



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Paper On a Proposed Amendment to the Securities and Futures (Price Stabilizing) Rules in relation to Recognition of Overseas Rules

Hong Kong
July 2003

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**A CONSULTATION PAPER ON A PROPOSED AMENDMENT TO
THE SECURITIES AND FUTURES (PRICE STABILIZING) RULES
IN RELATION TO RECOGNITION OF OVERSEAS RULES**

The Securities and Futures Commission invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals **no later than 18 August 2003**. Any person wishing to comment on the proposals should provide details of any organization whose views they represent.

Please note that the names of the commentators and the contents of their submissions may be published on the SFC website 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.

Written comments may be sent

By mail to: SFC Price Stabilizing Rules
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

By fax to: (852) 2810 5385

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

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

For further information, please contact the Corporate Finance Division at (852) 2840 9216 or 2840 9371.

Additional copies of the consultation paper may be obtained from the above address of the SFC. A copy of this paper can also be found on the SFC website at <http://www.hksfc.org.hk>.

Corporate Finance Division
Securities and Futures Commission
Hong Kong

July 2003

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 PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper (“the Consultation Paper”) 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 purpose 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 Paper. The names of persons who submit comments on the Consultation Paper 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 website 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 Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

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

The Data Privacy Officer
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

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

Introduction

1. The Securities and Futures (Price Stabilizing) Rules (“PS Rules”), which came into effect on 1 April 2003, are made under sections 282(2) and 306(2) of the Securities and Futures Ordinance (Cap. 571) (“SFO”). The PS Rules prescribe the circumstances in which price stabilizing action may be taken in connection with public offerings and regulate such action thus facilitating capital raising by corporations within an open, transparent and accountable framework.
2. The PS Rules are to a large extent commensurate with international standards so as to facilitate global offerings of securities conducted in Hong Kong and other markets. Having regards to the similarity in the regulatory framework for securities transactions and mechanisms for securities offerings, the PS Rules have been modelled closely on the UK Price Stabilizing Rules issued by the Financial Services Authority (“FSA”) pursuant to the Financial Services and Markets Act 2000.
3. In order to facilitate global offerings, section 15 of the PS Rules provides that stabilizing action conducted overseas with a view to stabilizing the price of securities on the overseas market and effected in accordance with the stabilization rules in recognized jurisdictions specified in Schedule 4 to the PS Rules will not for the purpose of the SFO be regarded as market misconduct.
4. It has been the SFC’s intention to recognize certain overseas jurisdictions which provide similar regulatory safeguards against market manipulation for the purpose of section 15 as soon as possible once the PS Rules are made. This paper seeks to consult the public on the proposed amendment to the PS Rules in order to include the UK as a recognized jurisdiction.
5. The SFC has also held discussions with the FSA regarding recognition by it of the PS Rules. On 18 July 2003, the FSA proposed to grant recognition of the PS Rules by making the necessary amendments to the UK Price Stabilizing Rules. Following the procedures necessary in the UK for rule amendments, including that of a public consultation under UK law, we hope that we will be able to announce that recognition by the FSA has been granted in the near future.

The proposed amendment

6. It is proposed that Schedule 4 of the PS Rules be amended by adding the reference “The Price Stabilising Rules, chapter 2 of the Market Conduct sourcebook made by the Financial Services Authority, United Kingdom, under section 144 of the Financial Services and Markets Act 2000”.
7. The scope of recognition of the overseas price stabilizing rules is that these rules will be applicable to stabilizing action carried out overseas in respect of an offer. This is to ensure that the PS Rules, rather than the overseas rules, regulate stabilizing action undertaken in Hong Kong.
8. The PS Rules provide that if the provisions in the rules of the foreign bodies or authorities specified in Schedule 4 are altered, the safe harbour will continue to apply.

9. The full text of the UK Price Stabilizing Rules can be downloaded from http://www.hksfc.org.hk/eng/bills/html/consultation/psrules_jul03.htm.

Way Forward

10. The public is invited to furnish us their comments on the amendment proposed in this paper. This public consultation is open from now to 18 August 2003. Upon conclusion of this consultation, the SFC will publish a conclusion paper and the proposed amendment will be tabled before the Legislative Council for negative vetting.