

**SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS –
SECURITIES BORROWING AND LENDING) RULES (CAP. 571 SUB. LEG)**

Under Section 8 of the Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules (Cap 571 sub. leg.) the Securities and Futures Commission publishes these guidelines for the approval of corporations as approved lending agents

1. Definitions

Terms that are defined in section 308 of the SFO, Schedule 1 to the SFO and the SBL Rules have the same meaning in these Guidelines. In addition :

“client” in relation to an applicant that is a lending agent, means a principal for whom the lending agent lends shares or holds shares that are available for lending;

“Guidelines” means these guidelines made pursuant to section 8 of the SBL Rules;

“lending agent” means a person who is authorised to lend shares as agent for a principal;

“lending pool” means shares in the relevant share capital of a listed corporation that are held by a lending agent on behalf of his clients that are available for lending, and includes shares that have been lent if the right to the return of the shares has not been extinguished;

“Part XV” means Part XV of the SFO;

“SBL Rules” means the Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules (Cap 571 sub. leg.)

“SFC” means the Securities and Futures Commission;

“SFO” means the Securities and Futures Ordinance (Cap. 571); and

“substantial shareholder” means a person or corporation who has an interest in shares comprising 5% or more of a listed corporation’s relevant share capital.

2. Nature and Purpose of these Guidelines for Approval

2.1 Part XV requires the disclosure by substantial shareholders of their interests in the securities of listed corporations. Disclosure of information to investors and the market is the cornerstone of a fair and orderly securities market. Disclosure of interests of substantial shareholders is an important element of an informed market. Nevertheless, in securities borrowing and lending business, a large number of loans and returns of shares can be transacted from the same lending pool. This would give rise to a large number of disclosures for movements in the same lending pool, which

may be of limited value to investors. Accordingly the SBL Rules establish a simplified disclosure regime that will limit the disclosure obligations of certain classes of participants in the SBL market without undermining the integrity of the disclosure regime or compromising investor protection.

2.2 Substantial shareholders, who lend through an approved lending agent, on condition that the shares are held by the ALA -

- (a) as agent for the substantial shareholder,
- (b) for lending only and for no other purpose; and
- (c) are lent using only a specified form of agreement (i.e. a relevant agreement¹ as defined),

will be exempt from making disclosures of changes in the nature of their interests that result from –

- (i) the transfer of the shares to the approved lending agent and the return of the shares by the approved lending agent; and
- (ii) the lending of the shares by the approved lending agent and the return of the shares to him (section 3 of the SBL Rules).

2.3 Corporations approved by the Commission as approved lending agents will be exempted from disclosure requirements which would otherwise arise when they lend shares from their lending pool or when shares are returned to their lending pool. Approved lending agents will have to disclose changes in the percentage level of their lending pool but the amount of information required to be included in their notification has been simplified (combined effect of sections 4, 5, and 6 of the SBL Rules).

2.4 The simplified disclosure regime for approved lending agents also extends to holding companies of approved lending agents that are taken to be interested in shares in which an approved lending agent is interested under section 316(2) of the SFO. Accordingly, a holding company will be exempted from disclosure requirements which would otherwise arise when the approved lending agent that it controls lends shares from its lending pool or when shares are returned to its lending pool. However, the SBL Rules do not suspend the duty on the holding company of an approved lending agent to aggregate the interests in shares of an approved lending agent that it controls.

2.5 Approved lending agents taking advantage of the simplified disclosure regime under SBL Rules will have to keep records of certain transactions in accordance with the requirements set out in section 9 of the SBL Rules.

¹ Briefly, a relevant agreement refers to a SBL agreement providing that the borrower of shares is required to provide collateral of a value exceeding the value of shares lent, the value of collateral is marked to market to avoid any shortfall and the lender of shares can require the return of shares at any time.

Enabling provisions and general qualification

2.6 Under section 8 of the SBL Rules the SFC may upon application by a corporation, approve in writing, the corporation as an approved lending agent for the purposes of the SBL Rules. An approval under section 8(1) shall be subject to compliance by the applicant corporation with section 9 of the SBL Rules (keeping of records) and such reasonable conditions as the Commission may impose from time to time.

2.7 These Guidelines set out the criteria that the SFC will take into account when deciding whether to grant an approval. The Guidelines are not exhaustive. They are simply intended to assist applicants in understanding the matters that the SFC will take into consideration when deciding whether to exercise its discretion to grant an approval. They may be modified or varied as circumstances require. Similarly an approval, once granted, can be withdrawn or any conditions attached modified or varied by the SFC as circumstances change.

3. Application for an Approval under section 8 of the SBL Rules

3.1 An application must be directed to the Corporate Finance Division of the SFC. Under the Securities and Futures (Fees) Rules (Schedule 3 item 20) the prescribed fee for an application for approval as an approved lending agent is \$24,000.

3.2 The applicant, when deciding what matters to include in its written application, should have regard to the Guidelines. The SFC may request additional information or make such enquiries as it considers appropriate when considering any application.

3.3 Approvals may be made subject to such reasonable conditions as the SFC impose from time to time.

4. General Criteria for Approval under section 8 of the SBL Rules

4.1 Generally, the SFC will not consider granting approval except to a corporation which is a custodian or a third party lending agent.

4.2 The SFC will take into account all relevant facts and circumstances, including the following matters in deciding whether to approve a corporation as an approved lending agent under section 8(1) of the SBL Rules and whether to withdraw its approval :

- (a) the principal business of the applicant and the other businesses conducted by the applicant;
- (b) whether the applicant is licensed to deal in securities in Hong Kong or in one of the following places Australia, Canada, France, Germany, Guernsey, Ireland, Isle of Man, Jersey,

Luxembourg, Netherlands, Singapore, Switzerland, United Kingdom or United States of America;

- (c) whether any client of the applicant, or person to whom the applicant lends shares from its lending pool, is a controlling entity of the applicant or a subsidiary of the controlling entity of the applicant, and the proportion of the lending business that such clients represent.

Additional information to be provided to the SFC

4.3 The applicant must provide the SFC with -

- (a) details of the number of shares of each listed corporation that it holds in its lending pool;
- (b) the names of all persons(s) in accordance with whose directions or instructions the applicant or its directors are accustomed to act (including the name of the ultimate holding company of the applicant);
- (c) confirmation that each client agreement, under which the applicant will be appointed as lending agent for its clients in its capacity as an approved lending agent, will contain the conditions referred to in section 3(2)(2)(a) of the SBL Rules; and
- (d) confirmation that the terms of the agreements that the applicant will enter into with each borrower prior to lending qualified shares will qualify as “relevant agreements” within the meaning of s.2 of the SBL Rules.

Conditions

4.4 The following conditions will be imposed on an Approved Lending Agent :

- (a) The approved lending agent must have a written agreement with each of its clients containing the conditions referred to in section 3(2)(2)(a) of the SBL Rules.
- (b) Before lending qualified shares to a borrower the approved lending agent must have a written agreement that is a relevant agreement (within the meaning of section 2 of the SBL Rules) with that borrower.
- (c) The approved lending agent, the controlling entity of the applicant, and any subsidiary of a controlling entity of the applicant, must not treat the following shares as “qualified shares” for the purposes of the SBL Rules:
 - (i) shares in which a controlling entity of the applicant, or any subsidiary of a controlling entity of the applicant, are interested; or
 - (ii) shares in which the approved lending agent is interested otherwise than as lending agent for a client.

- (d) The approved lending agent must not lend qualified shares from its lending pool shares to :
 - (i) a controlling entity of the applicant, or any subsidiary of a controlling entity of the applicant; or
 - (ii) the approved lending agent itself.
- (e) The approved lending agent must inform the SFC of :
 - (i) any material changes in the particulars supplied to the SFC;
 - (ii) if it ceases to carry on business as a custodian or lending agent;
 - (iii) if it fails to comply with these conditions; or
 - (iv) if it fails to comply with any requirement imposed under section 9 of the SBL Rules.

4.5 The SFC may from time to time impose such further reasonable conditions as it thinks fit. Approval of the lending agent as an approved lending agent will be withdrawn if it breaches a condition imposed on it.

4.6 The SFC will from time to time publish on its web site a list of the names of approved lending agents.