

Consultation Document
The Draft Securities and Futures (Licensed Persons And Registered Institutions) Rules (the “draft Rules”)

Introduction

1. The Securities and Futures Bill gives the Commission the necessary rule-making power under clause 384 to prescribe requirements in the subsidiary legislation. The basis for this approach is that, consistent with modern securities legislation such as the UK Financial Services and Markets Act, effective regulation depends upon the regulator having the flexibility to quickly address changing market practices and global conditions, by amending the rules rather than the primary legislation.
2. There are controls already built into the legislative system whereby any rules made by the Commission must be subject to negative vetting by the Legislative Council. In addition, the Commission now releases the draft Rules for public consultation.
3. The SFC has used the FinNet communication network to send copies of this consultation document to registered dealers that have lodged their Financial Resources Rules returns electronically with the SFC via FinNet. Copies of the consultation document are available free of charge at the SFC’s office and may also be found on the SFC’s Internet website at <http://www.hksfc.org.hk>.
4. The public is invited to submit comments before close of business on **17 December 2001**. Written comments may be sent:

By mail to: SFC (Licensed Persons and Registered Institutions) Rules
12/F Edinburgh Tower
The Landmark
15 Queen’s Road Central
Hong Kong

By fax to: 2501-0375

By on-line submission: <http://www.hksfc.org.hk>

By e-mail to: licensed_persons_rules@hksfc.org.hk

Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site and in other documents to be published by the SFC. In this connection, 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.

5. It should be stressed that the draft Rules must be read in conjunction with the Securities and Futures Bill itself (“the Bill”). For example, the public register will contain more information than what are given in section 5 of the draft Rules, such as the name, address or conditions in relation to a licence are provided under section 133(2) of the Bill.

Background

6. A copy of the draft Rules is attached. In short, the draft Rules prescribe requirements of the following:
 - Lodging of documents with the SFC;
 - Particulars to be entered into the public register maintained by the SFC and correction of errors in the public register;
 - Licence or certificate of registration to be exhibited;
 - Return of licence or certificate of registration; and
 - Changes to be notified by licensed persons and registered institutions.
7. The draft Rules is derived from, and will replace, the current Securities (Dealers, Investment Advisers, Partnerships and Representatives) Rules, the Securities (Miscellaneous) Rules, and the Commodities (Dealers, Commodity Trading Advisers and Representatives) Rules with certain significant changes.
8. We have prepared the draft Rules with the aim to:
 - improve the openness and transparency to the market participants and investors;
 - reduce the chance of misleading investors of a person’s licensing status by using an invalid licence; and
 - be kept informed of significant changes to licensed persons and registered institutions.

New Terminologies

9. A couple of the terminologies used in the Bill have recently been changed and are reflected in the draft Rules, these include:
 - from “exempt person” to “registered institution”; and
 - from “exemption” to “certificate of registration”.

New Policy Initiatives

10. Several policy changes have been incorporated into the draft Rules:
 - (a) To disclose in the public register the following additional information:
 - history of enforcement/disciplinary actions taken against licensed persons and registered institutions to enable investors to get access to relevant information relating to industry participants including their past conduct; and
 - Name or title of an assigned complaints officer of a licensed corporation to provide a channel for aggrieved investors to lodge complaints against the company or any of its representatives.
 - (b) To ensure prompt reporting from intermediaries and licensed individuals regarding material information which were not previously provided for, such as the assigned complaints officer and contact person in the event of market emergency or other urgent need.

Highlights of significant changes of the draft Rules

11. The Public Register
 - (a) The draft Rules provide for additional particulars to be entered in the public register such as:
 - Certain information on waiver or modification granted;
 - Suspension status and disciplinary record in Hong Kong including disciplinary history for a period of five years;
 - The temporary licence status in respect of a corporation;
 - List of licensed representatives accredited to a licensed corporation;
 - Name or title of any assigned complaints officer in respect of a licensed corporation;
 - The provisional or temporary licence status in respect of a representative; and
 - The approval as a Responsible Officer.
 - (b) The SFC would like to particularly draw the attention of interested persons on two of the items mentioned above, namely the disclosure of disciplinary record and contact details of the assigned complaints officer.
 - (c) To provide more information for the public to decide on the intermediaries whom they wish to deal with and in line with the regulatory philosophy adopted by our overseas counterparts, such as the National Association of Securities Dealers Regulation, Inc in the USA

and the Australian Securities and Investments Commission, where enforcement/disciplinary actions taken against firms and individuals are disclosed to the public, the SFC is proposing to add this information to the public register. The period of disclosure is set at five years from the date when the action is effected, and comments on this are welcome.

- (d) With a view to providing an aggrieved investor with more information and awareness of his right to lodge complaints against an intermediary, the SFC considers that it is necessary for a licensed firm to assign a person to be a complaints officer that is made known to the public. As a result, the SFC proposes to add the name or title of this person into the public register.

12. Return of Licence or Certificate of Registration

The Bill provides for a licensed representative to return his licence to the SFC upon cessation of accreditation. To extend the scope, the draft Rules require a licensed corporation or registered institution to return its licence or certificate of registration after it has ceased to engage in any regulated activity.

13. Licensed Persons and Registered Institutions to notify changes

In order to ensure information in the public register and SFC's records are kept up-to-date, the draft Rules require persons who are licensed or registered, or applying to be licensed or registered to notify SFC of relevant changes, including but not limiting to the following:

- Contact details;
- Name or title and contact details of any assigned complaints officer in respect of the corporation;
- Name and contact details of each person assigned to be its main point of contact by the Commission in the event of market emergency or other urgent need;
- When a person ceases to be a responsible officer;
- Issues affecting the person's fitness and properness;
- Significant changes in business activities; and
- Details relating to their associated entities.

- End -

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 (“PDPO”).

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to the Consultation Document on the Draft Securities and Futures (Licensed Persons And Registered Institutions) Rules (“the Consultation Document”) may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Document. The names of persons who submit comments on the Consultation Document 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 web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

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 the Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Document, 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
12/F, Edinburgh Tower
The Landmark
15 Queen's Road
Central
Hong Kong

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

**SECURITIES AND FUTURES (LICENSED PERSONS AND
REGISTERED INSTITUTIONS) RULES**

(Made by the Securities and Futures Commission under section 384 of the Securities and Futures Ordinance (Cap. XXX))

1 Commencement

These Rules shall come into operation on [] 2002.

2. Citation

These Rules may be cited as the Securities and Futures (Licensed Persons and Registered Institutions) Rules.

3. Interpretation

In these Rules, "CE number" () means the unique identifier assigned by the Commission.

4. General requirements for documents lodged with the Commission

(1) Where any document (however described) is required under any of the relevant provisions to be submitted, filed or lodged with the Commission it shall –

(a) in the case of a document other than in electronic form, be –

(i) delivered by hand;

- (ii) sent by post; or
- (iii) with the agreement of the Commission, sent by facsimile transmission; or

(b) in the case of a document in electronic form, be –

- (i) submitted by means of a Commission electronic submission facility; or
- (ii) sent by electronic mail,

to the offices of the Commission.

(2) Except as otherwise provided in the Ordinance, where any document (however described) is required under any of the relevant provisions to be submitted, filed or lodged with the Commission –

(a) in the case of a document (however described) in respect of which a form has been specified under section 388 of the Ordinance, it shall be signed in such manner as may be specified in the directions and instructions;

(b) in any other case, it shall be signed.

(3) Where the Commission is satisfied that an applicant has substantial practical difficulties in submitting, filing or lodging any document (however described) within the time provided under any of the relevant provisions, it may in its discretion by notice in writing extend the time of submission to such extent as it considers necessary.

5. Particulars to be entered in the register of licensed persons and registered institutions

(1) In addition to the information prescribed under section 133(2) of the Ordinance, the particulars specified in subsections (2) to (4) shall also be included in the register.

(2) For a licensed person or a registered institution, the –

- (a) CE number;
- (b) date of granting the licence or the certificate of registration;
- (c) effective date of such conditions of the licence or the certificate of registration (if any) as the Commission considers appropriate;
- (d) regulated activities for which the person is licensed or registered and their respective effective dates;
- (e) status of suspension of the licence or the certificate of registration, if applicable;
- (f) waiver or modification (if any) granted and the corresponding effective date; and
- (g) disciplinary record in Hong Kong (including whether the licence or certificate of registration is currently suspended and disciplinary history for a period of 5 years from the date when the disciplinary order took effect), if applicable.

(3) Additional information in the case of a licensed corporation –

- (a) whether it holds a temporary licence;
- (b) a list of its accredited representatives; and
- (c) name or title of any assigned complaints officer.

(4) Additional information in the case of a licensed representative –

- (a) whether he holds a temporary licence;
- (b) whether he holds a provisional licence;

(c) whether he is approved as a responsible officer and, if so, for which regulated activity; and

(d) the date of accreditation to his principal.

(5) Where, pursuant to section 132 of the Ordinance and section 9, the Commission is notified of any change in the particulars relating to a licensed person or registered institution, it shall make such amendments in the register as it considers necessary to record the change.

(6) Information in the register is to be updated at such intervals as the Commission considers appropriate.

6. Correction of errors

Where an error exists in the register kept under section 133 of the Ordinance, or in a licence or certificate of registration, the Commission may correct the error.

7. Licence or certificate of registration to be exhibited

Every intermediary shall exhibit its licence or certificate of registration, as the case may be, in a prominent place at its place of business, or if it has more than one place of business, at its principal place of business.

8. Return of licence or certificate of registration

(1) If an intermediary ceases to engage in regulated activities, it shall return its licence or certificate of registration to the Commission within 7 days after such cessation.

(2) If the regulated activities for which an intermediary is licensed or registered are varied under section 127 of the Ordinance, it shall produce its licence or certificate of registration (as the case may be) to the Commission for amendment.

(3) If it appears to the Commission that an error exists in a licence or certificate of registration, it may require any person whom it reasonable believes to be in possession of any such licence or certificate of registration (as the case may be) to produce it to the Commission for correction of the error.

9. Changes to be notified by licensed persons and registered institutions

(1) Pursuant to section 132(3) of the Ordinance, changes concerning the matters specified in subsections (2) to (4) shall be notified in writing within 7 days of the change.

(2) To the Commission by a corporation which is licensed or has applied for a licence-

- (a) name of the corporation;
- (b) contact details, including correspondence address, telephone and facsimile numbers and electronic mail address of the corporation;
- (c) name or title and contact details, including correspondence address, telephone and facsimile numbers and electronic mail address, of any assigned complaints officer;
- (d) name and contact details, including daytime and night time telephone (both land line and mobile) and facsimile numbers and daytime and night time electronic mail address, of each person assigned by the corporation to be its main point of contact by the Commission in the event of market emergency or other urgent need;
- (e) status of any authorization (however described) by an authority or regulatory organization outside Hong Kong for the carrying on in a place

outside Hong Kong of an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;

- (f) status of membership (however described) of a stock exchange or futures exchange outside Hong Kong or participation in a recognized exchange company;
- (g) when an individual ceases to be a responsible officer;
- (h) issues relating to its fitness and properness, including –
 - (i) whether it or any of its directors or responsible officers has been charged with, or convicted of, any criminal offence, whether in Hong Kong or elsewhere;
 - (ii) whether it or any of its directors or responsible officers has been involved in any disciplinary proceedings conducted by an organization or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
 - (iii) whether it is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere;
 - (iv) its solvency or the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; and
 - (v) any other matter which might reasonably be considered relevant to the fitness and properness of the corporation to remain, or to become, licensed.

- (i) its capital and shareholding structure;
- (j) the corporation's bank accounts relating to the conduct of regulated activities;
- (k) changes in business activities which might reasonably be expected to have a significant impact on the carrying on of business in any regulated activity for which it is licensed; and
- (l) the following details in relation to each of its associated entities –
 - (i) in the case where the associated entity is an intermediary or authorized financial institution-
 - (A) name;
 - (B) CE number;
 - (C) whether the associated entity holds client assets as nominee for the licensed corporation or its clients;
 - (D) date of its becoming as associated entity; and
 - (E) date of its ceasing to be associated entity.
 - (ii) In any other case-
 - (A) name;
 - (B) business address;
 - (C) name of each executive officer;
 - (D) whether the associated entity holds client assets as nominee for the licensed corporation or its clients;
 - (E) date of its becoming an associated entity;
 - (F) circumstances under which it became an associated entity;

- (G) date of its ceasing to be associated entity; and
 - (H) in the case of a ceasing associated entity, circumstances under which it ceased to be an associated entity and confirmation that all client assets held by the associated entity prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of.
- (3) To the Commission and the Monetary Authority by a registered institution -
 - (a) name of the registered institution;
 - (b) contact details, including correspondence address, telephone and facsimile numbers, and electronic mail address of the registered institution;
 - (c) name and contact details, including daytime and night time telephone (both land line and mobile) and facsimile numbers and daytime and night time electronic mail address, of each person assigned by the institution to be its main point of contact by the Commission in the event of market emergency or other urgent need;
 - (d) name and residential address of any individual who has been appointed as an executive officer;
 - (e) date of appointment of any executive officer and for which regulated activity;
 - (f) date when an individual ceased to be an executive officer; and
 - (g) the following details in relation to each of its associated entities –
 - (i) in the case where the associated entity is an intermediary or authorized financial institution -

- (A) name;
 - (B) CE number;
 - (C) whether the associated entity holds client assets as nominee for the registered institution or its clients for whom the registered institution provides a service that constitutes a regulated activity;
 - (D) date of its becoming as associated entity; and
 - (E) date of its ceasing to be associated entity.
- (ii) In any other case-
- (A) name;
 - (B) business address;
 - (C) name of each executive officer;
 - (D) whether the associated entity holds client assets as nominee for the registered institution or its clients for whom the registered institution provides a service that constitutes a regulated activity;
 - (E) date of its becoming an associated entity;
 - (F) circumstances under which it became an associated entity;
 - (G) date of its ceasing to be associated entity; and
 - (H) in the case of a ceasing associated entity, circumstances under which it ceased to be an associated entity and confirmation that all client assets held by the associated entity prior to its

ceasing to be an associated entity have been fully accounted for and properly disposed of.

- (4) To the Commission by an individual who is licensed or who has applied for a licence-
- (a) his name;
 - (b) status of any authorization (however described) by an authority or regulatory organization outside Hong Kong for the carrying on in a place outside Hong Kong of an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
 - (c) status of membership (however described) of a stock exchange or futures exchange outside Hong Kong or participation in a recognized exchange company; and
 - (d) issues relating to his fitness and properness, including –
 - (i) whether he has been charged with, or convicted of, any criminal offence, whether in Hong Kong or elsewhere;
 - (ii) whether he has been involved in any disciplinary proceedings conducted by an organization or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
 - (iii) whether he is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere;

- (iv) whether any person has petitioned for a bankruptcy order against him, or he has petitioned for a bankruptcy order against himself; and
- (v) any other matter which might reasonably be considered relevant to his fitness and properness to remain, or to become, licensed.