



**SECURITIES AND
FUTURES COMMISSION**

證券及期貨事務監察委員會

Consultation Conclusions on the

- i) Securities and Futures (Investor Compensation – Levy) Rules,**
 - ii) Securities and Futures (Investor Compensation – Compensation Limits) Rules,**
 - iii) Securities and Futures (Transfer of Functions – Investor Compensation Company) Order, and**
 - iv) Securities and Futures (Investor Compensation – Claims) Rules**
-
- i) 《證券及期貨(投資者賠償-徵費)規則》;
 - ii) 《證券及期貨(投資者賠償-賠償限額)規則》;
 - iii) 《證券及期貨(職能的轉移-投資者賠償公司)令》; 及
 - iv) 《證券及期貨(投資者賠償-申索)規則》的

諮詢總結

Hong Kong
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INTRODUCTION

1. On 28 March 2002, the Securities and Futures Commission (“SFC”) issued a consultation paper (“the Consultation Paper”) to solicit comments on draft subsidiary legislation relating to new investor compensation arrangements to be put in place under Parts III and XII of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”). The draft subsidiary legislation comprises rules to be made by the Chief Executive in Council and rules to be made by the SFC under the Ordinance.
2. The consultation period lasted until 25 April 2002.
3. The purpose of this document is to provide interested persons with an analysis of the comments raised during the consultation exercise and the rationale for the SFC’s conclusions. This document should be read in conjunction with the Consultation Paper.

PUBLIC CONSULTATION

Consultation process

4. In addition to the public announcement inviting comments, the Consultation Paper was distributed to various interested parties and professional bodies. The Consultation Paper was also published on the SFC’s website.
5. Six submissions were received from Consumer Council, The Institute of Securities Dealers Ltd., the Hong Kong Securities Institute, HSBC Broking Securities (Asia) Limited, the Hong Kong Stockbrokers Association and one organization which chooses to remain anonymous.
6. There were no substantive comments. Most comments were supportive of the proposed subsidiary legislation.

Consultation Conclusion

7. The SFC considers that no changes should be made to the existing levies and rates. The draft Securities and Futures (Investor Compensation - Levy) Rules have now been amended to achieve consistency with the existing practice. A copy of the revised draft Securities and Futures (Investor Compensation - Levy) Rules are attached at Appendix 1. No major change has been made to the substance of the other original draft Rules and the draft Order set out in the Consultation Paper. We have however refined the Rules and Order to better reflect the policy intention and to improve drafting.

SUMMARY OF COMMENTS AND SFC'S RESPONSES

8. Summaries of the comments received on each of the draft rules, and the SFC's responses, are set out in the attached tables -
 - i) Securities and Futures (Investor Compensation) Rules, now retitled the Securities and Futures (Investor Compensation – Levy) Rules (Appendix 2);
 - ii) Securities and Futures (Investor Compensation - Compensation Limits) Rules (Appendix 3);
 - iii) Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (Appendix 4);
 - iv) Securities and Futures (Investor Compensation - Miscellaneous) Rules, now retitled the Securities and Futures (Investor Compensation – Claims) Rules (Appendix 5).

DRAFT

[CF: Sections 236, 237(1), 244(1) and 244(4) of the
Securities and Futures Ordinance]

SECURITIES AND FUTURES (INVESTOR COMPENSATION - LEVY) RULES

(5 OF 2002 SECTION 244(1))

ARRANGEMENT OF SECTIONS

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**SECURITIES AND FUTURES (INVESTOR COMPENSATION
- LEVY) RULES**

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (5 of 2002))

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day on which Part XII of the Securities and Futures Ordinance (5 of 2002) comes into operation.

2. Interpretation

In these Rules, unless the context otherwise requires -
"Exchange Company" (交易所) -

(a) in relation to a levy payable under Part II,
means the Stock Exchange Company;

(b) in relation to a levy payable under Part III,
means the Futures Exchange Company;

"exchange traded fund" (交易所買賣基金) means a collective
investment scheme that -

(a) holds portfolios of securities;

(b) is designed generally to correspond to the price and yield performance of the underlying portfolios of securities with in kind creation and redemption facilities; and

(c) is listed or traded on a recognized stock market operated by the Stock Exchange Company as a single security;

"exchange traded funds market maker" (交易所買賣基金莊家) means any person who is registered as an exchange traded funds market maker by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company;

"levy" (徵費) means a levy payable under Part II or Part III;

"Mini-Hang Seng Index Futures contract" (小型恒生指數期貨合約) means the stock index futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company;

"pilot programme" (試驗計劃) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme market maker" (試驗計劃莊家) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme securities" (試驗計劃證券) means securities that are traded on a recognized stock market operated by the Stock Exchange Company under the pilot programme;

"remittance" (轉交) means a payment, by way of remittance, by the Exchange Company to the Commission under section 13;

"stock futures contract" (股票期貨合約) means a stock futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company.

PART II

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF SECURITIES

3. Application of Part II

This Part does not apply in relation to a sale and purchase of securities unless it is recorded on a recognized stock market or notified to a recognized exchange company under its rules.

4. Securities

Subject to sections 5, 6 and 7, for the purposes of the compensation fund, a levy for a sale and purchase of securities shall be payable to the Commission -

(a) by the seller at the rate of 0.002% of the consideration for the sale; and

(b) by the purchaser at the rate of 0.002% of the consideration for the purchase.

5. No levy on stock options

For the purposes of the compensation fund, no levy for a sale and purchase of a stock option shall be payable to the Commission.

6. Pilot programme securities

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of pilot programme securities is -

- (a) in the case of the seller -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the sale;
 - (ii) where the seller is a pilot programme market maker, at the rate of 0% of the consideration for the sale; or
- (b) in the case of the purchase -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the purchase;
 - (ii) where the purchaser is a pilot programme market maker, at the rate of 0% of the consideration for the purchase.

7. Exchange traded funds

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of an exchange traded fund is -

- (a) in the case of the seller -

- (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the sale;
 - (ii) where the seller is an exchange traded funds market maker, at the rate of 0% of the consideration for the sale; or
- (b) in the case of the purchaser -
- (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the purchase;
 - (ii) where the purchaser is an exchange traded funds market maker, at the rate of 0% of the consideration for the purchase.

PART III

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF FUTURES CONTRACTS

8. Application of Part III

This Part does not apply in relation to a sale and purchase of a futures contract unless it is traded on a recognized futures market.

9. Futures contracts

Subject to sections 10 and 11, for the purposes of the compensation fund, a levy for a sale and purchase of a futures contract shall be payable to the Commission -

- (a) by the seller in the amount of \$0.50; and
- (b) by the purchaser in the amount of \$0.50.

10. Mini-Hang Seng Index Futures contracts

For the purposes of the compensation fund, the levy for a sale and purchase of a Mini-Hang Seng Index Futures contract is -

(a) in the case of the seller, in the amount of \$0.10;

or

(b) in the case of the purchaser, in the amount of \$0.10.

11. Stock futures contracts

For the purposes of the compensation fund, the levy for a sale and purchase of a stock futures contract or an option on such a contract is -

(a) in the case of the seller, in the amount of \$0.10;

or

(b) in the case of the purchaser, in the amount of \$0.10.

PART IV

MANNER OF PAYMENT AND INCIDENTAL MATTERS

12. Payment of levies

(1) A person who is liable to pay a levy under these rules shall pay the levy to the Exchange Company on behalf of the Commission in such manner as may be prescribed from time to time in the rules of the Exchange Company.

(2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

13. Exchange Company to collect and remit levy

The Exchange Company shall collect any levy paid to it under section 12 and, subject to section 21, pay the levy by way of remittance to the Commission by paying it -

- (a) into such bank account as may be specified by the Commission;
- (b) on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a business day, on the next business day.

14. Exchange Company to deposit levies pending remittance

Pending remittance to the Commission of any levy in accordance with section 13, the Exchange Company shall -

- (a) hold the levy on behalf of the Commission; and
- (b) deposit the levy in a bank within the meaning of the Banking Ordinance (Cap. 155) as soon as reasonably practicable after collection of the levy.

15. Returns relating to remittance

(1) Within 7 days after the date of each remittance, the Exchange Company shall furnish to the Commission a return relating to the remittance.

(2) A return furnished under subsection (1) shall -

(a) be in such form as may be specified by the Commission;

(b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and

(c) contain such information as may be specified by the Commission.

16. Adjustment of remittance and returns

A return or the amount of remittance to which it relates may be adjusted by the Exchange Company to reflect any error in a previous return or remittance (as the case may be).

17. Late remittance charge

(1) If the Exchange Company fails to remit any levy when required under these Rules, it shall pay to the Commission a late remittance charge of 2% above the average of the best lending rates of all the note-issuing banks within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap.65), on the amount of the levy, calculated on a daily basis commencing on the date of default until the remittance of the levy is made.

(2) The late remittance charge payable under subsection (1) and the amount of the levy referred to in subsection (1) are recoverable as a civil debt due to the Commission.

(3) The Commission shall pay the late remittance charge paid to it under subsection (1) into the compensation fund.

18. Accounts

The Exchange Company shall keep proper accounts in respect of all transactions relating to the collection and remittance of levies.

19. Access to accounts by the Commission

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of a copy of the authorization, inspect and make copies of the accounts kept under section 18.

20. Report

(1) Subject to subsection (3), the Exchange Company shall, within 1 month after 31 March in each year or such longer period as may be specified by the Commission either generally or in a particular case, furnish to the Commission a report certifying that the returns furnished under section 15 relating to all remittances made in respect of the 12 months

ending on 31 March in that year are correct and in accordance with these Rules.

(2) The report furnished under subsection (1) shall be -

- (a) in such form as may be specified by the Commission; and
- (b) prepared and certified, at the expense of the Exchange Company, by an auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 32).

(3) The first report furnished by the Exchange Company under subsection (1) shall deal with returns furnished in respect of all remittances made by it on or before 31 March 2003.

21. Refund of levy

(1) Where a person has paid a levy , he may apply to the Commission for the refund of such levy on the ground that -

- (a) he was in fact not liable to pay the levy; or
- (b) he subsequently became not liable to pay the levy.

(2) An application under subsection (1) shall be -

- (a) in writing; and
- (b) accompanied by all relevant information.

(3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it shall refund the levy to the applicant.

22. Notification of failure to pay levy

Where the Exchange Company is aware that any person has failed to pay a levy payable by him, it shall as soon as reasonably practicable notify the Commission in writing of the failure.

23. Provision of information

(1) The Commission may by notice in writing require the Exchange Company to provide information specified in the notice relating to the collection, deposit and remittance of levies.

(2) Where a notice is given under subsection (1), the Exchange Company shall as soon as reasonably practicable provide the information specified in the notice.

Clerk to the Executive Council,

COUNCIL CHAMBER

2002

Explanatory Note

These Rules prescribe the means of funding the compensation fund established under section 236 of the Securities and Futures Ordinance (5 of 2002) by providing that a levy is payable on certain securities and futures contracts. They also prescribe the manner in which payment of levies must be made and some incidental matters.

Summary of Comments Received on Securities and Futures (Investor Compensation - Levy) Rules

	Section reference	Details of the Rules	Respondent's comments	SFC's response
1.	-		<p>[The Institute of Securities Dealers Ltd.] *The target size of \$1 billion for the new Compensation Fund should be incorporated into the rules and a proper mechanism should be set up to handle any surplus over the expected claim amount paid to the investors.</p> <p>[HSBC] *Clarification is sought as to whether the increase in levy will be used as an ongoing measure to achieve the \$1 billion target fund size whenever the Compensation Fund falls below the threshold of \$1 billion.</p> <p>[HK Stockbrokers Association] *Even if the \$1 billion target is reached, the levy system shall go on for the foreseeable future or the rate of levy be reduced. When \$1 Billion target is reached, the \$150,000 limit can be increased.</p>	<p>The target size of the new Compensation Fund should not be incorporated into the rules because it is subject to regular review and any surplus in the Compensation Fund can be used for future needs. In the event that the surplus is more than required, the new Investor Compensation Company ("ICC") can then evaluate the possibility of raising the per investor compensation limit.</p> <p>ICC will review the fund size and also the levy rate on a regular basis and changes will be made where appropriate to ensure that the fund size be maintained at a prudent level.</p> <p>ICC will review the fund size and also the levy rate on a regular basis and changes will be made where appropriate to ensure that the fund size be maintained at a prudent level.</p>

* Section reference was not quoted by the respondent.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
2.	3 and 7	A seller and a purchaser of securities which is recorded on a recognized stock market or notified to a recognized exchange company shall pay a levy at 0.002% of the consideration. A seller and a purchaser of a futures contract shall pay \$0.50 for each futures contract traded on a recognized futures market.	[The Institute of Securities Dealers Ltd.] *It was unfair to have securities investors bearing the full burden of the funding of the Compensation Fund. [Hong Kong Securities Institute ("HKSI")] *According to the survey made by the HKSI, 66.8% of their members who replied agreed to the imposition of compensation fund levy.	Section 7 imposes a levy on futures contracts traded on a recognized futures market, thus sharing the cost of funding the new compensation fund. Noted.
3.	10	The seller and purchaser of a new futures contract traded on a recognized futures market do not have to pay compensation levy during the first 6 months.	[Name withheld] Consideration should be given to build in flexibility in extending the relevant period which has now been fixed at six months commencing on the first day of trading in the new futures contract. A longer relevant period will give a better incentive to investors to trade the new contract.	The SFC considers that no changes should be made to the existing levies and rates. The draft Securities and Futures (Investor Compensation) Rules have now been amended to achieve consistency with the existing practice.
4.	Part II	Part II specifies that the seller and the purchaser of securities have each to pay to a compensation fund at 0.002% of the consideration. Trading of Stock Options, market makers of Pilot Programme Securities and Exchange Traded Funds does not attract payment of compensation fund levy.	[Name withheld] In line with the principle adopted for newly traded futures contracts under section 10, a seller and a purchaser should be exempt from payment of a compensation fund levy for the purposes of the compensation fund in respect of sale and purchase of newly launched products which are recorded on a recognized stock market or notified to a recognized exchange company under its rules, for a period relevant to the nature of a specific product so as to assist the	Following the current practice, a seller and a purchaser should be required to pay a levy for the purposes of the compensation fund in respect of sale and purchase of newly launched products without any exemption period.

* Section reference was not quoted by the respondent.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
			development of new products in the securities market, such as Equity Linked Instruments which is due to be launched in the near future.	
5.	Part II		<p>[Name withheld] For the purposes of funding the compensation fund, a seller and a purchaser of products which are covered by the compensation fund but traded over the counter should similarly be subject to the rates of levy specified in Part II.</p> <p>[HSBC] *It does not seem consistent that listed securities acquired through cross trade not reported to the exchange should be eligible for compensation claims as no levy is paid on the cross trade. We suggest that the Commission look into this and amend the definition of "specified securities or futures contract".</p>	<p>Most of the transactions done over the counter may eventually be channelled to the stock exchange when the brokers concerned placed orders through the exchange participants. The compensation fund levy should have been paid by them. Moreover, the substantial administrative costs and administrative burden in tracing over-the-counter transactions will outweigh the benefits of collecting compensation fund levy from these transactions.</p> <p>Cross trades done by or through Exchange Participants are reported and levy is paid. Although there may be cases where non-exchange participant brokers do cross trades which are not reported to the Stock Exchange and hence, no levy is paid, it will be more appropriate from the clients' protection point of view to cover those trades because clients may not be in a position to know whether levy is paid in respect of such trades. Moreover, it would be very difficult for ICC to trace whether levy was paid for a particular trade.</p>

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Investor Compensation – Compensation Limits) Rules

	Section reference	Details of the Rules	Respondent's comments	SFC's response
1.	3	Subsection (1) of section 3 provides that the total amount of compensation that may be awarded to each claimant in respect of securities listed or traded, or to be listed or traded, on a recognized stock market and related assets of such securities must not exceed \$150,000. Subsection (2) of section 3 provides that the total amount of compensation that may be awarded to each claimant in respect of futures contracts listed or traded, or to be listed or traded, on a recognized futures market must not exceed \$150,000.	[Hong Kong Securities Institute (“HKSI”)] *66.8% who responded to the survey by the HKSI agreed with the \$150,000 per claimant compensation payment limit. [Name withheld] Under the single licence regime where one or more types of regulated activities may be conducted under one licence, a claimant should be entitled to be awarded a maximum of \$150,000 for his loss in relation to each type of regulated activities carried out by a defaulted specified person or of any defaulted associated person of the specified person, who is licensed to carry out more than one type of regulated activity.	Not applicable. Section 3(1) & (2) provide that a claimant is entitled to be awarded a maximum of \$150,000 for loss as a result of a default in relation to securities and also \$150,000 for the loss as a result of a default in futures trading activities. Thus, for clients who suffer loss as a result of a default in relation to both trading activities, a maximum sum of \$300,000 can be awarded.
2.	8	SFC can determine a compensation claim and may pay it by instalments, if necessary.	[Hong Kong Stockbrokers Association Ltd.] A time of payment should be specified.	ICC will make payments as soon as practicably after determination.
3.	-		[Hong Kong Stockbrokers Association Ltd.] *In order to ensure that investors	The new compensation arrangements will cover transactions relating to the HKEx products irrespective of whether levy is paid

* Section reference was not quoted by the respondent.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
			compensated are people who have paid the levy, rule 3(1)(b) and (2)(b) should be amended.	for better investor protection. It will not be administratively feasible for ICC to differentiate between trades which have paid the levy from the trades which have not.

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Transfer of Functions - Investor Compensation Company) Order

	Section reference	Details of the Rules	Respondent's comments	SFC's response
1.	-		[The Institute of Securities Dealers Ltd.] SFC should retain the administration of the Compensation Fund as a division with the SFC.	It is preferable that the administration of the new compensation fund can be independent of the work of the SFC, in line with similar practices in the US, the UK, etc.
2.	-		[Hong Kong Securities Institute] The Investor Compensation Company (ICC) should not be a bulky organization and it should be cost conscious in its administration.	ICC's structure will be kept lean as far as practicable.

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Investor Compensation - Claims) Rules

	Section reference	Details of the Rules	Respondent's comments	SFC's response
1.	2	... "qualifying client" in relation to a specified person, means a person for whom the specified person provides a service but does not include ...	[Hong Kong Securities Institute ("HKSI")] *66.8% who responded to the survey by the HKSI agreed with the definition of "qualifying client".	Not applicable.
2.	2	"Claimant" means a qualifying client who makes a claim under section 3.	[The Institute of Securities Dealers Ltd.] *Clarification is sought about the claimants who have opened accounts in joint names.	Each holder of a joint account would be regarded as a claimant for the purpose of calculating the per claimant limit provided that he or she falls under the definition of "qualifying client".
3.	3	A claim must be lodged on or before the date specified in the claim notice or, if no such date is published, within 6 months after the claimant is first aware of the default.	[Consumer Council] *There is concern about the publicity of the notice for inviting claims.	Claim notices and news will be published in newspapers and relevant websites. Press releases will be issued to advise the public that a claim notice is published. Past experience shows that press release and the notice are effective means to alert the members of the public.
4.	4	Claim notice allowing 3 months for claim has to be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and	[Consumer Council] *In the case of liquidation of a brokerage firm, the court-appointed trustee and the SFC should send claim forms with instruction to the affected investors.	This will be done where possible but, in some cases, ICC may not have the names and addresses of the clients of the defaulted broker because they may not be in possession of the books and records of the broker. Investors will also be alerted to the default by the published claim notice and media reports.

* Section reference was not quoted by the respondent.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
		circulating generally in Hong Kong.		
5.	5	A claim must be lodged in the form specified by the SFC and completed and signed in accordance with such directions and instructions as are included in the form.	[Consumer Council] *SFC should allow online submission of claims through a standard form downloadable from the website.	It is intended that claim forms can be downloaded. However, online submission is not always feasible because claimants often have to send documents in support of their claims.
6.	7(2)	In determining the amount of compensation payable to a claimant, the Commission must calculate, amongst others, the market value of the assets "as at the date of the default".	[Name withheld] It should be specified as to how the date of the default is determined by the SFC.	"Date of default" cannot be specified in the subsidiary legislation because it varies according to the circumstance of each case. The date of default will be specified in the determination notice.
7.	8(4)	The Commission may pay the compensation in one or more instalments if it determines that it is necessary or appropriate to do so.	[Name withheld] Such determination should be published or announced to improve transparency.	Such determination will be included in the letters sent to the claimants.
8.	Part II, III and IV		[Name withheld] A change in use of terms in relation to a person making a claim against the compensation fund is noted throughout these parts: "a qualifying client of a specified person", "a person" and "claimant". Consideration may be given to maintain consistency in use of terms to avoid confusion.	The use of "person" in section 6 has a wider coverage than a claimant because the SFC may need to ask people other than claimants (for example, the defaulting broker or his related person) to produce documents during the claims verification process.

* Section reference was not quoted by the respondent.

List of Respondents

Date received	Respondent
24 April 2002	Consumer Council
25 April 2002	The Institute of Securities Dealers Ltd.
25 April 2002	Hong Kong Securities Institute
29 April 2002 (late response)	Name withheld
6 May 2002 (late response)	HSBC Broking Securities (Asia) Ltd.
9 May 2002 (late response)	Hong Kong Stockbrokers Association Ltd.

* Section reference was not quoted by the respondent.