

L.N. 99 of 2018

**Securities and Futures (Professional Investor)
(Amendment) Rules 2018**

(Made by the Securities and Futures Commission under section 397(1)
of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules come into operation on 13 July 2018.

2. Securities and Futures (Professional Investor) Rules amended

The Securities and Futures (Professional Investor) Rules (Cap. 571 sub. leg. D) are amended as set out in sections 3 to 6.

3. Section 2 amended (interpretation)

(1) Section 2, definition of *custodian*, paragraph (b)—

(a) English text, after “the following persons”—

Add

“whose business includes acting as a custodian of securities or other property for another person, whether on trust or by contract”;

(b) **Repeal**

everything after “investment services”

Substitute

“and regulated under the law of any place outside Hong Kong;”.

(2) Section 2—

Repeal the definition of *custodian statement*.

(3) Section 2—

Add in alphabetical order

“**public filing** (公開檔案) means a document that, pursuant to the legal or regulatory requirements in Hong Kong or in a place outside Hong Kong, has been submitted to a person or body that is under a duty to publish the document to, or otherwise make the document available for inspection by, members of the public in Hong Kong or in a place outside Hong Kong, by or on behalf of—

- (a) a trust corporation (whether on its own behalf or in respect of a trust of which it acts as a trustee);
- (b) an individual;
- (c) a corporation (other than a trust corporation referred to in paragraph (a)); or
- (d) a partnership;”.

4. Section 2A added

After section 2—

Add**“2A. Amount in Hong Kong dollars includes its equivalent in any foreign currency**

In these Rules, a reference to an amount expressed in Hong Kong dollars includes its equivalent in any foreign currency.”.

5. Section 3 amended (persons prescribed as professional investors)

Section 3—

Repeal

everything after “other than Schedule 5”

Substitute

“—

- (a) a trust corporation specified in section 4;
- (b) an individual specified in section 5(1);
- (c) a corporation (other than a trust corporation referred to in paragraph (a)) specified in section 6;
- (d) a partnership specified in section 7.”.

6. Sections 4 to 8 added

After section 3—

Add

“4. Trust corporations

A trust corporation specified for the purposes of section 3(a) is a trust corporation having been entrusted under one or more trusts of which it acts as a trustee with total assets of not less than \$40 million at the relevant date or as ascertained in accordance with section 8.

5. Individuals

- (1) An individual specified for the purposes of section 3(b) is an individual having a portfolio of not less than \$8 million at the relevant date or as ascertained in accordance with section 8, when any one or more of the following are taken into account—
 - (a) a portfolio on the individual’s own account;
 - (b) a portfolio on a joint account with the individual’s associate;

- (c) the individual's share of a portfolio on a joint account with one or more persons other than the individual's associate;
 - (d) a portfolio of a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by the individual.
- (2) For the purposes of subsection (1)(c), an individual's share of a portfolio on a joint account with one or more persons other than the individual's associate is—
- (a) the individual's share of the portfolio as specified in a written agreement among the account holders; or
 - (b) in the absence of an agreement referred to in paragraph (a), an equal share of the portfolio.

6. Corporations

A corporation specified for the purposes of section 3(c) is—

- (a) a corporation having—
 - (i) a portfolio of not less than \$8 million; or
 - (ii) total assets of not less than \$40 million, at the relevant date or as ascertained in accordance with section 8;
- (b) a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by any one or more of the following persons—
 - (i) a trust corporation specified in section 4;

- (ii) an individual specified in section 5(1);
 - (iii) a corporation specified in this paragraph or paragraph (a);
 - (iv) a partnership specified in section 7;
 - (v) a professional investor within the meaning of paragraph (a), (d), (e), (f), (g) or (h) of the definition of *professional investor* in section 1 of Part 1 of Schedule 1 to the Ordinance; or
- (c) a corporation which, at the relevant date, wholly owns a corporation referred to in paragraph (a).

7. Partnerships

A partnership specified for the purposes of section 3(d) is a partnership having—

- (a) a portfolio of not less than \$8 million; or
- (b) total assets of not less than \$40 million,

at the relevant date or as ascertained in accordance with section 8.

8. Ascertaining total assets or portfolio

For the purposes of section 4, 5(1), 6(a) or 7, the total assets entrusted to a trust corporation, the portfolio of an individual, or the portfolio or total assets of a corporation or partnership, are to be ascertained by referring to any one or more of the following—

- (a) for a trust corporation, corporation or partnership, the most recent audited financial statement prepared within 16 months before the relevant date in respect of the trust corporation

- (or a trust of which it acts as a trustee), corporation or partnership;
- (b) for a trust corporation, individual, corporation or partnership, any one or more of the following documents issued or submitted within 12 months before the relevant date—
- (i) a statement of account or a certificate issued by a custodian;
 - (ii) a certificate issued by an auditor or a certified public accountant;
 - (iii) a public filing submitted by or on behalf of the trust corporation (whether on its own behalf or in respect of a trust of which it acts as a trustee), individual, corporation or partnership.”.

Ashley ALDER
Chief Executive Officer,
Securities and Futures Commission

14 May 2018

Explanatory Note

The main object of these Rules is to amend the Securities and Futures (Professional Investors) Rules (Cap. 571 sub. leg. D) (*principal Rules*) to expand the types of individuals and corporations that are to be regarded as professional investors and the records which may be considered in ascertaining whether a person is a professional investor, and to restructure section 3 of the principal Rules (*existing section 3*).

2. Section 1 provides for commencement.
3. Section 3 amends section 2 of the principal Rules to repeal the definition of *custodian statement* and to add a new definition of *public filing* which is used in the new section 8 of the principal Rules.
4. Section 4 adds a new section 2A to the principal Rules, which consolidates the references to amounts in foreign currency in paragraphs (a), (b) and (c) of the existing section 3.
5. Sections 5 and 6 amend the existing section 3 to restructure it into separate sections for better presentation, and to expand the types of individuals and corporations that are to be regarded as professional investors and the records which may be considered in ascertaining whether a person is a professional investor, as follows—
 - (a) the existing section 3 is amended to replace its paragraphs (a), (b), (c) and (d) with cross-references to the new sections 4, 5, 6 and 7 of the principal Rules;

- (b) the circumstances in which trust corporations are prescribed as professional investors are moved from paragraph (a) of the existing section 3 to the new section 4 of the principal Rules;
- (c) the circumstances in which individuals are prescribed as professional investors are moved from paragraph (b) of the existing section 3 to the new section 5 of the principal Rules, and are expanded by allowing interests in joint accounts with non-associates and in certain corporations to be taken into account;
- (d) the circumstances in which corporations are prescribed as professional investors are moved from paragraphs (c) and (d) of the existing section 3 to the new section 6 of the principal Rules, and are expanded by including corporations which have a principal (rather than sole) business of holding investments, and corporations which wholly own another corporation which is a professional investor;
- (e) the circumstances in which partnerships are prescribed as professional investors are moved from paragraph (c) of the existing section 3 to the new section 7 of the principal Rules;
- (f) matters relating to the documents by reference to which a person's total assets or portfolio are to be ascertained are moved from paragraphs (a)(i), (ii) and (iii), (b)(i) and (ii) and (c)(iii) and (iv) of the existing section 3 to the new section 8 of the principal Rules, and are expanded by allowing, in respect of all types of persons, reference to be made to documents which are public filings or certificates issued by custodians, auditors or certified public accountants.