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1. These Guidelines are published by the Securities and Futures Commission () under sections 95(6) and 399(1) of the Securities and Futures Ordinance (). They set out principles, standards and procedures in relation to the SFC's regulation of automated trading services (), including the authorization, registration and licensing of persons providing such services.
2. These Guidelines do not have the force of law and should not be interpreted in any manner which would override the provisions of any applicable law, codes or other regulatory requirements. However, a failure to follow the spirit of these Guidelines may reflect adversely on the fitness and properness of persons to be, or to continue to be, authorized, registered or licensed to provide ATS.
3. Terms defined in the SFO bear the same meaning when used in these Guidelines.
4. Part 2 of Schedule 5 to the SFO defines ATS¹ as follows:

automated trading services

¹ The definition of ATS was expanded by the Securities and Futures (Amendment) Ordinance 2014 to cover services for the trading or clearing of OTC derivative transactions. The expanded trading limb is reflected in paragraphs (ab) and (ba) of the definition, while the expanded clearing limb is reflected in paragraph (d) of the definition. As at 1st September 2016, only the expanded clearing limb was implemented, and only in so far as it does not relate to Type 7 regulated activity – see the Securities and Futures (Amendment) Ordinance 2014 (Commencement) Notice 2016.

typically offer facilities that are similar to those of a traditional exchange or a clearing house/central counterparty ().

- (b) An ATS licence or registration under Part V () is appropriate where the provision of ATS is incidental to the performance of

10. Where a person is licensed under Part V, all of the provisions of the SFO (including subsidiary legislation under the SFO) affecting intermediaries will normally apply. These include, for example, provisions and requirements relating to the licensing of representatives, the maintenance of financial resources, the keeping of books and records, the conducting of audits, the protection of client assets, and compliance with relevant codes for business conduct. For general licensing requirements, a Licensing Information Booklet is available on the SFC's website.
11. Where a person is licensed as a Part V ATS provider, section 118(1)(c) empowers the SFC to require the person to apply to become a Part III ATS provider. If this is not complied with, the SFC may revoke the licence under section 195(2). This might be used, for example, where the SFC believes that it would be inappropriate to apply all of the Part V requirements (e.g. licensing of representatives) to the ATS provider, because it does not handle clients' securities and funds, or where the nature of the ATS provider's business as a market operator makes it appropriate to regulate it as a Part III ATS provider.
12. The next two Sections of these Guidelines set out the SFC's principles for the regulation of ATS providers, and its core standards of practice for providing ATS.

- (e) promoting, encouraging and enforcing proper conduct, competence and integrity of persons carrying on activities regulated by the SFC;
- (f) adopting appropriate internal controls and risk management systems by persons carrying on activities regulated by the SFC;
- (g) the international character of the securities and futures industry and the

of activities in Hong Kong, and the risks that such activities pose, including potential risks to the financial stability of Hong Kong.

20. Currently, there are international standards (e.g. PFMI) and widely accepted practices for ensuring the financial integrity of CCPs. These standards and practices will be taken into account when assessing the sufficiency of the financial resources of an ATS provider that offers CCP-type facilities. However, for ATS providers whose facilities are similar to those of an exchange or electronic platform, there are currently no similar international standards and practices in place. The SFC will therefore adopt the approach described in paragraph 16 above when assessing if such ATS providers meet the standard on financial resources.

21. An ATS provider is expected to have a sound risk management framework that enables it to identify, measure, monitor and manage the range of risks that are borne by it.

22. In general, the SFC will expect the ATS provider to have policies and procedures in place to ensure that risks associated with its businesses and operations are properly identified and prudently managed.

23. An ATS provider whose facilities are similar to those of a CCP will be expected, among other things, to demonstrate to the SFC's satisfaction that it complies with the PFMI. An assessment on compliance with the PFMI will also be expected.

24. The electronic facilities used for the provision of ATS are expected to be designed to provide a high degree of reliability, availability and security in respect of the systems, data and networks used, and to incorporate adequate capacity and contingency arrangements. Among other things, appropriate policies, procedures and controls should be in place to ensure that such high degree of reliability, availability and

25. The SFC may, on a case-by-case basis, require an independent assessment³ of the integrity of the electronic facilities used for the provision of ATS. In assessing the need for such assessment, the SFC will take into account any past system performance, as well as the potential systemic risks and market significance of the ATS to the Hong Kong market.

26. An ATS provider is expected to have robust, well-defined and transparent governance arrangements. Such governance arrangements should include, among other things, clear lines of reporting, effective processes to review operational and business performance, proper arrangements to handle conflicts of interest and adequate internal control procedures. Sufficient checks and balances should be introduced in the decision-

- (b) the electronic facilities to be used for providing ATS;
 - (c) the contractual documentation relevant to its members/users in Hong Kong;
 - (d) the criteria for admitting persons as Hong Kong members/users or for revoking such membership, prior to the changes taking effect; and
 - (e) in some cases, the new products that it intends to offer to persons in Hong Kong.
37. The information to be provided and the frequency of reporting will, in each case, be tailored to the impact of the activities of the ATS provider in Hong Kong. The SFC will not

41. In regulating ATS providers and their activities, the SFC generally (and as required by section 6(2) of the SFO) takes into account the principle that competition among persons carrying out activities regulated by the SFC

45. In the case of a “futures market”, section 19(1)(b) of the SFO prohibits a person from operating a futures market unless the person is an REC. However, by virtue of section 19(9) of the SFO, a person who is licensed or registered to provide ATS under Part V of the SFO, or authorized to provide ATS under Part III of the SFO, will not be regarded as contravening section 19(1)(b) if the person’s licence, registration or authorization (as applicable) permits it to engage in activities that constitute operating

participants that might be affected by the provision of such ATS, and whether any systemic risks might arise. Generally, the greater the scope of the ATS and its potential effect on market participants, and especially if systemic risks might arise, the more that will be expected of the domestic ATS provider. In appropriate cases, the level of regulation may be akin to that of an REC.

48. As noted above, a person wishing to operate an exchange-like platform may apply to become an REC or a Part III ATS provider. Under the SFO, there are clear and separate regimes for regulating RECs and Part III ATS providers. The SFC takes into account a range of factors when considering whether a prospective operator is more suited to being regulated as an REC or as a Part III ATS provider. These include, among other things, five major regulatory differences between the two regimes which the SFC has identified.

products and in the case of futures contracts/derivatives, their contract specifications, if applicable.

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These fees are prescribed in Schedules 3 and 1, respectively, of the Securities and Futures (Fees) Rules.⁷ The application fee should be paid when the ATS application is submitted. The annual fee should be paid on the anniversary of the Part III ATS authorization. In both cases, fees paid are not refundable.

57. By virtue of section 96 of the SFO, the SFC may, when considering an application for Part III ATS authorization, have regard to any information in its possession whether provided by the applicant or not. The SFC may also require the applicant to submit further information and particulars as reasonably required.
58. If the SFC decides to authorize an applicant to provide ATS, it will notify the applicant in writing, and publish notice of such fact in the Government Gazette, as required by section 95(2) and (3) of the SFO. If the authorization is granted subject to conditions, these will be specified in the notice. Conditions imposed may be subsequently amended, added to or revoked. Applicants will be generally given an opportunity to comment on any proposed conditions, and their comments and concerns will be taken into account, before conditions are finalized. This applies in respect of both conditions proposed to be imposed at the time of authorization and any subsequent additions or amendments.
59. If the SFC is minded not to grant a Part III ATS authorization, it will, as required by section 95(4) of the SFO, inform the applicant of this and give it a reasonable opportunity to be heard. Specifically, the applicant will be informed of the SFC's concerns and reasons for being minded to refuse the application. The applicant will also be given an opportunity to address the SFC's concerns and to make any other representations as to why the application should not be refused. Any representations made will be taken into account before the SFC makes a final decision in respect of the application.
60. Under section 98 of the SFO, the SFC may withdraw a Part III ATS authorization if it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest. As required by section 98(4) of the SFO, the SFC will give the ATS provider an opportunity to be heard before withdrawing its authorization. Specifically,

account before a final decision is made. Where an authorization is withdrawn, notice of the fact of such withdrawal will be published in the Gazette, as required by section 98(5) of the SFO.

61. The following decisions of the SFC concerning a Part III ATS authorization are “specified decisions” under Part 2 of Schedule 8 to the SFO, and may therefore be appealed against, under section 217 of the SFO, to the Securities and Futures Appeals Tribunal:

<u>SFO provision</u>	<u>SFC decision</u>
section 95(2)	refusal to grant an authorization or imposition of any condition
section 97(1)	amendment or revocation of any condition, or imposition of any new condition
section 98(1)	withdrawal of an authorization

62. Section 101C of the SFO mandates the clearing of certain OTC derivative transactions through a CCP that has been designated under section 101J(1) of the SFO (). A prerequisite to becoming a designated CCP is that the CCP must be an RCH or a Part III ATS provider.
63. While there is no such limitation in the legislation, the SFC expects that overseas CCPs seeking to become designated CCPs will generally apply to become a Part III ATS provider rather than an RCH

purposes of fulfilling any mandatory clearing requirements in force in that jurisdiction; and details of the regulator in each such jurisdiction that regulates its activities as a CCP.

- (b) The classes of OTC derivative transactions in respect of which the applicant is seeking to be designated, together with details of the applicant— ca # i2

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