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BANKING (DISCLOSURE) (AMENDMENT) RULES 2012

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BANKING (DISCLOSURE) (AMENDMENT) RULES 2012

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BANKING (DISCLOSURE) (AMENDMENT) RULES 2012

(Made by the Monetary Authority under section 60A of the Banking Ordinance (Cap. 155) as amended by the Banking (Amendment) Ordinance 2012 (3 of 2012) after consultation with the Financial Secretary, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The DTC Association)

1. Commencement

(1) Subject to subsection (2), these Rules come into operation on 30 June 2013.

(2) Section 3(7) comes into operation on [date to be determined[1]].

[1] Section 3(7) relates to a consequential change arising from the Basel Committee's framework for the capitalisation of bank exposures to central counterparties which are still to be finalized by the Committee.

2. Banking (Disclosure) Rules amended

The Banking (Disclosure) Rules (Cap. 155 sub. leg. M) are amended as set out in sections 3 to 22.

3. Section 2 amended (interpretation)

(1) Section 2(1)-

Repeal the definition of *available-for-sale*

Substitute

"*available-for-sale-*

(a) in relation to financial assets other than derivative contracts, means that the financial assets-

(i) are designated by an authorized institution as available for sale;

(ii) are not classified by an authorized institution as-

(A) loans and receivables; or

(B) financial assets at fair value through profit or loss; or

(iii) are not classified by an authorized institution as held to maturity investments; or

(b) in relation to financial instruments other than derivative contracts, means that the financial instruments-

(i) are designated by an authorized institution as available for sale;

(ii) are not classified by an authorized institution as-

(A) loans and receivables; or

(B) financial instruments at fair value through profit or loss; or

(iii) are not classified by an authorized institution as held to maturity investments;

(c) in relation to loans, means that the loans are designated by an authorized institution upon initial recognition as available for sale;".

(2) Section 2(1), definition of ***capital requirements***-

Repeal

"capital required"

Substitute

"CET1 capital, Tier 1 capital and Tier 2 capital required".

(3) Section 2(1), definition of ***consolidation requirement***-

Repeal

"section 35"

Substitute

"section 34D".

(4) Section 2(1), definition of ***debt securities***-

Repeal the definition

Substitute

"***debt securities*** ( ) means any securities other than shares, stocks or import or export trade bills;".

(5) Section 2(1), definition of ***surplus provisions***-

Repeal

"supplementary capital"

Substitute

"Tier 2 capital".

(6) Section 2(1)-

Add in alphabetical order

"***additional Tier 1 capital*** ( ), in relation to an authorized institution, is to be construed in accordance with [ ][2] of the Capital Rules;

[2] Blank spaces in square brackets throughout this document represent new provisions to be incorporated in the Banking (Capital) Rules to implement the relevant Basel III requirements.

capital adequacy ratio ( ) has the meaning assigned to it by section 2(1) of the Capital Rules;

CET1 capital ( ) has the meaning assigned to it by section 2(1) of the Capital Rules;

common equity Tier 1 capital ( ), in relation to an authorized institution, is to be construed in accordance with [ ] of the Capital Rules;

specific wrong-way risk ( ) has the meaning assigned to it by [ ] of the Capital Rules;

Tier 1 capital ( ) has the meaning assigned to it by section 2(1) of the Capital Rules;

Tier 2 capital ( ) has the meaning assigned to it by section 2(1) of the Capital Rules;

Total capital ( ) has the meaning assigned to it by section 2(1) of the Capital Rules;".

(7) Section 2(1), definition of ***capital requirements***, paragraph (a), after "Part 4, 5 or 6,"-

Add

"or [ ][3],".

[3] See footnote 1.

4. Section 5 amended (disclosure policy)

Section 5(a)(i)(A)-

Repeal

"profit and loss or capital adequacy ratio;"

Substitute

", including its profit and loss and financial resources (including, in the case of financial resources, capital resources and liquidity resources)".

5. Section 11 amended (consolidated group level disclosures)

Section 11(3) and (5)-

Repeal

"profit and loss or capital adequacy ratio"

Substitute

"including its profit and loss and financial resources (including, in the case of financial resources, capital resources and liquidity resources),".

6. Section 15 amended (group-wide disclosures made by parent bank of authorized institution)

Section 15-

Repeal paragraph (b)

Substitute

"(b) the foreign disclosures are prepared in accordance with the banking supervisory standards relating to disclosure issued by the Basel Committee and adopted by the relevant banking supervisory authority of the parent bank;".

7. Section 18 amended (scope of consolidation)

Section 18-

Repeal paragraph (a)

Substitute

"(a) the basis of consolidation including-

(i) an outline of the differences between the accounting scope of consolidation and the regulatory scope of consolidation;

(ii) a list of-

(A) the institution's subsidiaries which are included within the accounting scope of consolidation but are not included within the regulatory scope of consolidation;

(B) the institution's subsidiaries which are included within the regulatory scope of consolidation but are not included within the accounting scope of consolidation;

(C) the institution's subsidiaries (if any) which are included within both the regulatory scope of consolidation and the accounting scope of consolidation where the methods of consolidation differ between those 2 scopes; and

(D) the institution's subsidiaries in respect of which its shareholdings therein are deducted from the institution's CET1 capital;

(iii) if subparagraph (ii)(C) applies, an explanation of the differences in the 2 consolidation methods mentioned in that subparagraph; and

(iv) a description of the principal activities of each of the subsidiaries mentioned in subparagraph (ii), including the amount of total assets and the amount of total equity reported on the financial statements of each subsidiary; and".

8. Section 24 substituted

Section 24-

Repeal the section

Substitute

"**24. Capital disclosures**

(1) An authorized institution must disclose the following information regarding its capital base as set out in the returns relating to capital adequacy it submitted to the Monetary Authority pursuant to section 63 of the Ordinance in respect of the interim reporting period-

(a) a detailed breakdown of CET1 capital items, additional Tier 1 capital items, Tier 2 capital items and regulatory adjustments and deductions applied pursuant to [ ] of the Capital Rules to the capital base of the institution, showing which of these items are benefiting from the transitional provisions set out in [ ] to the Capital Rules.

(b) a full reconciliation of CET1 capital items, additional Tier 1 capital items, Tier 2 capital items and regulatory adjustments and deductions applied pursuant to [ ] of the Capital Rules to the capital base of the institution and the balance sheet in the published financial statements of the institution;

(c) a description of the main features of any CET1 capital instruments and additional Tier 1 capital instruments and Tier 2 capital instruments issued by the institution;

(d) the full terms and conditions of all CET1 capital instruments, additional Tier 1 capital instruments and Tier 2 capital instruments;

(e) separate disclosure of the nature and amounts of-

(i) each regulatory adjustment and deduction applied pursuant to [ ] of the Capital Rules (reported separately for CET1 capital, additional Tier 1 capital and Tier 2 capital, as the case requires); and

(ii) items not deducted from CET1 capital pursuant to [ ] of the Capital Rules[4];

(f) a description of all limits and minima applied to the calculation of the capital base of the institution in accordance with the Capital Rules and the instruments, regulatory adjustments and deductions to which those limits or minima, as the case may be, apply;

(g) where the institution discloses capital ratios calculated using elements of capital determined on a basis other than that laid down in the Capital Rules, a comprehensive explanation of the basis on which those capital ratios are calculated.

(2) The Monetary Authority may specify standard disclosure templates[5] to be used by an authorized institution for the purposes of making any disclosure referred to in subsection (1)(a), (b), (c), (e) and (f).

(3) An authorized institution must either-

(a) include the standard disclosure templates applicable to its disclosures in the interim financial statements published by it; or

(b) provide a direct link, on its website, to the complete disclosure.

(4) An authorized institution must establish and maintain an archive of all capital disclosures made by it that relate to such former reporting periods as specified by the Monetary Authority[6].

(5) Subject to subsection (6) and unless otherwise approved by the Monetary Authority, an authorized institution must make available on its website the full terms and conditions of all instruments included in its capital base.

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[4] These relate to disclosures on the use of threshold limits in the deduction framework for capital investments in financial institutions.

[5] The standard disclosure templates will closely follow those set out in the *Composition of capital disclosure requirements* text released by the Basel Committee on Banking Supervision on 26 June 2012.

[6] The HKMA currently intends that the maintenance periods for capital disclosures referred to in section 24(1)(a), (b), (c), (f) and (g) will follow those specified under the existing section 6(8) of the Banking (Disclosure) Rules. For capital disclosures referred to in section 24(1)(c) and (d), the maintenance period should be taken as the remaining life of a capital instrument.

(6) Whenever-

(a) a new capital instrument is issued and included in an authorized institution's capital base; or

(b) there is a redemption, conversion or write down, or other material change, in the nature of a capital instrument included in an authorized institution's capital base,

the institution must, as soon as is practicable, update the disclosures it has made under subsection (5) in order to take account of that new capital instrument, or that redemption, conversion or write down, or other material change, as the case may be.

(7) An authorized institution must disclose the total amount of any relevant capital shortfall in any of its subsidiaries which are outside of the scope of regulatory consolidation.

(8) Subject to subsections (9) and (10), an authorized institution must disclose its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(9) Where an authorized institution is required under [ ] of the Capital Rules to calculate its capital adequacy ratio on a consolidated basis, the institution must disclose, on a consolidated basis, its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(10) Where subsection (9) does not apply to an authorized institution, the institution must disclose, on a solo basis or solo-consolidated basis, as the case requires, its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(11) Where an authorized institution has earmarked part of its retained earnings for maintaining its regulatory reserve to satisfy the provisions of the Ordinance for prudential supervision purposes, the institution must disclose-

(a) this fact; and

(b) the amount of retained earnings so earmarked.

(12) In this section-

relevant capital shortfall ( ), in relation to a subsidiary of an authorized institution —

(a) which is a securities firm or insurance firm; and

(b) which is not the subject of a consolidation requirement, imposed on the institution,

means that amount which is deducted from the institution's CET1 capital pursuant to [ ] of the Capital Rules.

9. Section 32 amended (interpretation of Part 4)

(1) Section 32, definition of ***cash flow hedge***-

Repeal

"section 35"

Substitute

"section 34D".

(2) Section 32, definitions of ***forecast transaction*** and ***highly probable forecast transaction***-

Repeal the definitions.

(3) Section 32, definitions of ***long lease, medium-term lease*** and ***short lease***[7]**-**

Repeal the definitions.

Substitute

"***long lease*** –

(a) in relation to land in Hong Kong, means –

(i) a lease the portion of the term for which itwas granted remaining unexpired at the end of the financial year of the institution is not less than 50 years; or

(ii) a renewable Government lease the portion of the term for which it was granted remaining unexpired at the end of the financial year, when added to the term for which the lessee is entitled to renew the lease, amounts to a period of not less than 50 years from the end of that financial year of the institution; or

(b) in relation to land outside Hong Kong, means a lease the portion of the term for which it was granted remaining unexpired at the end of the financial year of the institution is not less than 50 years;

[7] "Long lease, medium-term lease and short lease are terms which are currently defined in the Companies Ordinance. As these definitions may be removed during the rewrite of the Companies Ordinance exercise currently being undertaken by the Financial Services and the Treasury Bureau to update the Ordinance. we propose to create a definition for each of these terms under the BDR.
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medium-term lease –

(a) in relation to land in Hong Kong, means -

(i) a lease the portion of the term for which it was granted remaining unexpired at the end of the financial year of the institution is less than 50 years but not less than 10 years; or

(ii) a renewable Government lease the portion of the term for which it was granted remaining unexpired at the end of the financial year of the institution, when added to the term for which the lessee is entitled to renew the lease, amounts to a period of less than 50 years but not less than 10 years from the end of that financial year; or

(b) in relation to land outside Hong Kong, means a lease the portion of the term for which it was granted remaining unexpired at the end of the financial year of the institution is less than 50 years but not less than 10 years"

short lease -

in relation to land inside and outside Hong Kong, means a lease which is neither a long lease nor a medium-term lease;".

10. Section 33 amended (scope of consolidation)

Section 33-

Repeal paragraph (a)

Substitute

"(a) the basis of consolidation including-

(i) an outline of the differences between the accounting scope of consolidation and the regulatory scope of consolidation;

(ii) a list of-

(A) the institution's subsidiaries which are included within the accounting scope of consolidation but are not included within the regulatory scope of consolidation;

(B) the institution's subsidiaries which are included within the regulatory scope of consolidation but are not included within the accounting scope of consolidation;

(C) the institution's subsidiaries (if any) which are included within both the regulatory scope of consolidation and the accounting scope of consolidation where the methods of consolidation differ between those 2 scopes; and

(D) the institution's subsidiaries in respect of which its shareholdings therein are deducted from the institution's CET1 capital;

(iii) if subparagraph (ii)(C) applies, an explanation of the differences in the 2 consolidation methods mentioned in that subparagraph; and

(iv) a description of the principal activities of each of the subsidiaries mentioned in subparagraph (ii), including the amount of total assets and the amount of total equity reported on the financial statements of each subsidiary; and".

11. Section 40 amended (hedge accounting)

Section 40(2)(e)-

Repeal

"forecast transaction"

Substitute

"uncommitted but anticipated future transaction".

12. Section 45 substituted

Section 45-

Repeal the section

Substitute

"**45. Capital disclosures**

(1) An authorized institution must disclose the following information regarding its capital base as set out in the returns relating to capital adequacy it submitted to the Monetary Authority pursuant to section 63 of the Ordinance in respect of the annual reporting period-

(a) a detailed breakdown of CET1 capital items, additional Tier 1 capital items, Tier 2 capital items and regulatory adjustments and deductions applied pursuant to [ ] of the Capital Rules to the capital base of the institution, showing which of these items are benefiting from the transitional provisions set out in [ ] to the Capital Rules.

(b) a full reconciliation of CET1 capital items, additional Tier 1 capital items, Tier 2 capital items and regulatory adjustments and deductions applied pursuant to [ ] of the Capital Rules to the capital base of the institution and the balance sheet in the published financial statements of the institution;

(c) a description of the main features of any CET1 capital instruments and additional Tier 1 capital instruments and Tier 2 capital instruments issued by the institution;

(d) the full terms and conditions of all CET1 capital instruments, additional Tier 1 capital instruments and Tier 2 capital instruments;

(e) separate disclosure of the nature and amounts of-

(i) each regulatory adjustment and deduction applied pursuant to [ ] of the Capital Rules (reported separately for CET1 capital, additional Tier 1 capital and Tier 2 capital, as the case requires); and

(ii) items not deducted from CET1 capital pursuant to [ ] of the Capital Rules[8];

(f) a description of all limits and minima applied to the calculation of the capital base of the institution in accordance with the Capital Rules and the instruments, regulatory adjustments and deductions to which those limits or minima, as the case may be, apply;

(g) where the institution discloses capital ratios calculated using elements of capital determined on a basis other than that laid down in the Capital Rules, a comprehensive explanation of the basis on which those capital ratios are calculated.

(2) The Monetary Authority may specify standard disclosure templates[9] to be used by an authorized institution for the purposes of making any disclosure referred to in subsection (1)(a), (b), (c), (e) and (f).

(3) An authorized institution must either-

(a) include the standard disclosure templates applicable to its disclosures in the annual financial statements published by it; or

(b) provide a direct link, on its website, to the complete disclosure.

(4) An authorized institution must establish and maintain an archive of all capital disclosures made by it that relate to such former reporting period as specified by the Monetary Authority[10].

(5) Subject to subsection (6) and unless otherwise approved by the Monetary Authority, an authorized institution must make available on its website the full terms and conditions of all instruments included in its capital base.

(6) Whenever-

(a) a new capital instrument is issued and included in an authorized institution's capital base; or

[8] See footnote 4.
[9] See footnote 5
[10] See footnote 6.

(b) there is a redemption, conversion or write down, or other material change, in the nature of a capital instrument included in an authorized institution's capital base,

the institution must, as soon as is practicable, update the disclosures it has made under subsection (5) in order to take account of that new capital instrument, or that redemption, conversion or write down, or other material change, as the case may be.

(7) An authorized institution must disclose the total amount of any relevant capital shortfall in any of its subsidiaries which are outside of the scope of regulatory consolidation.

(8) Subject to subsections (9) and (10), an authorized institution must disclose its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(9) Where an authorized institution is required under [ ] of the Capital Rules to calculate its capital adequacy ratio on a consolidated basis, the institution must disclose, on a consolidated basis, its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(10) Where subsection (11) does not apply to an authorized institution, the institution must disclose, on a solo basis or solo-consolidated basis, as the case requires, its-

(a) CET1 capital ratio;

(b) Tier 1 capital ratio; and

(c) Total capital ratio.

(11) Where an authorized institution has earmarked part of its retained earnings for maintaining its regulatory reserve to

satisfy the provisions of the Ordinance for prudential supervision purposes, the institution must disclose-

(a) this fact; and

(b) the amount of retained earnings so earmarked.

(12) In this section-

relevant capital shortfall ( ), in relation to a subsidiary of an authorized institution —

(a) which is a securities firm or insurance firm; and

(b) which is not the subject of a consolidation requirement, imposed on the institution,

means that amount which is deducted from the institution's CET1 capital pursuant to [ ] of the Capital Rules.

13. Section 52 amended (corporate governance)

(1) Section 52(b)-

Repeal

"; and"

Substitute

";".

(2) Section 52, after paragraph (b)-

Add

"(ba) the extent of its compliance with Part 3 headed "Disclosure on remuneration" set out in the Supervisory Policy Manual module CG-5 issued by the Monetary Authority and entitled "Guideline on a Sound Remuneration System";

(3) Section 52(c)-

Repeal

"referred to in paragraph (b)"

Substitute

"mentioned in paragraph (b) or the guideline mentioned in paragraph (ba)".

14. Section 57 amended (credit risk: specific disclosures)

Section 57(f)-

Repeal

"deducted from the institution's core capital and supplementary capital"

Substitute

"that are risk-weighted at 1250%".

15. Section 58 amended (general disclosures for counterparty credit risk-related exposures)

(1) Section 58(1)(a)-

Repeal

"exposures; and"

Substitute

"exposures;".

(2) Section 58(1)(b)-

Repeal

"provisions."

Substitute

"provisions;".

(3) Section 58(1), after paragraph (b)-

Add

"(c) its policies with respect to exposures that give rise to general or specific wrong-way risk; and

(d) the impact on it in terms of the amount of collateral that it would have to provide if there were a downgrade in its credit rating."

(4) Section 58, after subsection (4)-

Add

"(4A) An authorized institution must disclose the default risk exposures or exposures calculated under the current exposure method or the internal model (counterparty credit risk) approach, whichever is applicable.

(4B) An authorized institution must disclose the estimate of alpha (α) if the Monetary Authority has given it approval to estimate alpha (α).".

16. Section 60 amended (asset securitization)

(1) Section 60(1)(i)-

Repeal

"section 35"

Substitute

"section 2(1)".

(2) Section 60(1)(k)-

Repeal

"deducted from its core capital and supplementary capital"

Substitute

"allocated a risk-weight of 1250%".

(3) Section 60(1)(u)-

Repeal

"core capital"

Substitute

"CET1 capital".

(4) Section 60(1)(v)-

Repeal

"have been deducted from the institution's core capital and supplementary capital"

Substitute

"the institution has allocated a risk-weight of 1250%".

17. Section 63 amended (equity exposures: disclosures for banking book positions)

Section 63(c)-

Repeal subparagraph (ii)-

Substitute

"(ii) the total unrealized gains recognized in, or unrealized losses deducted from, the institution's retained earnings (or reserves) but not passing through the profit or loss account.".

18. Section 69 amended (asset securitization)

Section 69(1)(k)-

Repeal

"deducted from its core capital and supplementary capital"

Substitute

"allocated a risk-weight of 1250%".

19. Section 80 amended (general disclosures for counterparty credit risk-related exposures)

(1) Section 80(1)(a)-

Repeal

"exposures; and"

Substitute

"exposures;".

(2) Section 80(1)(b)-

Repeal

"provisions."

Substitute

"provisions;".

(3) Section 80(1), after paragraph (b)-

Add

"(c) its policies with respect to exposures that give rise to general or specific wrong-way risk; and

(d) the impact on it in terms of the amount of collateral that it would have to provide if there were a downgrade in its credit rating.".

(4) Section 80, after subsection (4)-

Add

"(4A) An authorized institution must disclose the default risk exposures or exposures calculated under the current exposure method or the internal model (counterparty credit risk) approach, whichever is applicable.

(4B) An authorized institution must disclose the estimate of alpha (α) if the Monetary Authority has given it approval to estimate alpha (α).".

20. Section 82 amended (asset securitization)

(1) Section 82(1)(i)-

Repeal

"section 35"

Substitute

"section 2(1)".

(3) Section 82(1)(u)-

Repeal

"core capital"

Substitute

"CET1 capital".

(4) Section 82(1)(v)-

Repeal

"have been deducted from the institution's core capital and supplementary capital"

Substitute

"the institution has allocated a risk-weight of 1250%".

21. Section 85 amended (equity exposures: disclosures for banking book positions)

Section 85(c)-

Repeal subparagraph (ii)

Substitute

"(ii) the total unrealized gains recognized in, or unrealized losses deducted from, the institution's retained earnings (or reserves) but not passing through the profit and loss account.".

22. Section 105 amended (capital and capital adequacy)

(1) Section 105(a)-

Repeal

"capital adequacy ratio"

Substitute

"CET1 capital ratio, Tier 1 capital ratio and Total capital ratio".

(2) Section 105(a)-

Repeal subparagraph (i)

Substitute

"(i) the document entitled "Basel III: A global regulatory framework for more resilient banks and banking systems" published by the Basel Committee in December 2010 and revised in June 2011; or".

Monetary Authority

[ ].[ ].2012.

Explanatory Note

1. These Rules are made by the Monetary Authority under section 60A of the Banking Ordinance (Cap. 155) and amend the Banking (Disclosure) Rules (Cap. 155 sub. leg. M) (***principal Rules***).

2. The main purpose of the Rules is to incorporate into the principal Rules-

   (a) revisions necessitated by the new disclosure requirements contained in the paper entitled "Composition of capital disclosure requirements" issued by the Basel Committee on Banking Supervision (***BCBS***) in June 2012;

   (b) Pillar 3 disclosures (basically, the public disclosure of prudential information) specific for authorized institutions using the internal model approach to calculate capital requirements for counterparty credit risk exposures as set out in Table 8 (general disclosures for exposures related to counterparty credit risk) to the paper entitled "Conveyance of Capital Measurements and Capital Standards - A Revised Framework Comprehensive Version" issued by the BCBS in 2006;

   (c) revisions necessitated by the amendments [to be] made to the Banking Ordinance by the Banking (Amendment) Ordinance 2012; and

   (d) revisions necessitated by the amendments [to be] made to the Banking (Capital) Rules (Cap. 155 sub. leg. L) by the Banking (Capital) (Amendment) (No. 2) Rules 2012.

3. The Rules come into operation on 30 June 2013 except for section 3(7). That section comes into operation on 1 January 2014.