

L.N. 215 of 2002**SECURITIES AND FUTURES (INVESTOR COMPENSATION—
CLAIMS) RULES****CONTENTS**

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SECURITIES AND FUTURES (INVESTOR COMPENSATION— CLAIMS) RULES

(Made by the Securities and Futures Commission under section 244(2) of the Securities and Futures Ordinance (Cap. 571), and in relation to rules made under section 244(2)(a) and (f) of that Ordinance after consultation with the Financial Secretary)

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Interpretation

In these Rules, unless the context otherwise requires—

“appointed day” (指定日期) means the date appointed under section 13;

“associated person” (相聯者), in relation to a specified person, means—

- (a) a person employed or otherwise engaged by the specified person;
- (b) a person who may receive or hold client assets of the specified person under section 164 of the Ordinance; or
- (c) an employee of the person referred to in paragraph (b);

“claimant” (申索人) means a qualifying client who makes a claim under section 4;

“default” (違責), in relation to a specified person or an associated person of the specified person, means—

- (a) the insolvency, bankruptcy or winding up of the specified person or associated person of the specified person; or
- (b) any breach of trust, defalcation, fraud or misfeasance committed by the specified person or associated person of the specified person,

which occurs on or after the appointed day;

“qualifying client” (合資格客戶), in relation to a specified person, means a person for whom the specified person provides a service but does not include—

- (a) a licensed corporation;
- (b) an authorized financial institution;
- (c) a recognized exchange company, a recognized exchange controller, or a recognized clearing house;
- (d) a person authorized to provide automated trading services under section 95(2) of the Ordinance;
- (e) an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41);
- (f) a manager or operator of a collective investment scheme authorized under section 104(1) of the Ordinance;
- (g) a manager or operator of an arrangement referred to in paragraph (iii) of the definition of “collective investment scheme” in section 1 of Part 1 of Schedule 1 to the Ordinance;
- (h) a person who is authorized, licensed or exempt by a competent authority in a jurisdiction outside Hong Kong for any activity that in the opinion of the Commission is the same as or similar to any of the activities carried on by a person referred to in paragraphs (a) to (g);
- (i) an associated person of the specified person—
 - (i) which is a corporation; or
 - (ii) who has committed any breach of trust, defalcation, fraud or misfeasance or assisted in the commission of a default by the specified person or any other associated person of the specified person;
- (j) the Government or a government of any place outside Hong Kong; and
- (k) a person in his capacity as a trustee or custodian of a person, scheme or arrangement referred to in paragraphs (a) to (j);

“related assets” (有連繫資產) means money and other property—

- (a) which are entrusted to or received by a specified person or an associated person of the specified person;
- (b) to which a claimant is entitled or in which he has a beneficial interest; and
- (c) which relates to the—
 - (i) purchase;
 - (ii) sale;
 - (iii) holding;
 - (iv) pledge;
 - (v) adjustment;
 - (vi) exercise; or
 - (vii) expiry,of specified securities or futures contracts;

“securities margin financing” (證券保證金融資) has the same meaning as in Part 2 of Schedule 5 to the Ordinance except that paragraph (v) of the definition of that expression does not apply;

“specified person” (指明人士) means—

- (a) an intermediary licensed or registered for dealing in securities or dealing in futures contracts;
- (b) an intermediary licensed for securities margin financing; or
- (c) an authorized financial institution which provides securities margin financing;

“specified securities or futures contracts” (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on a recognized stock market or recognized futures market—

- (a) which are entrusted to or received by a specified person or an associated person of the specified person; and
- (b) to which a claimant is entitled or in which he has a beneficial interest;

“Tribunal” (審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of the Ordinance.

PART 2

CLAIMS FOR COMPENSATION

3. Notice inviting claims

(1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting a qualifying client of the specified person named in the notice who believes he has sustained loss as a result of such default to claim for compensation. Such a notice shall be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.

(2) A notice published under subsection (1) shall specify a date, not being earlier than 3 months after publication of the notice, on or before which a claim for compensation may be made under section 4.

4. Making a claim for compensation

(1) Where a qualifying client of a specified person sustains a loss—

- (a) as a result of a default committed on or after the appointed day by—

- (i) the specified person; or
 - (ii) an associated person of the specified person;
- (b) in relation to—
- (i) specified securities or futures contracts; or
 - (ii) related assets,

the qualifying client may claim compensation from the compensation fund in respect of such loss.

(2) A claim under subsection (1) may include a claim for the costs reasonably incurred in and incidental to the making and proving of the claim.

(3) A claim under subsection (1) shall be lodged with the Commission—

- (a) if a notice under section 3(1) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after the day the claimant first became aware of the default giving rise to the claim.

(4) A claim which is not lodged within the time limit provided in subsection (3) is barred, unless the Commission determines otherwise.

5. Submission of claims

(1) Subject to subsection (2), a claim under section 4(1) shall be—

- (a) lodged in the form specified by the Commission under section 402(1) of the Ordinance for the purposes of this section;
- (b) completed and signed in accordance with such directions and instructions as are included in the form; and
- (c) accompanied by such documents as are specified in the form.

(2) The Commission may accept a claim lodged otherwise than in accordance with subsection (1).

PART 3

PROCESSING OF CLAIMS

6. Commission may require records

(1) The Commission may, by notice in writing served upon a person, require the person to produce to the Commission originals or copies of such records as the Commission may reasonably require—

- (a) in connection with a claim for compensation made under section 4(1); or

- (b) for the purpose of assisting—
 - (i) the Commission in the exercise of its rights of subrogation under section 243 of the Ordinance; or
 - (ii) a recognized investor compensation company in the exercise of its rights of subrogation under section 87 of the Ordinance.

(2) A notice under subsection (1) shall specify the records required and the date by which the person served with the notice is to furnish them to the Commission.

7. Determination by Commission

(1) The Commission shall, in relation to a claim for compensation, determine—

- (a) whether there has been a default by the specified person concerned or any associated person of the specified person;
 - (b) the date of the default (if any); and
 - (c) whether the claimant is entitled to compensation from the compensation fund.
- (2) If the Commission determines that—
- (a) there has been a default by a specified person or any associated person of the specified person; and
 - (b) the claimant is entitled to compensation from the compensation fund,

the Commission shall determine a provisional amount of compensation in accordance with subsection (3).

(3) The provisional amount of compensation referred to in subsection (2) shall be determined by the Commission having regard to—

- (a) the market value, as at the date of the default, of the specified securities or futures contracts and of any related assets that the Commission is satisfied the claimant has lost as a result of the default less—
 - (i) any amount that the Commission is satisfied was due from the claimant to the specified person; and
 - (ii) any specified securities, futures contracts or related assets that have been returned to the claimant after the date of the default; and
- (b) any costs that the Commission is satisfied were reasonably incurred by the claimant incidental to the making and proving of his claim for compensation under section 4.

8. Notice of determination

(1) Subject to subsection (2), where the Commission makes a determination under section 7, it shall issue a notice of determination to the claimant as soon as practicable thereafter.

(2) The Commission shall not issue a notice of determination specifying a provisional amount of compensation that is less than the compensation claimed unless it has given the claimant a reasonable opportunity of being heard and, where the Commission decides to issue such a notice, it shall give its reasons in the notice of determination.

(3) Where the Commission determines that compensation should be paid to a claimant, it shall specify the following in the notice of determination—

- (a) the name of the person found to be in default;
- (b) the date of the default;
- (c) the provisional amount of compensation as determined under section 7;
- (d) any relevant specified securities or futures contracts or related assets; and
- (e) the amount of compensation payable under these Rules.

9. Payment of compensation

(1) Subject to subsection (2) and section 11, the following amounts shall be paid out of the compensation fund—

- (a) any compensation payable to a claimant as specified in the notice of determination under section 8(3)(e);
- (b) any compensation payable following a decision of the Tribunal or the Court of Appeal, under Part XI of the Ordinance; and
- (c) any costs awarded in favour of a claimant by the Tribunal, or the Court of Appeal, following a decision referred to in paragraph (b).

(2) The total amount of compensation payable to a claimant under subsection (1)(a) and (b) shall not exceed the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance.

(3) In determining the total amount of compensation to be paid to a claimant under subsection (1)(a) and (b), and in applying the limits on the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance, the Commission may aggregate separate claims for compensation by a claimant, or a number of claimants, or parts of those claims, if it is satisfied that the separate claims, or parts of those claims, represent the losses sustained by one person arising out of the same default.

(4) The Commission may pay compensation by instalments if it determines that it is necessary or appropriate to do so.

PART 4**MISCELLANEOUS****10. Financial arrangements**

The Commission may arrange for such insurance, surety, guarantee or other financial arrangements as it considers appropriate to facilitate the administration of the compensation fund.

11. Provision where the money available to the compensation fund is insufficient to meet claims

(1) If, at any time, the Commission determines that the amount of money available to the compensation fund is insufficient to pay the total amount of compensation then payable to the claimants, or likely to become so payable—

(a) under these Rules; and

(b) in the circumstances referred to in section 9(1)(b),

the amount available to the compensation fund is to be apportioned among the claimants in such manner as the Commission may determine.

(2) In the event that any amounts referred to in section 9(1) remain unpaid because the Commission has determined that an apportionment shall be made under subsection (1), the amounts are to be paid when there is sufficient money available to the compensation fund.

12. Discharge of claims

Upon payment of the full amount determined to be payable to a claimant under these Rules, the rights of the claimant against the compensation fund in relation to the claim and the default are absolutely discharged.

13. Appointed day

The Commission may by notice published in the Gazette appoint a date as the appointed day for the purposes of these Rules.

Andrew Len Tao SHENG
Chairman,
Securities and Futures Commission

9 December 2002

Explanatory Note

These Rules are made by the Securities and Futures Commission (“the Commission”) under section 244(2) of the Securities and Futures Ordinance (Cap. 571) (“the Ordinance”). They prescribe the persons who may make a claim for compensation from the Investor Compensation Fund established under section 236 of the Ordinance. They also prescribe the manner in which such a claim is to be made and how such a claim will be assessed and paid.

2. These Rules should be read in the light of the Securities and Futures (Transfer of Functions—Investor Compensation Company) Order (L.N. 225 of 2002) which transfers certain functions of the Commission to a recognized investor compensation company.