specified OTC derivative transactions for purposes of reporting obligation)

Rule 7—

Repeal

“in a product type”

Substitute

“(except a transaction in an excluded currency contract)”.

7. Rule 8 amended (transactions that are specified OTC derivative transactions for purposes of record keeping obligation)

Rule 8—

Repeal

“in a product type”

Substitute

“(except a transaction in an excluded currency contract)”.

8. Rule 10 amended (reporting by licensed corporations)

(1) After rule 10(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or

(b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(2) Rule 10(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

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

(1) After rule 11(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

(a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or

(b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(2) Rule 11(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

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

(1) After rule 12(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) or (c) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

- (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
 - (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.
- (2) Rule 12(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

11. Rule 13 amended (reporting by approved money brokers)

- (1) After rule 13(2)—

Add

“(2A) The transaction referred to in subrule (1)(b) includes a transaction that is still outstanding on the specification day and which, under the previous Rules—

- (a) was reported to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong; or
- (b) the person was required to report to the Monetary Authority but the person had not reported to the Monetary Authority before the specification day (whether because the time for reporting was not reached before the specification day, or otherwise).”.

(2) Rule 13(3)—

Repeal

“in relation to the specified OTC derivative transaction”.

12. Rule 16 heading amended (reporting obligation applies even if counterparty, or transaction entered into, outside Hong Kong)

Rule 16, heading—

Repeal

everything after “counterparty”

Substitute

“is, or transaction was entered into, outside Hong Kong”.

13. Rule 19 repealed (interpretation of Division 3)

Rule 19—

Repeal the rule.

14. Rule 22 repealed (reporting outstanding transactions and transactions entered into during concession period)

Rule 22—

Repeal the rule.

15. Rule 23 amended (reporting outstanding transactions where no concession period)

(1) Rule 23, heading—

Repeal

“where no concession period”.

(2) Rule 23(1)—

Repeal

“Subject to subrule (5), a prescribed person referred to in subrule (2) and”

Substitute

“Subject to subrule (5) and rule 25B, a prescribed person”.

(3) Rule 23—

Repeal subrule (2).

16. Rule 24 amended (reporting transactions entered into after concession period, or where no concession period)

(1) Rule 24, heading—

Repeal

everything after “**entered into**”

Substitute

“**on or after starting day**”.

(2) Rule 24(1)—

Repeal

“referred to in subrule (2) and”.

(3) Rule 24—

Repeal subrule (2).

(4) Rule 24(3)—

Repeal

everything after “specified OTC derivative transaction”

Substitute

“that is entered into on or after the starting day.”.

17. Rule 25 amended (reporting subsequent events)

(1) Rule 25(1)—

Repeal

everything after “subrules (2) and (3)” and before “must submit the transaction information”

Substitute

“and rule 25B, a prescribed person referred to in subrule (1A)”.

- (2) After rule 25(1)—

Add

“(1A) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—

- (a) has submitted the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for the transaction to the Monetary Authority despite rule 23(5)); or
- (b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.”.

- (3) Rule 25(2)—

Repeal

“22(4) or”.

18. Rules 25A and 25B added

After rule 25—

Add

“25A. Submitting valuation transaction information

- (1) Subject to rule 25B, a prescribed person referred to in subrule (2) must submit the valuation transaction information for a specified OTC derivative transaction to the Monetary Authority for every day on which the transaction is still outstanding, within 2 business days after the day to which the valuation transaction information relates.
- (2) Subrule (1) applies to a prescribed person that, in relation to a specified OTC derivative transaction—
 - (a) has submitted the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24 (including a prescribed person that has submitted the transaction information for the transaction to the Monetary Authority despite rule 23(5)); or
 - (b) was required to submit the transaction information for the transaction to the Monetary Authority in accordance with rule 23 or 24, but failed to do so.

25B. Modified requirements for transactions reported to Monetary Authority under previous Rules

- (1) Rules 23, 25 and 25A apply to a prescribed person in relation to a specified OTC derivative transaction referred to in subrule (2) subject to the modifications specified in subrule (3), (5) or (7) (as applicable).
- (2) The specified OTC derivative transaction is a transaction—
 - (a) that is still outstanding on the specification day; and

-
- (b) for which previous transaction information was, before the specification day and under the previous Rules, submitted to the Monetary Authority by the prescribed person or by the affiliate of the person on whose behalf the person conducted the transaction in Hong Kong.
- (3) If, on the specification day, the transaction has a maturity day that is before 1 July 2018, subject to subrule (7)—
- (a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit the previous transaction information to the Monetary Authority on the specification day;
 - (b) rule 25(1)—
 - (i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day; and
 - (ii) applies until the maturity day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;

-
- (c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day.
- (4) For the purposes of subrule (3)(a), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.
- (5) If, on the specification day, the transaction has a maturity day that is on or after 1 July 2018—
- (a) rule 23(1) applies to the prescribed person in relation to the transaction as if it required the person to submit to the Monetary Authority—
- (i) on the specification day, the previous transaction information; and
- (ii) by no later than the last day of the grace period, the additional transaction information as at a day (*reporting day*) which is not earlier than 2 business days before the day on which the additional transaction information is submitted, reflecting the net effect of all subsequent events that have occurred since the transaction was entered into;
- (b) rule 25(1)—
- (i) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the

- transaction to the Monetary Authority on the specification day; and
- (ii) applies until the reporting day to the prescribed person in relation to a subsequent event that occurs on or after the specification day as if the transaction information required to be submitted to the Monetary Authority for the subsequent event is the previous transaction information;
 - (c) rule 25A(1) is to be construed in relation to the prescribed person as if it applied to a prescribed person that has submitted the previous transaction information for the transaction to the Monetary Authority on the specification day.
- (6) For the purposes of subrule (5)(a)(i), (b)(i) and (c), the prescribed person is taken to have submitted the previous transaction information referred to in subrule (2)(b) to the Monetary Authority on the specification day.
- (7) If, in relation to a transaction referred to in subrule (3), on or after the specification day and before 1 July 2018, a subsequent event occurs that has the effect of extending the maturity day of the transaction to a day that is on or after 1 July 2018 (*extending event*), then—
- (a) on and from the day on which the extending event occurs, subrule (3) ceases to apply to the prescribed person in relation to the transaction and, subject to paragraph (b), subrule (5) applies to the person in relation to the transaction; and

- (b) if the extending event occurs on or after the last day of the grace period, subrule (5)(a)(ii) is to be construed as if the reference to the last day of the grace period is a reference to a day that is no later than 2 business days after the day on which the extending event occurs.

(8) In this rule—

additional transaction information (額外的交易資料) means transaction information that is not previous transaction information;

previous transaction information (先前的交易資料) means information and particulars that constituted the transaction information within the meaning of the previous Rules.”.

19. Rule 26 amended (submitting counterparty identifying particulars in certain circumstances)

(1) Rule 26(1)—

Repeal

“22,”.

(2) Rule 26(1)—

Repeal

“22(5) or”.

(3) Rule 26(1)(b)(i)—

Repeal

everything after “entered into before”

Substitute

“10 January 2016;”.

(4) Rule 26(6)—

Repeal the definition of *counterparty identifying particulars*

Substitute

“*counterparty identifying particulars* (識別對手方身分的詳情) means the following transaction information—

- (a) the name of a counterparty to a specified OTC derivative transaction;
- (b) any identifying reference of, or assigned to, a counterparty to a specified OTC derivative transaction, and the type of the identifying reference;”.

20. Rule 28 heading amended (prescribed persons to keep records even if counterparty, or transaction entered into, or conducted, outside Hong Kong)

Rule 28, heading—

Repeal

everything after “**counterparty**”

Substitute

“**is, or transaction was entered into or conducted, outside Hong Kong**”.

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

(1) Rule 29(1)(c)—

Repeal

“**exempt person in relation to the transaction**”

Substitute

“**exempt person**”.

(2) Rule 29(1)(e)—

Repeal

“22(5) or”.

(3) Rule 29—

Repeal subrule (2).

22. Rule 32 amended (reporting and record keeping obligations applicable to authorized financial institutions incorporated in Hong Kong in respect of specified subsidiaries)

Rule 32(5)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) a reference to a prescribed person, or to a prescribed person that is an authorized financial institution incorporated in Hong Kong (other than an institution that is an exempt person), is to be construed as a reference to a specified subsidiary;
- (b) a reference to the starting day in relation to a prescribed person is to be construed, in relation to a specified subsidiary, as a reference to the effective day; and”.

23. Rule 33 added

After rule 32—

Add

“33. Transitional arrangements for specification of subsidiary made before specification day

- (1) A specification of a subsidiary by the Monetary Authority under section 101B(5) of the Ordinance for the purposes of section 101B(3) of the Ordinance, that was in force immediately before the specification day continues to have effect on and after the

Column 1

Column 2

- | Item | Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction |
|------|---|
| | <ul style="list-style-type: none">(a) the nature of the report;(b) the person submitting the report;(c) the person that is required to comply with the reporting obligation; and(d) if the person that is required to comply with the reporting obligation is regarded as having conducted the transaction in Hong Kong on behalf of an affiliate of the person, the affiliate. |
| 2. | Information and particulars relating to the class or type of product to which the transaction belongs. |
| 3. | Days and periods relating to the transaction, including— <ul style="list-style-type: none">(a) the day on which the transaction was entered into or on which a subsequent event is agreed;(b) the day on which the transaction or a subsequent event becomes effective;(c) the day on which the transaction matures or terminates;(d) dates or periods relating to a feature of the class or type of product to which the transaction belongs; and |

Column 1

Column 2

Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
4.	(e) dates or periods relating to the reporting of a transaction that is outstanding as at a particular time. Information and particulars relating to the counterparties to the transaction, including names, places of incorporation or residence, identifying references, and rights and obligations arising under, or relating to, the transaction.
5.	Information and particulars relating to pricing of the transaction (other than valuation transaction information), including— (a) notional amounts and schedules; (b) reference and settlement currencies; (c) agreed prices, rates or indices; (d) settlement details; and (e) other features or details specific to the class or type of product to which the transaction belongs that may affect the value of the transaction.

Column 1

Column 2

Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
6.	Information and particulars relating to the confirmation of the transaction, including the platform through which, and the manner in which, the transaction was confirmed and any identifying reference assigned to the transaction by the confirmation platform.
7.	Information and particulars relating to the execution of the transaction, including— <ul style="list-style-type: none"><li data-bbox="389 785 925 882">(a) the platform through which, and the manner in which, the transaction was executed;<li data-bbox="389 898 959 961">(b) any identifying reference assigned to the transaction by the execution platform;<li data-bbox="389 976 964 1039">(c) the day on which, and the time at which, the transaction was executed; and<li data-bbox="389 1055 933 1117">(d) any agent involved in the execution of the transaction.

Column 1

Column 2

Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
8.	<p>Information and particulars relating to the clearing of the transaction, including—</p> <ul style="list-style-type: none"><li data-bbox="389 542 970 639">(a) whether the transaction was, or is intended to be, cleared through a central counterparty;<li data-bbox="389 655 970 752">(b) if applicable, the central counterparty through which the transaction was, or is intended to be, cleared;<li data-bbox="389 768 970 903">(c) identifying references assigned to the original transaction before it is cleared, and the 2 new transactions resulting from the clearing process;<li data-bbox="389 918 970 1016">(d) the client clearing services provider (if any) involved in, or intended to be involved in, clearing the transaction; and<li data-bbox="389 1031 970 1099">(e) whether or not the clearing obligation applies to the transaction.
9.	<p>Information and particulars relating to whether and how the transaction arises from, or is amended as a result of, a portfolio compression exercise.</p>

Column 1	Column 2
Item	Category of information and particulars relating to specified OTC derivative transaction, and to persons involved in transaction
10.	Particulars of any identifying reference assigned to the transaction (being types of references that may be accepted by the Monetary Authority, as specified by the Monetary Authority in the directions and instructions published under rule 21(2)).
11.	Information and particulars relating to the valuation of the transaction, including— <ul style="list-style-type: none"><li data-bbox="388 784 782 815">(a) the basis of the valuation;<li data-bbox="388 831 968 893">(b) the day on which, and the time at which, the valuation was calculated;<li data-bbox="388 909 865 940">(c) the value of the transaction; and<li data-bbox="388 956 875 1019">(d) the currency in which the value is denominated.
12.	Information and particulars relating to a subsequent event, including— <ul style="list-style-type: none"><li data-bbox="388 1136 916 1168">(a) the day on which the event occurred;<li data-bbox="388 1183 782 1215">(b) the type of the event; and<li data-bbox="388 1230 953 1326">(c) the changes resulting from the event to information or particulars submitted to the Monetary Authority.

Explanatory Note

The main object of these Rules is to amend the Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (L.N. 96 of 2015) (**Reporting Rules**) by expanding the scope of OTC derivative transactions to which the reporting and record keeping obligations apply and information relating to the transactions that must be submitted to the Monetary Authority (**MA**), and by providing for transitional arrangements relating to transactions already reported to the MA under the Reporting Rules when these Rules commence (**specification day**).

2. Rule 3 amends rule 2 of the Reporting Rules by amending, repealing and adding various definitions used in the Reporting Rules.
3. Rule 4 adds a new rule 2A to the Reporting Rules, which sets out the meaning of **transaction information** and expands the scope of the information and particulars relating to a transaction that must be submitted to the MA for complying with the reporting obligation.
4. Rule 5 amends rule 3 of the Reporting Rules by removing the product class basis for exempt person status. Consequential amendments as a result of this removal are made to rules 2 (definitions of **starting day** and **regulated prescribed person**), 10(3), 11(3), 12(3), 13(3), 29(1)(c) and 32(5) of the Reporting Rules.
5. Rules 6 and 7 respectively amend rules 7 and 8 of the Reporting Rules to apply the reporting and record keeping obligations to all OTC derivative transactions, except

transactions in excluded currency contracts. Consequential amendments as a result of this expansion are made to rule 2 (addition of definition of *excluded currency contract* and repeal of various definitions relating to product classes and product types), rule 3 (exempt person status), rules 19, 22, 23 and 24 (repeal of references to concession period) of, and Schedule 1 to, the Reporting Rules.

6. Rules 8(1), 9(1), 10(1) and 11(1) respectively add a new subrule (2A) to rules 10, 11, 12 and 13 of the Reporting Rules in order to apply the reporting obligation to certain transactions which were conducted by prescribed persons on behalf of affiliates and reported to the MA before the specification day.
7. Rule 13 repeals rule 19 of the Reporting Rules that contains the definitions of—
 - (a) *grace period* (rule 3 adds a new definition for this term to rule 2 of the Reporting Rules); and
 - (b) *concession period* (rules 14, 15(1) and 16(1) remove references to this term from the Reporting Rules).
8. Rules 15(2) and 17(1) respectively amend rules 23 and 25 of the Reporting Rules to make them subject to certain modified requirements set out in a new rule 25B of the Reporting Rules relating to transactions reported to the MA before the specification day.
9. Rule 17(2) amends rule 25 of the Reporting Rules to clarify the prescribed persons that are required to report subsequent events.
10. Rule 18 adds to the Reporting Rules—

- (a) a new rule 25A, which requires prescribed persons to submit valuation transaction information for a specified OTC derivative transaction on a daily basis; and
 - (b) a new rule 25B, which sets out certain modified requirements for reporting expanded transaction information for transactions that were reported to the MA before the specification day.
- 11. Rule 19 amends rule 26 of the Reporting Rules, to clarify the meaning of the day specified in rule 26(1)(b)(i) of the Reporting Rules and to amend the definition of *counterparty identifying particulars* consequential to the repeal and substitution of Schedule 1 to the Reporting Rules.
- 12. Rule 23 adds a new rule 33 to the Reporting Rules, which sets out transitional arrangements relating to certain subsidiaries of authorized financial institutions incorporated in Hong Kong that were specified by the MA under sections 101B(5) or 101E(5) of the Securities and Futures Ordinance (Cap. 571) before the specification day.
- 13. Rule 24 repeals and substitutes Schedule 1 to the Reporting Rules with certain categories of information and particulars relating to transactions, for the purposes of the new rule 2A of the Reporting Rules.