



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Paper on the Proposed Amendments to the Securities and Futures (Professional Investor) Rules

March 2017



Table of Contents

Foreword	1
Personal Information Collection Statement	2
Introduction	4
Background	5
Proposed amendments to the Professional Investor Rules	7
Seeking Comments	11
Appendix A - Indicative draft of the proposed Professional Investor Rules	12
Appendix B - Derivation table showing the differences between the existing and the proposed Professional Investor Rules	15



Foreword

The Securities and Futures Commission (**SFC**) invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals **not later than 3 April 2017**.

Any person wishing to comment on the proposals should provide details of any organisation whose views they represent.

Please note that the names of commentators and the contents of their submissions may be published on the SFC's website and in other documents to be published by the SFC. In this regard, please read the Personal Information Collection Statement attached to this consultation paper.

You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.

Written comments may be sent

by mail to:	Securities and Futures Commission 35/F, Cheung Kong Center 2 Queen's Road Central Hong Kong Re: Consultation Paper on the Proposed Amendments to the Securities and Futures (Professional Investor) Rules
by fax to:	(852) 2523 4598
by on-line submission:	http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/
by e-mail to:	SFCPIRules@sfc.hk

Securities and Futures Commission
Hong Kong

1 March 2017



Personal Information Collection Statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
 - (a) to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) in performing the SFC's statutory functions under the relevant provisions;
 - (c) for research and statistical purposes;
 - (d) for other purposes permitted by law.

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

1 Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

2 The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) to mean provisions of the Securities and Futures Ordinance and subsidiary legislation made under it.



Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
The Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.



Consultation Paper on the Proposed Amendments to the Securities and Futures (Professional Investor) Rules

Introduction

1. The SFC invites comments on the proposals described in this consultation paper, including the proposed amendments to the Securities and Futures (Professional Investor) Rules (Cap. 571D) (**Professional Investor Rules**).
2. In particular, the proposed amendments pertain to the following:
 - (a) Allowing the portfolio held in joint account(s) with persons other than associates³ and investment vehicle(s) owned by individuals to be counted in ascertaining if the individuals meet the monetary threshold to qualify as professional investors;
 - (b) Expanding the definition of corporations as professional investors; and
 - (c) Allowing alternative forms of evidence demonstrating qualification as a professional investor.
3. An indicative draft of the proposed Professional Investor Rules incorporating the above proposed amendments is set out in Appendix A to facilitate market comments.
4. Over the years, the SFC has received comments from the market to the effect that modifications which the SFC has previously granted under section 134 of the Securities and Futures Ordinance (SFO) should be standardised and made generally applicable, by incorporating them into the provisions of the Professional Investor Rules.
5. Following the recent reform of the professional investor regime to enhance investor protection⁴, the SFC would now like to incorporate into the Professional Investor Rules such modifications as are suitable for standardisation and general application to the market. However, this consultation does not seek to further review the professional investor regime in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**).
6. Prior to the publication of this paper, the SFC soft-consulted some industry associations and intermediaries which provided positive feedback in response to our proposals and also suggested that we consider introducing some additional changes to the Professional Investor Rules. Having taken into account the views expressed, the SFC proposes to combine those suggestions and incorporate them into the proposed new rules.
7. The proposed amendments to the Professional Investor Rules include expanding the categories of persons who will qualify as professional investors and allowing the aggregation of certain assets and alternative forms of evidence for determining and ascertaining whether a person meets the relevant asset or portfolio thresholds to qualify as a professional investor under the Professional Investor Rules.

³ "Associate" is defined in section 2 of the Professional Investor Rules as the spouse or any child of the individual.

⁴ See [Consultation Conclusions](#) on the Proposed Amendments to the Professional Investor Regime and Further Consultation on the Client Agreement Requirements published by the SFC in September 2014 and [Consultation Conclusions](#) on the Client Agreement Requirements published by the SFC in December 2015.



8. The SFC believes that the proposed amendments will cater for the business needs of intermediaries and their clients and enhance consistency in the application of the Professional Investor Rules. A consultation conclusions paper will be published after careful consideration of all public comments received during the consultation period. Comments that are accepted by the SFC will be incorporated into the proposed new rules, which will be subject to negative vetting by the Legislative Council before they become effective.

Background

9. There are two types of professional investors under the SFO. The first are specified entities set out in paragraphs (a) to (i) of the definition of “professional investor” in Part 1 of Schedule 1 to the SFO (e.g., banks and insurance companies). The second are persons belonging to one of the categories of high net worth professional investors prescribed under the Professional Investor Rules. This consultation paper is concerned with the second type.
10. There are four categories of high net worth professional investors, namely:
- (a) a trust corporation entrusted with total assets of not less than HK\$40 million (or the equivalent in foreign currency);
 - (b) an individual who (either alone or with his/her spouse or children in a joint account) has a portfolio of not less than HK\$8 million (or the equivalent in foreign currency);
 - (c) a corporation or partnership with either a portfolio of not less than HK\$8 million (or the equivalent in foreign currency) or total assets of not less than HK\$40 million (or the equivalent in foreign currency); and
 - (d) a corporation the sole business of which is to hold investments and which is wholly owned by any of the persons falling within paragraphs (a), (b) or (c) above.
11. The Professional Investor Rules further set out the following methods to ascertain the relevant assets or portfolio thresholds for the first three types of high net worth professional investors:
- (a) A principles-based approach may be adopted such that intermediaries may use methods that are appropriate to satisfy themselves that an investor meets the relevant assets or portfolio threshold at the relevant date⁵ to qualify as a professional investor. Intermediaries are expected to keep proper records of their assessment process so as to demonstrate that they have exercised professional judgement and have reached a reasonable conclusion that their clients meet the relevant thresholds⁶;
 - (b) Alternatively, a more prescriptive approach may be followed where intermediaries shall obtain certain evidential documents before the relevant

⁵ “Relevant date” is defined in section 2 of the Professional Investor Rules.

⁶ See [Consultation Conclusions](#) on the Evidential Requirements under the Securities and Futures (Professional Investor) Rules published by the SFC in February 2011.



date as set out in section 3(a) to (c) of the Professional Investor Rules. These evidential requirements are:

- (i) For a trust corporation – (i) the most recent audited financial statement prepared in respect of the trust corporation and within 16 months before the relevant date; (ii) one or more audited financial statements, each being the most recent audited financial statement, prepared in respect of the trust or any of the trusts and within 16 months before the relevant date; or (iii) one or more custodian statements issued to the trust corporation in respect of the trust or any of the trusts and within 12 months before the relevant date.⁷
- (ii) For an individual – (i) a certificate issued by an auditor or a certified public accountant within 12 months before the relevant date; or (ii) one or more custodian statements issued to the individual (either alone or with his/her spouse or children in a joint account) within 12 months before the relevant date.⁸
- (iii) For a corporation or partnership – (i) the most recent audited financial statement prepared in respect of the corporation or partnership and within 16 months before the relevant date; or (ii) one or more custodian statements issued to the corporation or partnership within 12 months before the relevant date.⁹

12. Over the years, some intermediaries have expressed the view that certain requirements of the Professional Investor Rules, such as the categories of professional investors and the associated evidential requirements, could be refined to provide more practical flexibility to both intermediaries and their clients. Some intermediaries have sought modifications to the Professional Investor Rules to expand the categories of persons who qualify as professional investors or to allow the aggregation of certain assets and the use of alternative forms of evidence for determining whether a person meets the relevant asset or portfolio thresholds to qualify as a professional investor. The SFC has granted a number of modifications in order to aid in the efficiency of the operations of intermediaries and their clients without compromising investor protection. Currently, there are around 40 subsisting modifications that the SFC has granted to intermediaries. All modifications granted are published on the SFC's website.
13. This consultation seeks the market's views on the SFC's proposals to amend the Professional Investor Rules for the purpose of formalising modifications that it previously granted under section 134 of the SFO, by which the categories of persons who will qualify as professional investors, and the evidence that may be relied upon when assessing professional investor status, will be expanded, and by which the aggregation of certain assets will be permitted. The SFC wishes to stress that the principal objective of this exercise is to incorporate standardised modifications into the Professional Investor Rules, thereby enhancing transparency and promoting market consistency. This consultation does not relate to any of the other elements of the professional investor regime such as the asset/portfolio thresholds prescribed under the Professional Investor Rules or other provisions in the Code of Conduct, including the

⁷ Section 3(a) of the Professional Investor Rules.

⁸ Section 3(b) of the Professional Investor Rules.

⁹ Section 3(c) of the Professional Investor Rules.



regulation of intermediary conduct, which were the subject of a separate consultation exercise concluded in September 2014.¹⁰

Proposed amendments to the Professional Investor Rules

14. The SFC proposes to amend the Professional Investor Rules to consolidate and embed in them the modifications which in the past it has commonly granted under section 134 of the SFO. The SFC proposes to amend the Professional Investor Rules:

Allowing aggregation of certain assets

- (a) To allow an individual to aggregate the portfolio or share of the portfolio of any corporation the principal business of which is to hold investments and which is wholly or partially owned by the individual at the relevant date when determining whether the individual meets the relevant portfolio threshold to qualify as a professional investor¹¹.

Some intermediaries have indicated that some investors may use investment vehicles to hold their assets, hence an individual's portfolio or share of a portfolio held by an investment vehicle should be aggregated with the individual's portfolio in assessing whether the individual meets the portfolio threshold. The SFC considers that this is a natural extension of the existing categories of professional investors and is consistent with the spirit of the Professional Investor Rules.

- (b) To include an individual's share of a portfolio held in an account jointly owned by the individual with other persons (including individuals, corporations and partnerships) who are not associates of that individual at the relevant date when determining whether the individual meets the relevant portfolio threshold to qualify as a professional investor¹².

The existing Professional Investor Rules define the term "associate" as the spouse or any child of an individual. Certain intermediaries have indicated that it is quite common for family members other than associates, such as siblings, parents or grandparents and business partners (which are corporations or partnerships), to set up a joint account together. The SFC takes the view that it would be practical to allow intermediaries to take into account the share of the portfolio held by an individual in a joint account with non-associates.

Expanding the definition of corporations to qualify as professional investors

- (c) To expand the categories¹³ of professional investors to include any corporation the principal business of which at the relevant date is to hold investments, where the corporation is wholly owned by one or more persons where each of them qualify as a professional investor (under the Professional Investor Rules or Schedule 1 to the SFO). It is also proposed to allow any corporation¹⁴ to qualify as a professional investor if it wholly owns another corporation that

¹⁰ See footnote 4.

¹¹ Rule 6(1)(d) and rule 6(1)(e) of the Proposed Professional Investor Rules as set out in Appendix A.

¹² Rule 6(1)(c) of the Proposed Professional Investor Rules as set out in Appendix A.

¹³ Rule 7(b) of the Proposed Professional Investor Rules as set out in Appendix A.

¹⁴ Rule 7(c) of the Proposed Professional Investor Rules as set out in Appendix A.



qualifies as a professional investor under the Professional Investor Rules by meeting the asset or portfolio threshold.

Some intermediaries have indicated that it is quite common for an individual or a corporation to set up companies for investment purposes, and that although such investment vehicles may also be involved in other businesses, this may not materially affect or detract from their principal business of investment holding. It is also considered sensible for a corporation to qualify as a professional investor if it wholly owns another corporation which has been ascertained to have met the asset or portfolio threshold to qualify as a professional investor. The SFC accepts this industry view and proposes to expand the categories of professional investor to include these corporations.

The SFC believes that such an expansion of the professional investor categories will facilitate and encourage the participation of corporations in private placement activities. On the other hand, investor protection for these corporations will not be compromised given that intermediaries will still be required to apply all of the Code of Conduct requirements, including the suitability requirements, unless any such corporation has been assessed to have sufficient knowledge, expertise and investment experience according to the Code of Conduct requirements¹⁵ and has consented to being treated as a professional investor under the Code of Conduct.

Allowing alternative forms of evidence

- (d) To refine the evidential requirements stipulated in section 3(a) to (c) of the Professional Investor Rules by allowing certain alternative forms of evidence in ascertaining whether a person meets the relevant assets or portfolio threshold to qualify as a professional investor¹⁶. The two alternative forms of evidence are public filings made pursuant to legal or regulatory requirements in Hong Kong or in a place outside Hong Kong and certificates issued by custodians. It is also proposed to allow the use of certificates issued by auditors or certified public accountants for ascertaining the professional investor qualification for corporations, trust corporations and partnerships in addition to individuals.

The SFC understands that intermediaries use these alternative forms of evidence in practice and we would like to consult the market on whether any conditions should be imposed on the rules for the use of such alternative forms of evidence.

15. As the proposed amendments include all of the modified terms the SFC previously granted under section 134 of the SFO, we also propose, in the interest of consistency, to revoke all existing section 134 modifications in the event of the proposed amendments to the Professional Investors Rules becoming effective.
16. An indicative draft of the proposed Professional Investor Rules is set out in Appendix A.
17. A derivation table showing the differences between the existing and the proposed Professional Investor Rules is shown in Appendix B.

¹⁵ Please refer to paragraphs 15.3A and 15.3B of the Code of Conduct regarding the assessment requirements and procedures, which came into effect in March 2016.

¹⁶ Rule 9 of the Proposed Professional Investor Rules as set out in Appendix A.



18. The SFC envisages that more persons will qualify as professional investors with our proposed amendments to the Professional Investor Rules. Nevertheless, Intermediaries are not exempted from the suitability requirement and other fundamental requirements¹⁷ when serving individual professional investors following the implementation of the new Professional Investor Regime in March 2016.
19. In respect to the above proposed amendments, responses to the following questions are sought:

Question 1

Do you agree that the proposed amendments to the Professional Investor Rules would introduce appropriate levels of consistency and flexibility, and better serve the interests of both intermediaries and their clients? Please explain your view.

Do you have any other suggestions?

Question 2

Do you agree that section 3(b) of the existing Professional Investor Rules in relation to individuals should be extended so that:

a) an individual's share of a portfolio that is held in a joint account with a non-associate can be counted towards meeting the prescribed threshold to qualify as a professional investor (as outlined in paragraph 14(b) above and provided for in Rule 6(1)(c) in Appendix A)? Please explain your view.

In determining the share of an individual's portfolio held in a joint account with a non-associate for the purpose of meeting the prescribed threshold, we propose that the individual's share is either based on the share specified in the written agreement between the account holders or an equal share of the portfolio in the absence of a written agreement (as provided for in Rule 6(2) in Appendix A). Do you agree with our approach? Please explain your view.

b) an individual's portfolio or share of a portfolio held by a corporation, the principal business of which is to hold investments and which is wholly or partially owned by the individual, can be counted towards meeting the prescribed threshold to qualify as a professional investor (as outlined in paragraph 14(a) above and Rule 6(1)(d) and Rule 6(1)(e) in Appendix A)? Please explain your view.

Do you have any other suggestions?

¹⁷ The other fundamental requirements inherently linked with the suitability requirement or that have significant bearing on investor protection under the Code of Conduct include, among other things, the need to disclose certain transaction related information, the need to enter into a written agreement and the provision of relevant risk disclosure statements.



Question 3

Do you agree that the scope of the existing Professional Investor Rules should be extended so that:

(a) any corporation, the principal business of which at the relevant date is to hold investments and which is wholly owned by one or more of the persons where each of them is qualified as a professional investor, will qualify as a professional investor (as outlined in paragraph 14(c) above and provided for in Rule 7(b) in Appendix A)? Please explain your view.

(b) any corporation, which wholly owns another corporation which has been qualified as a professional investor under the Professional Investor Rules by meeting the asset or portfolio threshold, will qualify as a professional investor (as outlined in paragraph 14(c) above and provided for in Rule 7(c) in Appendix A)? Please explain your view.

Do you have any other suggestions?

Question 4

Do you agree that the evidential requirements set out in section 3(a) to (c) of the existing Professional Investor Rules (as outlined in paragraph 11(b) above) should be extended to include public filings and certificates issued by auditors, certified public accountants or custodians (as outlined in paragraph 14(d) above and provided for in Rule 9 in Appendix A)? Are these alternative forms of evidence used commonly by intermediaries as proof of clients meeting the stipulated monetary thresholds? Please explain your view.

If so, do you also agree that the Professional Investor Rules should prescribe the types or categories of documents that could be regarded as “public filings” and the extent of details to be included in the content of “certificates” issued by auditors, certified public accountants or custodians? Please explain your view.

In particular, which documents are used in practice as “public filings” and “certificates” issued by auditors, certified public accountants or custodians? Please provide examples.

Do you consider that the Professional Investor Rules should impose conditions for the use of these alternative forms of evidence? Please explain your view.

Do you have any other suggestions?



Question 5

Do you have any other comments on the indicative draft of the proposed Professional Investor Rules in Appendix A? Please explain your view.

Do you suggest any alternative wording for the proposed rules? If so, please give your suggestions and explain your view.

Seeking Comments

The SFC welcomes any comments from the public and the industry on the proposals made in this consultation paper and the indicative draft of the proposed Professional Investor Rules in Appendix A to this consultation paper. Please submit comments to the SFC in writing by not later than 3 April 2017.



Appendix A

Indicative draft of the proposed Professional Investor Rules

Chapter: 571D

Securities and Futures (Professional Investor) Rules

(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 [] 2017.

2. Interpretation

In these Rules, unless the context otherwise requires—

associate (有聯繫者), in relation to an individual, means the spouse or any child of the individual;

custodian (保管人) means—

- (a) a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract; or
- (b) any of the following persons whose business includes acting as a custodian of securities or other property for another person, whether on trust or by contract—
 - (i) an authorized financial institution;
 - (ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
 - (iii) a licensed corporation;
 - (iv) a person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;

portfolio (投資組合) means a portfolio comprising any of the following—

- (a) securities;
- (b) a certificate of deposit issued by—
 - (i) an authorized financial institution; or
 - (ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- (c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership;

public filing (公開檔案) in relation to an individual, a trust corporation (or any trust of which it acts as a trustee), corporation or partnership (**the entity**) means a document that, pursuant to legal or regulatory requirements applicable to the entity in Hong Kong or in a place outside Hong Kong, has been submitted by or on behalf of the entity 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.

relevant date (有關日期) —

- (a) in the case of an advertisement, invitation or document described in section 103(3)(k) of the Ordinance, means the date on which the advertisement, invitation or document is issued, or possessed for the purposes of issue;
- (b) in the case of a call described in section 174(2)(a) of the Ordinance, means the date on which the call is made;



- (c) in the case of an offer described in section 175(5)(d) of the Ordinance, means the date on which the offer is made; or
- (d) in any other case which, by virtue of any rules made under the Ordinance, requires compliance with an obligation, means the date by or on which the obligation is required to be complied with;

trust corporation (信託法團) means—

- (a) any trust company registered under Part 8 of the Trustee Ordinance (Cap 29); or
- (b) any other corporation which—
 - (i) carries on a business which is of a nature similar to that of a trust company referred to in paragraph (a); and
 - (ii) is regulated under the law of any place outside Hong Kong.

3. Hong Kong dollars includes equivalent in foreign currency

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

4. Persons prescribed as professional investors

For the purposes of paragraph (j) of the definition of **professional investor** in section 1 of Part 1 of Schedule 1 to the Ordinance, the following persons are prescribed as within the meaning of that definition for the purposes of any provision of the Ordinance other than Schedule 5—

- (a) a trust corporation referred to in rule 5;
- (b) an individual referred to in rule 6(1);
- (c) a corporation (other than a trust corporation referred to in paragraph (a)) referred to in rule 7;
- (d) a partnership referred to in rule 8.

5. Trust corporations

Rule 4(a) applies to a trust corporation, at the relevant date or as ascertained in accordance with rule 9, having been entrusted under the trust or trusts of which it acts as a trustee with total assets of not less than \$40 million.

6. Individuals

- (1) Rule 4(b) applies to an individual, at the relevant date or as ascertained in accordance with rule 9, having a portfolio of not less than \$8 million when any one or more of the following are taken into account—
 - (a) a portfolio in his or her own account;
 - (b) a portfolio in a joint account with his or her associate;
 - (c) subject to subrule (2), his or her share of a portfolio in a joint account with a person other than his or her 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;
 - (e) his or her share of a portfolio of a corporation which, at the relevant date, has as its principal business the holding of investments and is not wholly owned by the individual.
- (2) For the purposes of subrule (1)(c), an individual's share of a portfolio in a joint account with a person other than his or her associate is—



- (a) the individual's share of the portfolio, as specified in a written agreement between the accountholders; or
- (b) in the absence of an agreement referred to in paragraph (a), an equal share of the portfolio.

7. Corporations

Rule 4(c) applies to the following corporations—

- (a) a corporation, at the relevant date or as ascertained in accordance with rule 9, having—
 - (i) a portfolio of not less than \$8 million; or
 - (ii) total assets of not less than \$40 million;
- (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 referred to in rule 5;
 - (ii) an individual referred to in rule 6(1);
 - (iii) a corporation referred to in paragraph (a) or this paragraph;
 - (iv) a partnership referred to in rule 8;
 - (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;
- (c) a corporation which, at the relevant date, wholly owns a corporation referred to in paragraph (a).

8. Partnerships

Rule 4(d) applies to a partnership, at the relevant date or as ascertained in accordance with rule 9, having—

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

9. Ascertaining total assets or portfolio

For the purposes of rules 5, 6(1), 7 or 8, the total assets or portfolio (including a share in a portfolio) of an individual, a trust corporation (or of any trust of which it acts as a trustee), corporation or partnership are to be ascertained in any one or more of the following ways—

- (a) in the case of a trust corporation, corporation or partnership, as stated in or by referring to the most recent audited financial statement prepared within 16 months before the relevant date in respect of the trust corporation (or of any trust of which it acts as a trustee), corporation or partnership;
- (b) in the case of an individual, a trust corporation, corporation or partnership, as stated in or by referring to 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; or
 - (iii) a public filing submitted by or on behalf the individual, trust corporation (or any trust of which it acts as a trustee), corporation or partnership.



Appendix B

Derivation table showing the differences between the existing and the proposed Professional Investor Rules

	Section number in existing Rules	Rule number in draft new Rules	Scope of expansion/remarks
Definitions of associate , portfolio , relevant date , trust corporation	2	2	No change.
Definition of custodian	2	2	Minor drafting change in paragraph (b).
Definition of custodian statement	2	-	Deleted, as no longer needed in view of rule 9(b)(i).
Definition of public filing	-	2	Added for the purposes of rule 9(b)(iii).
References to equivalent amount of foreign currency	3(a) 3(b) 3(c)	3	No change.
Trust corporations	3(a)	4(a) 5 9(a) & (b)	Rule 9(b) allows for custodian or auditor/certified public accountant certificates and public filings.
Individuals	3(b)	4(b) 6 9(b)	Rule 6 allows for aggregation of portfolios/shares of portfolios, including a joint account with a non-associate and wholly/partially owned investment corporations. Rule 9(b) allows for custodian certificates and public filings.
Corporations	3(c)	4(c) 7(a) 9(a) & (b)	Rule 9(b) allows for custodian or auditor/certified public accountant certificates and public filings.



	Section number in existing Rules	Rule number in draft new Rules	Scope of expansion/remarks
	3(d)	4(c) 7(b) 7(c) 9(a) & (b)	<p>Rule 7(b) applies where the <i>principal</i> (rather than <i>sole</i>) business is holding investments.</p> <p>Rule 7(b)(ii) applies in respect of ownership by a wider range of individuals.</p> <p>Rule 7(b)(iii) applies in respect of ownership by a wider range of corporations.</p> <p>Rule 7(b)(v) applies in respect of ownership by additional type of professional investors.</p> <p>Rule 7(c) applies in respect of a corporation that wholly owns a corporation that is a professional investor pursuant to Rule 7(a).</p> <p>Rule 9(b) allows for custodian or auditor/certified public accountant certificates and public filings.</p>
Partnerships	3(c)	4(d) 8 9(a) & (b)	<p>Rule 9(b) allows for custodian or auditor/certified public accountant certificates and public filings.</p>