

# LEGISLATIVE COUNCIL BRIEF

## SECURITIES AND FUTURES ORDINANCE (Chapter. 571)

- Securities and Futures (Levy) Order**
- Securities and Futures (Levy) Rules**
- Securities and Futures**  
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- Securities and Futures (Investor Compensation – Compensation**  
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- Securities and Futures (Transfer of Functions –**  
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- Securities and Futures (Fees) Rules**
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**(Disclosure of Interests - Exclusions) Regulation**
- Securities and Futures**  
**(Offences and Penalties) Regulation**
- Securities and Futures Ordinance**  
**(Amendment of Schedule 8) Order 2002**

## INTRODUCTION

At the meeting of the Executive Council on 10 December 2002, the Council ADVISED and the Acting Chief Executive ORDERED that –

- A (a) the Securities and Futures (Levy) Order, at **Annex A**;
- B (b) the Securities and Futures (Levy) Rules, at **Annex B**;
- C (c) the Securities and Futures (Investor Compensation – Levy) Rules, at **Annex C**;
- D (d) the Securities and Futures (Investor Compensation – Compensation Limits) Rules, at **Annex D**;

- E (e) the Securities and Futures (Transfer of Functions - Investor Compensation Company) Order, at **Annex E**;
- F (f) the Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002, at **Annex F**;
- G (g) the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order, at **Annex G**;
- H (h) the Securities and Futures (Fees) Rules, at **Annex H**;
- I (i) the Securities and Futures (Disclosure of Interests - Exclusions) Regulation, at **Annex I**;
- J (j) the Securities and Futures (Offences and Penalties) Regulation, at **Annex J**; and
- K (k) the Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002, at **Annex K**.

should be made under the Securities and Futures Ordinance (Cap. 571) (the Ordinance) to provide for the operational details and requirements for the new regulatory regime for commencing the Ordinance.

## **JUSTIFICATIONS**

2. The Securities and Futures Ordinance was enacted in March 2002. On commencement (and issue of relevant repeal notices under section 406 of the Ordinance), the Ordinance will replace all the existing Ordinances and subsidiary legislation governing the securities and futures market, save for the transitional arrangements already in place under the Ordinance to ensure a smooth transition into the new regulatory regime. A total of 39 sets of subsidiary legislation have to be put in place to commence the Ordinance. Eleven of them require approval by the Chief Executive in Council, and the rest by other authorities specified in the Ordinance. The majority of the subsidiary legislation made by the Chief Executive in Council is adapted from existing legislation and does not involve major change in policy.

3. Early implementation of the new regulatory regime will help enhance Hong Kong's position as a major international financial centre and the premier capital formation centre for the Mainland.

4. In preparing the subsidiary legislation, we have worked in partnership with the financial market participants to ensure that the requirements are practicable and would facilitate compliance by the industry. This has been achieved through consultation with the market and the public in general.

5. To minimise the cost of compliance, we have conducted a critical review of all existing subsidiary legislation that is to be re-enacted under the Ordinance with a view to removing any unnecessary or obsolete regulatory requirements and identifying room for streamlining existing procedures. The adoption of this pro-compliance and user-friendly principle is to ensure that the new regulatory regime as a whole is cost-effective for both compliance and enforcement.

6. In the following paragraphs, we highlight the justifications for each of the subsidiary legislation made by the Chief Executive in Council.

### **Securities and Futures (Levy) Order**

7. The Securities and Futures (Levy) Order at Annex A is adapted from the existing Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 Sub. Leg. A) and the Securities and Futures Commission (Levy) (Futures Contracts) Order (Cap. 24 Sub. Leg. B). It provides for the continuation of existing arrangements whereby specified levy is payable to the Securities and Futures Commission (SFC) by sellers and purchasers of securities and futures contracts, to meet with SFC's operational expenses. In 2001-02, the market levy so received by the SFC amounted to \$202.6 million or 55.8 % of its total income.

8. In relation to sales and purchases of securities, the levy payable is 0.007% of the consideration under the existing arrangements. In effect, the SFC retains the levy of 0.005% for its own expenses; and pays the levy of 0.002% into the existing compensation fund for securities investors<sup>1</sup>. To enhance transparency, we have taken the opportunity to specify in a new set of subsidiary legislation that the 0.002% levy is payable for the purposes of the new compensation fund. The Securities and Futures (Investor Compensation – Levy) Rules at Annex C (paragraphs 12 and 13 below) are relevant.

9. The above notwithstanding, the levy rate on securities transactions payable by investors is in effect the same as at present. The levy on futures transactions also remains the same.

10. We have taken the opportunity to specify the levy on a new futures product, namely the Mini-Hang Seng Index Options Contract. Like a Mini-

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<sup>1</sup> This refers to the Unified Exchange Compensation Fund established under the Securities Ordinance (Cap. 333). Please see paragraphs 12 to 18 for further details of the new investor compensation arrangements under the Securities and Futures Ordinance.

Hang Seng Index Futures Contract which has been traded on the Futures Exchange since October 2000, the contract size of a Mini-Hang Seng Index Options Contract is one-fifth of that of a standard Hang Seng Index contract. The levy for this new product is to be adjusted accordingly and will be the same as that for a Mini-Hang Seng Index Futures Contract.

### **Securities and Futures (Levy) Rules**

11. The Securities and Futures (Levy) Rules at Annex B prescribe the manner in which payments of levies must be made, impose charges for late payment of such levies and prescribe matters concerning the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment to the SFC of such levies. The Rules are adapted from the Securities and Futures Commission (Levy) Rules (Cap. 24 Sub. Leg. G) with no change in policy.

### **Securities and Futures (Investor Compensation – Levy) Rules**

12. Part XII of the Ordinance provides for the establishment of a new investor compensation fund (ICF). The Securities and Futures (Investor Compensation – Levy) Rules at Annex C set out the means of funding the ICF set up under section 236 of the Ordinance through levies payable on securities and futures contracts and provide for the manner in which payment of levies is to be made. To preserve the existing levy rates, the Rules generally provide for a levy at the rate of 0.002% on securities transactions and a levy in the amount of \$0.5 on each futures contract payable by both the buyer and the seller.

13. The SFC estimates that the prudent level for the new ICF is \$1 billion. Under the Ordinance, the monies in the existing compensation funds<sup>2</sup> may be transferred to the new ICF whilst reserving sufficient amounts to cover claims on the former funds. Together with the proposed 0.002% levy on securities transactions and \$0.5 per contract levy on futures transactions, this ensures that the new ICF will be properly funded on establishment to meet with its obligations. We will keep under review the funding level and the rate of levy in the light of the operational experience of the ICF and prevailing circumstances.

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<sup>2</sup> These are the Unified Exchange Compensation Fund and the Futures Exchange Compensation Fund established under the Securities Ordinance (Cap. 333) and the Commodities Trading Ordinance (Cap. 250) respectively.

## **Securities and Futures (Investor Compensation – Compensation Limits) Rules**

14. The Securities and Futures (Investor Compensation – Compensation Limits) Rules at Annex D provide that the maximum amount of compensation that may be paid to each person making a claim for compensation is \$150,000 for each case of default. The claim may cover losses sustained as a result of a default in relation to securities listed or traded on a recognized stock market or in relation to futures contracts traded on a recognized futures market. The limit is in line with the practice under the existing compensation fund for awarding claimants in recent years and is generally accepted by the public during consultation of the draft Rules.

## **Securities and Futures (Transfer of Functions – Investor Compensation Company) Order**

15. Part III of the Ordinance provides for the recognition of an investor compensation company (ICC) by the SFC for the facilitation of the management and administration of the ICF.

16. In line with the approach adopted for managing compensation arrangements in major overseas jurisdictions, including the US, the UK, Canada and Australia, the SFC set up in September 2002 a company named the Investor Compensation Company Limited (ICCL) independent from the Commission to focus on investor compensation matters. Pursuant to section 79 of the Ordinance, the SFC recognized the ICCL in November 2002. The directors on the ICCL governing body will be broadly based and concerned with the proper maintenance of the ICF, including the SFC, the HKEx, brokers, bankers and investors.

17. Pursuant to section 80 of the Ordinance, the SFC has requested the Chief Executive in Council to transfer to the ICCL certain SFC functions in relation to the management of the ICF through the Securities and Futures (Transfer of Functions – Investor Compensation Company) Order at Annex E. The transfer of functions to the ICCL will not take effect until the Ordinance comes into operation. The transfer is made subject to a reservation that the SFC is to perform the functions concurrently with the ICCL as necessary.

18. The functions being transferred to the ICCL are those relating to the day-to-day operation of the ICF including its management, keeping of proper accounts, investment of money and payments out of the ICF. To implement the new ICF scheme, the SFC has made the Securities and Futures (Investor

Compensation – Claims) Rules<sup>3</sup> to provide for various matters concerning the making of a claim on the new compensation fund, such as circumstances in which a person is entitled to claim compensation, the manner in which a claim is to be made and the determination and payment of a claim for compensation, etc. Certain SFC functions in these Rules, such as determination of the measure of compensation, will also be transferred to the ICCL through the Order.

## **Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002**

19. The Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 at Annex F seeks to amend the Prevention of Bribery Ordinance (Cap. 201) (POBO) by including in its schedules a recognized ICC and its relevant personnel as “public body” and “public servants” respectively. This has the effect of subjecting the ICCL and its relevant personnel to the POBO.

## **Securities and Futures (Transfer of Functions – Stock Exchange Company) Order**

20. Pursuant to section 25(1) of the Ordinance, the SFC has requested the Chief Executive in Council to transfer certain functions of the SFC under Parts II and XII of the Companies Ordinance (Cap. 32) relating to the vetting and authorization of prospectuses to the Stock Exchange of Hong Kong (SEHK) through the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order at Annex G, to continue the existing arrangements under the Securities and Futures Commission (Transfer of Functions) Order (Cap. 24, Sub. Leg. H)<sup>4</sup>.

21. Specifically, the functions transferred are those conferred on the SFC under sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance. A list of such functions is at **Annex L**.

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<sup>3</sup> The Securities and Futures (Investor Compensation – Claims) Rules are published in the Gazette on 13 December 2002.

<sup>4</sup> The existing arrangements were reviewed during the HKEx merger exercise in 1999 and preserved in the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) enacted in 2000, now re-enacted in the Securities and Futures Ordinance. Following the publication of the Report of the Panel of Inquiry on the Penny Stocks Incident, the Financial Secretary appointed an Expert Group on 26 September 2002 to review the roles and functions of the Government, the SFC and the HKEx in relation to listing matters for better execution of listing functions and to enhance the quality of the market and investor protection. The Expert Group will make its recommendations in March 2003, which will be followed up after commencement of the Ordinance.

22. The Order also preserves existing SFC policy to carve out SFC’s power to authorize prospectuses for “mutual fund corporations” from the transfer to SEHK. There is a change in terminology in the Order to refer to “collective investment schemes” instead of mutual fund corporations, to tally with the use of terminology in the Ordinance. Despite this change, the SFC policy remains that such instruments should be subject to SFC authorization for marketing to the public.

23. The transfer is made subject to a reservation that the SFC is to perform the functions concurrently with the exchange company as necessary<sup>5</sup>.

### **Securities and Futures (Fees) Rules**

24. The Securities and Futures (Fees) Rules at Annex H prescribe fees, and, in particular, require and provide for payment of fees to the SFC in respect of –

- (a) an application to the SFC under or pursuant to any of the relevant provisions<sup>6</sup> (e.g. licences for intermediaries);
- (b) functions performed by the SFC or a committee set up under section 8 of the Ordinance relating to takeovers and mergers or to share repurchases; and
- (c) functions performed by the SFC or such a committee or the Hong Kong Monetary Authority (HKMA), other than those referred to in (b) above.

25. The Rules are adapted from the existing Securities and Futures Commission (Fees) Rules (Cap. 24 Sub. Leg. C) and the Leveraged Foreign Exchange Trading (Fees) Rules (Cap. 451 Sub. Leg. F), with no major change in

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<sup>5</sup> To enhance the quality of disclosure by listed corporations, the SFC has made the Securities and Futures (Stock Market Listing) Rules under the Ordinance to require companies that disseminate information to the public (such as in company announcements and listing applications) to file a copy of the information with the SFC in parallel while the same is filed with the SEHK (“dual filing”). The SFC may also object to a listing application. The dual-filing proposals will be brought into operation on the commencement of the Ordinance.

<sup>6</sup> “Relevant provisions” is defined in Schedule 1 to the Ordinance to mean –

- (a) the Ordinance; and
- (b) Parts II and XII of the Companies Ordinance (Cap. 32) so far as those Parts relate to the performance of functions relating to prospectuses, share repurchases and a corporation giving financial assistance for share repurchases.

policy. In 2001-2002, fees so received by the SFC amounted to \$117.5 million or 32.4 % of its total income.

### *Licensing fees*

26. The new licensing regime imposes additional requirements on intermediaries to upgrade their quality of service, improve their internal control systems and better protect client assets. Early migration of existing intermediaries to the new regime will help protect investors. The SFC proposed in its March 2002 consultation exercise that all existing licensing fees for licensed corporations and licensed representatives be reduced by 3%.

27. To encourage early migration to the new licensing regime, the SFC is prepared to make available an additional 5% discount (based on the existing fee level) to existing licensees or exempt persons who apply to migrate to the new licensing regime during the first year of the 2-year transitional period. The discount will be effective from the date of the submission of the application for migration till the end of the transitional period. Accordingly, the SFC will exercise its waiver power granted under the Rules to ensure that existing regulatees of the SFC will enjoy the 5% discount such that they will not incur extra licensing fees over and above what he is paying under the existing licensing regime. The SFC will also publish detailed guidelines setting out its policy in granting the waivers in this regard.

### *Other fees*

28. Levels of fees other than licensing fees are set based on the existing fees. There is no change in policy regarding payment of these fees but certain amendments are made in order to streamline the fee structure for collective investment schemes. A number of new fees are introduced to accommodate new elements of the licensing and registration regime (e.g. application for authorization of automated trading services, or certificate of registration for banks engaged in securities businesses). The levels of new fees are set having regard to similar activities under the existing regulatory regime.

29. A table comparing the existing fees and the fees prescribed under the Rules is at **Annex M** for Members' reference.

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### **Securities and Futures (Disclosure of Interests – Exclusions) Regulation**

30. The Securities and Futures (Disclosure of Interests – Exclusions) Regulation at Annex I prescribes certain interests and short positions which are



to be disregarded for the purpose of notification, and provides an exclusion from the disclosure requirements under Part XV of the Ordinance. It is partly adapted from the existing Securities (Disclosure of Interests) (Exclusions) Regulations (Cap. 396 Sub. Leg. A) modified suitably to promote market transparency and facilitate compliance.

31. Part XV of the Ordinance requires the disclosure of interests and short positions in securities by a person who is interested in 5% or more of the relevant share capital of a listed corporation, and by a director and a chief executive of a listed corporation.

32. The Regulation prescribes specific interests and short positions to be disregarded in so far as disclosure obligations are concerned, where they would arise technically but disclosure would be onerous to the persons concerned and generally not useful in enhancing market transparency. It will apply to interests and short positions held by both shareholders holding 5% or more of shares of a listed corporation (Divisions 2 to 4 of Part XV) and those held by directors and chief executives of listed corporations (Divisions 7 to 9 of Part XV).

33. Compared to the existing Regulations, the new Regulation has expanded the scope of the exemption for intermediaries in respect of the interest of intermediaries entering in exchange-traded options and futures contracts solely for a client, to facilitate the business of such intermediaries. The SFC considers that expanding the exemption would not compromise market transparency and will relieve intermediaries from unnecessary compliance burden.

34. In the light of market comments, the SFC has undertaken to review the new disclosure regime at an appropriate time having regard to operational experience and views of the market and other concerned parties.

### **Securities and Futures (Offences and Penalties) Regulation**

35. The Securities and Futures (Offences and Penalties) Regulation at Annex J provides that a person who contravenes certain sections of the Securities and Futures (Miscellaneous) Rules<sup>7</sup> (the Miscellaneous Rules) made by the SFC under section 397 of the Ordinance commits an offence and is liable to specified penalties.

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<sup>7</sup> The Securities and Futures (Miscellaneous) Rules are published in the Gazette on 13 December 2002.

36. The Miscellaneous Rules provide for a range of miscellaneous matters including exhibition of licences or certificates of registration for intermediaries and the return of such licences or certificates, etc.

37. Specifically, section 3 of the Miscellaneous Rules provides that an intermediary must exhibit its licence or certificate of registration in a prominent place at its principal place of business. The Regulation provides that, where an intermediary fails to comply with this requirement, it commits an offence and is liable to a fine at level 5 (currently at \$50,000). The proposed penalty is comparable to a failure to report certain events (e.g. cessation to carry on any regulated activity) to the SFC under section 135 of the Ordinance.

38. Section 4 of the Miscellaneous Rules provides that an intermediary and a licensed representative must return his licence or certificate of registration to the SFC within a certain period for amendment or cancellation under certain circumstances. The Regulation provides that, where an intermediary or a licensed representative fails to return the licence in any of the specified circumstances (e.g. an intermediary has ceased to carry on all regulated activities), he commits an offence and is liable to a fine at level 6 (currently at \$100,000). The proposed penalty level is consistent with a similar offence under section 123(3) of the Ordinance applicable to a licensed representative.

39. The Department of Justice has advised that the proposed penalty levels are adequate having regard to similar offences in the Ordinance.

### **Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002**

40. The Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 at Annex K amends Schedule 8 to the Ordinance to make certain decisions of the SFC or an ICC performing SFC functions made under certain subsidiary legislation of the Ordinance reviewable by the Securities and Futures Appeals Tribunal (SFAT) established under Part XI of the Ordinance.

41. Under section 217 of the Ordinance, a person aggrieved by a “specified decision” may apply to the SFAT for a review of the decision. The SFAT is an independent full-time body chaired by a Judge, which may review, on application, the merits of the specified decision afresh. “Specified decisions” (as defined in section 215) are set out in Part 2 of Schedule 8 to the Ordinance, in a number of divisions.

42. Section 232(2) of the Ordinance prescribes the time at which specified decisions, except those set out in Division 5 of Part 3 of Schedule 8, are to take

effect<sup>8</sup>. The Order will amend Division 5 of Part 3 of Schedule 8 to the Ordinance so that some of the decisions added under the Order will take immediate effect for better investor protection.

43. We consider that making certain decisions made by the SFC under subsidiary legislation subject to the review of the SFAT upon application by the aggrieved party would ensure proper exercise of powers. These decisions include, for example, SFC's decision to object an application for listing on a stock market under section 6 of the Securities and Futures (Stock Market Listing) Rules<sup>9</sup>, or the determination of a recognized ICC as to the provisional amount of compensation in a claim for such under section 7 of the Securities and Futures (Investor Compensation – Claims) Rules.

44. For details of the specified decisions to be added, please refer to paragraphs 15 - 18 of **Annex N**.

## **THE RULES/ORDERS/REGULATIONS**

45. We set out in Annex N the empowering provisions and major features of the subsidiary legislation.

## **LEGISLATIVE TIMETABLE**

46. The legislative timetable is as follows –

Publication in the Gazette	13 December 2002
Tabling at Legislative Council	18 December 2002

47. All the subsidiary legislation to be made under the Ordinance will come into operation simultaneously with the commencement of the Ordinance, on a day to be appointed by the Secretary for Financial Services and the Treasury by notice in the Gazette. Our target is to commence the Ordinance and

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<sup>8</sup> Section 232(2) of the Ordinance basically provides that a specified decision will take effect after -

- (a) expiry of the appeal period specified in section 217(3) (i.e. 21 days);
- (b) at the time the subject being affected by the specified decision notified that he will not lodge an appeal;  
or
- (c) if an appeal is lodged, after the conclusion of relevant review proceedings.

<sup>9</sup> The Securities and Futures (Stock Market Listing) Rules are published in the Gazette on 13 December 2002.

the relevant subsidiary legislation on 1 April 2003, after completion of the negative vetting procedures through the Legislative Council and when the regulatory authorities, namely the SFC and the HKMA, and the industry are operationally ready for the new regulatory regime.

48. In the run up to the target commencement date, the regulatory authorities will endeavour to publicize the new regulatory regime to their regulatees and market participants so that they will be ready for the commencement.

## **IMPLICATIONS OF THE PROPOSAL**

49. The proposed subsidiary legislation will not have any financial or staffing implication for Government, or implication for the Civil Service.

50. The proposal will not have any adverse implications on the overall compliance burden on business and the labour market. It has no productivity implications for Government or sustainability implications.

51. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

52. There is a general requirement under section 398 of the Ordinance for the SFC to consult the public on a draft of all the subsidiary legislation to be made by it under the Ordinance. That requirement does not apply to any subsidiary legislation to be made under the Ordinance by the Chief Executive in Council and, by virtue of the transitional provision in section 89 of Part 1 of Schedule 10, does not apply to any subsidiary legislation to be made under the Ordinance by the SFC which is gazetted before commencement of the Ordinance. However, the SFC has in practice consulted the public, where appropriate, on the subsidiary legislation to be made under the Ordinance by the Chief Executive in Council and other authorities. In addition, the Legislative Council has set up a Subcommittee in February 2002 to study the subsidiary legislation in draft. Generally speaking, the market and the Legislative Council Subcommittee are supportive of the subsidiary legislation and their comments have been duly considered and reflected where appropriate.

53. The Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 seeks only to introduce a supplemental amendment to the POBO. No policy issues are involved and public consultation is considered not necessary. We have informed the Legislative Council Subcommittee of the details of this Order in November 2002.

## **PUBLICITY**

54. We will issue a press release when the subsidiary legislation is published in the Gazette on 13 December. A spokesman will be available for answering media and public enquiries on the subsidiary legislation. A publicity programme will be launched jointly with the SFC and the HKMA in the run up to the commencement of the Ordinance to enhance the awareness of the regulatees, the investing public and other stakeholders.

## **BACKGROUND**

### **Regulatory reform: the Securities and Futures Ordinance**

55. The Government announced a series of initiatives in 1999 to modernise the regulatory regime of our financial markets to maintain Hong Kong's competitiveness as a major international financial centre.

56. The reform is built upon the Securities and Futures Bill, which sought to consolidate the existing 10 Ordinances<sup>10</sup> governing the securities and futures market, and to modernize the regulatory regime to keep it on par with prevailing international standards. It will ensure optimal market regulation which affords sufficient protection for investors on one hand and leaves enough room for market development on the other. The Bill seeks to provide a regulatory framework capable of responding to the changing market environment.

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<sup>10</sup> The 10 Ordinances are –

- (1) the Securities and Futures Commission Ordinance (Cap. 24) (enacted 1989)
- (2) the Commodities Trading Ordinance (Cap. 250) (enacted 1976)
- (3) the Securities Ordinance (Cap. 333) (enacted 1974)
- (4) the Protection of Investors Ordinance (Cap. 335) (enacted 1974)
- (5) the Stock Exchanges Unification Ordinance (Cap. 361) (enacted 1980)
- (6) the Securities (Insider Dealing) Ordinance (Cap. 395) (enacted 1990)
- (7) the Securities (Disclosure of Interests) Ordinance (Cap. 396) (enacted 1988)
- (8) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) (enacted 1992)
- (9) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) (enacted 1994)
- (10) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (enacted 2000)

57. We introduced the Securities and Futures Bill into the Legislative Council on 29 November 2000. The Legislative Council formed a Bills Committee to scrutinize the Bill, and passed it into law in March 2002. At O **Annex O** is an overview of the Ordinance highlighting the major elements of the new regulatory regime for Members' reference.

### **Preparation of subsidiary legislation**

58. Our intention is to bring the Ordinance into operation as soon as the relevant subsidiary legislation is in place. These include 39 sets of subsidiary legislation to be made by the Chief Executive in Council, the Financial Secretary, the Chief Justice, the Secretary for Financial Services and the Treasury and the SFC respectively. This Brief deals with the 11 sets of subsidiary legislation made by the Chief Executive in Council.

59. The Bills Committee, when considering the Securities and Futures Bill, suggested that the Administration submit all the subsidiary legislation necessary for commencing the Ordinance to the Legislative Council in draft prior to making them formally. At the recommendation of the Bills Committee, the House Committee of the Legislative Council set up on 22 February 2002 the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance to study the draft subsidiary legislation. The Subcommittee held 12 meetings between March and October 2002.

### **ENQUIRIES**

60. For any enquiries on this brief, please contact Mr Frank Tsang of the Financial Services and the Treasury Bureau at 2528 9224.

Financial Services and the Treasury Bureau  
13 December 2002

(SU B38/26/3 (2002))

## SECURITIES AND FUTURES (LEVY) ORDER

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## SECURITIES AND FUTURES (LEVY) ORDER

(Made by the Chief Executive in Council under section 394  
of the Securities and Futures Ordinance (Cap. 571))

### PART 1

#### PRELIMINARY

#### 1. Commencement

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

#### 2. Interpretation

In this Order, unless the context otherwise requires -

"currency futures contract" (貨幣期貨合約) means a futures contract in respect of any currency;

"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;

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

"Mini-Hang Seng Index Options Contract" (小型恒生指數期權合約) means a futures contract entitled "Mini-Hang Seng Index Options Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company;

"new futures contract" (新期貨合約) means a futures contract that -

- (a) has been approved by the Commission for the purposes of section 20(2)(a) of the Ordinance; and
- (b) has not been traded on a recognized futures market operated by the Futures Exchange Company prior to the commencement of this Order;

"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;

"relevant period" (有關期間), in relation to a new futures contract, means the period of 6 months commencing on the first day of trading in the contract on a recognized futures market operated by the Futures Exchange Company;

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

## PART 2

### LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF SECURITIES DESCRIBED IN SECTION 394(1)(a) OF ORDINANCE

#### **3. Application of Part 2**

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 section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of securities -

(a) is payable by the seller and purchaser; and

(b) is -

- (i) in the case of the seller, 0.005% of the consideration for the sale; or
- (ii) in the case of the purchaser, 0.005% of the consideration for the purchase.

#### **5. Stock options**

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of a stock option -

(a) is payable by the seller and purchaser; and

(b) is -

- (i) in the case of the seller, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser, 0% of the consideration for the purchase.

#### **6. Pilot programme securities**

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of pilot programme securities -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller -

- (A) subject to sub-subparagraph (B),  
0.005% of the consideration for the sale;

- (B) where the seller is a pilot programme market maker, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser -
  - (A) subject to sub-subparagraph (B), 0.005% of the consideration for the purchase;
  - (B) where the purchaser is a pilot programme market maker, 0% of the consideration for the purchase.

**7. Exchange traded funds**

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of an exchange traded fund -

- (a) is payable by the seller and purchaser; and
- (b) is -

- (i) in the case of the seller -
  - (A) subject to sub-subparagraph (B), 0.005% of the consideration for the sale;
  - (B) where the seller is an exchange traded funds market maker, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser -

(A) subject to sub-subparagraph (B),  
0.005% of the consideration for the  
purchase;

(B) where the purchaser is an exchange  
traded funds market maker, 0% of the  
consideration for the purchase.

PART 3

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF FUTURES  
CONTRACTS DESCRIBED IN SECTION 394(1)(b) OF ORDINANCE

**8. Application of Part 3**

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, 11, 12 and 13, for the purposes of  
section 394(1)(b) of the Ordinance, the levy payable for a sale  
and purchase of a futures contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, \$1.00; or

(ii) in the case of the purchaser, \$1.00.

**10. Mini-Hang Seng Index Futures Contracts and  
Mini-Hang Seng Index Options Contracts**

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a Mini-Hang Seng Index Futures Contract or a Mini-Hang Seng Index Options Contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, \$0.20; or

(ii) in the case of the purchaser, \$0.20.

**11. Currency futures contracts**

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a currency futures contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, nil; or

(ii) in the case of the purchaser, nil.

**12. New futures contracts**

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a new futures contract during the relevant period of the contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, nil; or

(ii) in the case of the purchaser, nil.

**13. Stock futures contracts**

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a stock futures contract or an option on such a contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, \$0.20; or

(ii) in the case of the purchaser, \$0.20.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

**Explanatory Note**

This Order is made by the Chief Executive in Council under section 394 of the Securities and Futures Ordinance (Cap. 571). It specifies the rate of levy payable for a sale and purchase of securities. It also specifies the amount of levy payable for a sale and purchase of a futures contract.



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## SECURITIES AND FUTURES (LEVY) RULES

(Made by the Chief Executive in Council under section 394 of the Securities and Futures Ordinance (Cap. 571))

### 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 -

"Exchange Company" (交易所) -

(a) in relation to a levy payable under section 394(1)(a) of the Ordinance, means the Stock Exchange Company;

(b) in relation to a levy payable under section 394(1)(b) of the Ordinance, means the Futures Exchange Company;

"levy" (徵費) means a levy payable under section 394(1)(a) or (b) of the Ordinance;

"remittance" (轉付) means a payment, by way of remittance, by the Exchange Company to the Commission under section 4.

### 3. Payment of levy

A person who is liable to pay a levy shall pay the levy to the Exchange Company in such manner as may be specified from time to time in the rules of the Exchange Company.

**4. Exchange Company to remit levies**

Where the Exchange Company has collected the levy paid to it under section 3, it shall pay the levy, by way of remittance, to the Commission by paying it into such bank account as may be specified by the Commission, 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.

**5. 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.

**6. 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).

**7. 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 respectively quoted by each note-issuing bank 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 remittance of the levy is made.

(2) The late remittance charge payable under subsection (1) is recoverable as a civil debt due to the Commission.

**8. Accounts**

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

**9. Inspection of accounts**

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 8.

## **10. Report**

(1) The Exchange Company shall, within one 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 5 and relating to all remittances made in the 12 months ending on 31 March in that year are correct and comply with these Rules, and that the levies to which the remittances relate have been paid in accordance with the Securities and Futures (Levy) Order (L.N. of 2002).

- (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).

## **11. Refund of levy**

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

## **12. 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.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

### **Explanatory Note**

These Rules are made by the Chief Executive in Council under section 394 of the Securities and Futures Ordinance (Cap. 571). They prescribe the manner in which payment of levies under that section

must be made and impose charges for late payment of such levies.

They also prescribe matters relating to the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment to the Securities and Futures Commission of such levies.

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

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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 (Cap. 571))

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 -  
"Exchange Company" (交易所) -

(a) in relation to a levy payable under Part 2,  
means the Stock Exchange Company;

(b) in relation to a levy payable under Part 3,  
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 2 or Part 3;

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

"Mini-Hang Seng Index Options Contract" (小型恒生指數期權合約) means a futures contract entitled "Mini-Hang Seng Index Options 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" (轉付) 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 futures contract entitled "Stock Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company.

## PART 2

### LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF SECURITIES

#### **3. Application of Part 2**

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 subparagraph (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 purchaser -

(i) subject to subparagraph (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 subparagraph (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 subparagraph (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 3

LEVY PAYABLE IN RESPECT OF SALE AND  
PURCHASE OF FUTURES CONTRACTS

**8. Application of Part 3**

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  
and Mini-Hang Seng Index Options  
Contracts**

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of a Mini-Hang Seng Index Futures Contract or a Mini-Hang Seng Index Options 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 payable to the Commission 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 4

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 specified 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 -

- (a) collect any levy paid to it under section 12;
- and



- (b) subject to section 21, pay the levy by way of remittance to the Commission by paying it into such bank account as may be specified by the Commission, 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 in bank 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 rate respectively quoted by each note-issuing bank 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. Inspection of accounts**

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) The Exchange Company shall, within one 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 and relating to all remittances made in the 12 months ending on 31 March in that year are correct and comply with these Rules, and that the levies to which the remittances relate have been paid 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).

## **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 are made by the Chief Executive in Council under section 244(1) of the Securities and Futures Ordinance (Cap. 571)("the Ordinance"). They prescribe -

- (a) the means of funding the compensation fund established under section 236 of the Ordinance by providing that a levy is payable on certain securities and futures contracts;

- (b) the manner in which payment of levies must be made and impose charges for late payment of such levies; and
- (c) matters relating to the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment of such levies to the Securities and Futures Commission.

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

(Made by the Chief Executive in Council under  
section 244(1) of the Securities and  
Futures Ordinance (Cap. 571))

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 -  
"associated person" (相聯者), "claimant" (申索人), "default" (違  
責), "related assets" (有連繫資產) and "specified person"  
(指明人士) shall have the respective meanings assigned to  
them in section 2 of the Claims Rules;

"Claims Rules" (《申索規則》) means the Securities and Futures  
(Investor Compensation - Claims) Rules (L.N. of 2002).

PART 2

LIMITS ON AMOUNT OF COMPENSATION

**3. Limits on compensation to be made to claimants**

(1) Where a claimant claims compensation in respect of his loss sustained -

(a) as a result of a default committed by -

(i) a specified person; or

(ii) any associated person of the specified person;

(b) in relation to -

(i) securities listed or traded, or to be listed or traded, on a recognized stock market; and

(ii) related assets of such securities,

the total amount of compensation payable under section 9 of the Claims Rules to the claimant must not exceed the sum of \$150,000.

(2) Where a claimant claims compensation in respect of his loss sustained -

(a) as a result of a default committed by -

(i) a specified person; or

(ii) any associated person of the specified person;



- (b) in relation to -
  - (i) any futures contract traded on a recognized futures market; and
  - (ii) related assets of such futures contract,

the total amount of compensation payable under section 9 of the Claims Rules to the claimant must not exceed the sum of \$150,000.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

#### **Explanatory Note**

These Rules prescribe the maximum amount of compensation that may be paid to a person making a claim for compensation from the Investor Compensation Fund under the Securities and Futures (Investor Compensation - Claims) Rules (L.N. of 2002). These Rules should be read in the light of the Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (L.N. of 2002) which transfers certain functions of the Securities and Futures Commission to a recognized investor compensation company.

**SECURITIES AND FUTURES (TRANSFER OF FUNCTIONS -  
INVESTOR COMPENSATION COMPANY) ORDER**

(Made by the Chief Executive in Council at  
the request of the Securities and Futures  
Commission under section 80 of the  
Securities and Futures Ordinance  
(Cap. 571))

**1. Commencement**

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

**2. Interpretation**

In this Order, unless the context otherwise requires, "Investor Compensation Company" (投資者賠償公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "Investor Compensation Company Limited" in English and "投資者賠償有限公司" in Chinese.

**3. Transfer of functions of  
the Commission**

(1) Subject to subsections (2), (3), (4) and (5), the functions conferred upon the Commission by the provisions set out in column 2 of the Schedule are transferred to the Investor Compensation Company.

(2) The transfer of functions under subsection (1) is subject to the reservation that the Commission is to perform the functions concurrently with the Investor Compensation Company.

(3) The function specified in item 1 of the Schedule is transferred only to the extent that the function relates to the maintenance of the compensation fund.

(4) The functions specified in items 3 and 6 of the Schedule are transferred subject to such directions in writing as the Commission may from time to time give to the Investor Compensation Company.

(5) The functions specified in items 4, 5, 7, and 8 of the Schedule are transferred to the Investor Compensation Company only to the extent that the functions relate to the part of the compensation fund that is managed and administered by the Company.

(6) A description in column 3 of the Schedule indicates for convenience of reference only the general nature of the function under the provision specified opposite to that description in column 2 of the Schedule.

## SCHEDULE

[s. 3]

## TRANSFER OF FUNCTIONS

Item	Provision	Description
<b>Securities and Futures Ordinance (Cap. 571)</b>		
1.	Section 236(1)	Maintaining the compensation fund.
2.	Section 237(2)	Borrowing money for the purpose of the compensation fund.
3.	Section 238(1)	Management and administration of the compensation fund, including the determination of a claim for compensation.
4.	Section 239	Opening accounts at authorized financial institutions and paying into or transferring to such accounts all amounts received by the Investor Compensation Company forming part of the compensation fund.
5.	Section 240(1)	Keeping proper accounts of the compensation fund.
6.	Section 240(2)	Maintaining separate accounts and sub-accounts.
7.	Section 240(5)	Appointing an auditor to audit the

- accounts of the compensation fund.
8. Section 241 Investing money which forms part of the compensation fund.
  9. Section 242(1) Making payments out of the compensation fund and determining the order of such payments.

**Securities and Futures (Investor Compensation -  
Claims) Rules (L.N. of 2002)**

10. Section 3 Publishing a notice inviting claims.
11. Section 4(4) Determining whether a claim not lodged within the time limit provided in section 4(3) is barred.
12. Section 5(2) Accepting a claim lodged otherwise than in accordance with section 5(1).
13. Section 6 Requiring records to be produced.
14. Section 7 Making a determination.
15. Section 8 Issuing a notice of determination.
16. Section 9 Paying compensation.
17. Section 10 Arranging for insurance, surety, guarantee or other financial arrangements.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

**Explanatory Note**

The purpose of this Order is to transfer to the Investor Compensation Company certain functions of the Securities and Futures Commission in relation to the compensation fund established under Part XII of the Securities and Futures Ordinance (Cap. 571).

SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF  
SCHEDULE 10) ORDER 2002

(Made by the Chief Executive in Council under section 409  
of the Securities and Futures Ordinance (Cap. 571))

**1. Commencement**

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

**2. Savings, transitional, consequential and  
related provisions, etc.**

Schedule 10 to the Securities and Futures Ordinance (Cap.  
571) is amended in Part 2 by adding -

"18A. Prevention of Bribery (a) In Schedule 1, add -  
Ordinance (Cap. 201)

"99. A company  
recognized as an  
investor  
compensation  
company under  
section 79(1) of  
the Securities  
and Futures  
Ordinance (Cap.  
571).".

(b) In Schedule 2, add -

"7. A company  
recognized as an  
investor  
compensation  
company under  
section 79(1) of  
the Securities  
and Futures  
Ordinance (Cap.  
571).".

Clerk to the Executive Council

COUNCIL CHAMBER

2002

**Explanatory Note**

This Order is made by the Chief Executive in Council under section 409 of the Securities and Futures Ordinance (Cap. 571). It amends Part 2 of Schedule 10 to the Ordinance by adding an amendment to the Prevention of Bribery Ordinance (Cap. 201) under which a recognized investor compensation company under the Securities and Futures Ordinance (Cap. 571) is specified as a public body for the purposes of the Prevention of Bribery Ordinance (Cap. 201).



**SECURITIES AND FUTURES (TRANSFER OF FUNCTIONS -  
STOCK EXCHANGE COMPANY) ORDER**

(Made by the Chief Executive in Council at  
the request of the Securities and Futures  
Commission under section 25 of the  
Securities and Futures Ordinance  
(Cap. 571))

**1. Commencement**

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

**2. Application**

Nothing in this Order applies to a prospectus offering for subscription or purchase interests in a collective investment scheme, the issue of which -

- (a) would be an offence under section 103(1)(b) of the Ordinance; or
- (b) is exempted from the application of section 103(1)(b) of the Ordinance solely by virtue of section 103(3)(h) of the Ordinance.

**3. Transfer of functions of the Commission**

The functions conferred upon the Commission by sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap. 32) are transferred to the Stock Exchange Company -

- (a) to the extent that they relate to any prospectus which is concerned with any shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognized stock market; and
- (b) subject to the reservation that the Commission is to perform the functions concurrently with the Stock Exchange Company.

**4. Fees**

The Stock Exchange Company is entitled to charge and retain any fees payable in relation to its performance of functions transferred under this Order which, had this Order not been made, would be payable to the Commission under the Securities and Futures (Fees) Rules (L.N. of 2002) in relation to the performance by the Commission of such functions.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

**Explanatory Note**

This Order is made by the Chief Executive in Council under section 25 of the Securities and Futures Ordinance (Cap. 571). It transfers certain functions of the Securities and Futures Commission in relation to prospectuses under the Companies Ordinance (Cap. 32) to The Stock Exchange of Hong Kong Limited.

## SECURITIES AND FUTURES (FEES) RULES

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## **SECURITIES AND FUTURES (FEES) RULES**

(Made by the Chief Executive in Council under section 395  
of the Securities and Futures Ordinance (Cap. 571)  
after consultation with the Securities and  
Futures Commission)

### **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).

### **PART 2**

#### **FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(i), (iii) AND (iv) OF ORDINANCE**

#### **2. Annual fees, application fees, etc.**

A fee described in column 2 of Schedule 1, which is prescribed opposite the description in column 3 of that Schedule, shall be payable to the Commission.

#### **3. Time for payment of fees**

(1) The annual fee prescribed in item 1 of Schedule 1 shall be payable on or before each anniversary of the date on which authorization of the provision of automated trading services

concerned under section 95(2) of the Ordinance is granted.

(2) The annual fee prescribed in item 4 of Schedule 1 shall be payable -

(a) where it is first payable in respect of authorization of a collective investment scheme under section 104 of the Ordinance, on or before the date on which the authorization takes effect; and

(b) where it is subsequently so payable, on or before each successive anniversary of the date on which the authorization takes effect.

(3) Any fee, other than an annual fee referred to in subsection (1) or (2), prescribed in Schedule 1 shall be payable at the time when the application or request to which the fee relates is made.

### PART 3

#### FEEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(ii) OF ORDINANCE

#### **4. Interpretation of Part 3**

In this Part, unless the context otherwise requires -  
"Codes" (《守則》) means the codes entitled "The Codes on Takeovers and Mergers and Share Repurchases" and published by the Commission under section 399(2)(a) and (b) of the Ordinance;  
"Executive" (執行人員) means the Executive Director of the Corporate

Finance Division of the Commission or any delegate of the Executive Director;

"Introduction to the Codes" (《守則》引言) means the part of the Codes entitled "Introduction";

"offer" (要約) has the meaning assigned to it by the Codes and, in any case where section 5(2)(a)(ii) is applicable, includes any of the alternative offers or offers of different values (as the case may be) referred to in that section;

"offer document" (要約文件) means a document required to be submitted to the Executive under the Codes in connection with an offer;

"offeree company" (要約標的公司) means a corporation for which an offer is made in accordance with the Codes;

"off-market share repurchase" (場外股份購回) has the meaning assigned to it by the Codes;

"off-market share repurchase circular" (場外股份購回通告) means a document required to be submitted to the Executive under the Share Repurchase Code in connection with an off-market share repurchase;

"relevant shares" (有關股份) -

(a) in relation to an offer contained in an offer document, means the securities which are the subject of the offer;

(b) in relation to an off-market share repurchase contained in an off-market share repurchase



circular, means the securities which are the subject of the off-market share repurchase; or

(c) in relation to a whitewashed offer, means the securities which would be the subject of the offer;

"ruling" (裁定) includes any ruling, waiver, consent, decision, confirmation or other determination in writing, made under the Codes by the Executive, the Takeovers Panel or the Takeovers Appeal Committee;

"Share Repurchase Code" (《股份購回守則》) means the parts of the Codes respectively entitled "Introduction", "Definitions", "General Principles", "Code on Share Repurchases" and "Schedules";

"Takeovers Appeal Committee" (收購上訴委員會) means the committee established under section 8 of the Ordinance and known as the Takeovers Appeal Committee;

"Takeovers Code" (《收購守則》) means the parts of the Codes respectively entitled "Introduction", "Definitions", "General Principles", "Code on Takeovers and Mergers" and "Schedules";

"Takeovers Panel" (收購委員會) means the committee established under section 8 of the Ordinance and known as the Takeovers and Mergers Panel;

"whitewash document" (清洗交易文件) means a document required to be submitted to the Executive under the Whitewash Guidance Note in Schedule VI to the Codes;

"whitewashed offer" (清洗交易要約), in relation to a whitewash document, means an offer which would be required to be made

under Rule 26 of the Takeovers Code in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code.

**5. Fees relating to offer documents, off-market share repurchase circulars and whitewash documents**

(1) Where a first draft of an offer document, off-market share repurchase circular or whitewash document is submitted to the Executive for comment, a fee which is prescribed, opposite the applicable value set out in column 1 of Schedule 2, in column 2 of that Schedule shall be payable to the Commission.

(2) For the purposes of subsection (1), the applicable value shall be equivalent -

(a) in the case of an offer document -

(i) subject to subparagraph (ii), to the value of the offer contained in the offer document; or

(ii) where the offer document contains alternative offers to the same offeree company, or contains 2 or more offers of different values to different offeree companies, to the value of the offer contained in the offer document which has the lower or lowest value;

(b) in the case of an off-market share repurchase circular, to the value of the off-market share

repurchase contained in the off-market share repurchase circular; or

- (c) in the case of a whitewash document, to the value of the whitewashed offer.

(3) Where any offer contained in a draft offer document previously submitted to the Executive for comment is replaced by a revised offer, and a revised offer document is submitted to the Executive in connection with the revised offer, there shall be payable to the Commission a fee the amount of which shall be the difference between -

- (a) the fee previously paid under subsection (1) on the submission of the draft offer document; and
- (b) the fee which would have been payable under subsection (1) had the revised offer been contained in such draft offer document.

(4) For the purposes of this section -

- (a) the value of any offer contained in an offer document or the value of an off-market share repurchase contained in an off-market share repurchase circular shall be -

- (i) where the relevant shares are under the offer or the off-market share repurchase (as the case may be) to be acquired for cash, the total amount of such cash;
- (ii) where the relevant shares are under the offer or the off-market share repurchase

(as the case may be) to be acquired in exchange for securities, the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share repurchase (as the case may be) in accordance with the Codes; or

(iii) where the relevant shares are under the offer or the off-market share repurchase (as the case may be) to be acquired partly for cash and partly in exchange for securities, the aggregate of the total amount of such cash and the total value of such securities on the date of announcement of a firm intention to make the offer or the off-market share repurchase (as the case may be) in accordance with the Codes; and

(b) the value of a whitewashed offer in the case of a whitewash document shall be -

(i) where the relevant shares would under such whitewashed offer be acquired for cash, the total amount of such cash;

(ii) where the relevant shares would under such whitewashed offer be acquired in exchange for securities, the total value

of such securities on the date of announcement of a firm intention to enter into the transaction which would require such whitewashed offer to be made in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code; or

(iii) where the relevant shares would under such whitewashed offer be acquired partly for cash and partly in exchange for securities, the aggregate of the total amount of such cash and the total value of such securities on the date of announcement of a firm intention to enter into the transaction which would require such whitewashed offer to be made in the absence of a waiver under Note 1 on dispensations from Rule 26 of the Takeovers Code,

and where the application of this subsection may, in the case of any offer contained in an offer document or any whitewashed offer in the case of a whitewash document, result in 2 or more variable values, only the lower or lowest value shall be taken into account.

(5) The payment of a fee payable under this section shall be accompanied by a statement showing the value of the offer, off-market share repurchase or whitewashed offer concerned and the

manner in which the fee is determined having regard to subsection (4).

(6) Where a first draft of an offer document, a first draft of an off-market share repurchase circular and a first draft of a whitewash document, or any combination of them, are combined in a draft when submitted to the Executive for comment -

(a) the fee payable under subsection (1) shall be the aggregate of the respective fees payable under that subsection in respect of each such first draft as if each such first draft had not been so combined in the draft, and the provisions of this section shall apply accordingly; and

(b) without prejudice to paragraph (a), subsection (3) shall apply as if -

(i) the reference to a draft offer document in subsection (3) included a reference to the draft in which each such first draft is so combined; and

(ii) the reference to a revised offer document included a reference to that draft as revised to include the revised offer.

**6. Fees for applications to Takeovers Panel or Takeovers Appeal Committee**

Where, pursuant to the Codes, a person other than the Executive applies to the Takeovers Panel for a review of any

ruling of the Executive, or applies to the Takeovers Appeal Committee for a review of the appropriateness of any sanction imposed by the Takeovers Panel pursuant to the Codes -

- (a) a fee of \$50,000 shall be payable by the person to the Commission; and
- (b) an additional fee of \$20,000 shall be payable by the person to the Commission within 30 days after the delivery by the Takeovers Panel or the Takeovers Appeal Committee (as the case may be) of its ruling, in respect of each day or part of a day in excess of the first 2 days on which the Takeovers Panel or the Takeovers Appeal Committee (as the case may be) meets for the purposes of the review.

**7. Fees for hearings concerning compliance with Codes or any rulings under them**

(1) Where a hearing takes place before the Takeovers Panel in any disciplinary proceedings instituted under section 12 of the Introduction to the Codes, a fee, the amount of which shall be determined in accordance with subsection (3), shall, within 30 days after the delivery by the Takeovers Panel of its ruling, be payable to the Commission by any person who in the opinion of the Takeovers Panel -

- (a) has caused unnecessary expense to be incurred in connection with the investigation by the Commission

of any allegation against the person or with the conduct of the hearing; or

(b) has committed a breach of the Takeovers Code, the Share Repurchase Code or a ruling of the Executive or the Takeovers Panel.

(2) Where a hearing takes place before the Takeovers Panel for the purpose of deliberating the appropriate sanction to be imposed upon a person who has agreed that he is in breach of the Takeovers Code, the Share Repurchase Code or a ruling of the Executive or the Takeovers Panel, a fee, the amount of which shall be determined in accordance with subsection (3), shall be payable to the Commission by the person within 30 days after the delivery by the Takeovers Panel of its ruling.

(3) The fee payable under subsection (1) or (2) shall be \$50,000 and, in addition, \$20,000 in respect of each day or part of a day in excess of the first 2 days on which the Takeovers Panel meets for the purposes of the hearing in question.

## **8. Fees for miscellaneous applications**

(1) Subject to subsection (2), where any person applies to the Executive for any ruling under the Takeovers Code or the Share Repurchase Code and no fee is otherwise provided for by these Rules for the application, a fee of \$24,000 shall be payable by the person to the Commission.

(2) Where a fee has been paid under section 5 on the submission of a first draft of a whitewash document, or of a draft



in which a first draft of a whitewash document is combined with any first draft of any other document, no fee shall be payable under subsection (1) for an application to the Executive for a waiver in relation to the whitewash document under Note 1 on dispensations from Rule 26 of the Takeovers Code.

**9. Time for payment of fees**

(1) The fee prescribed in section 5 shall be payable -

(a) in the case of a fee payable under section 5(1), at the time when -

(i) subject to subparagraph (ii), the first draft concerned; or

(ii) where section 5(6)(a) applies, the draft concerned,

is submitted to the Executive; or

(b) in the case of a fee payable under section 5(3), at the time when -

(i) subject to subparagraph (ii), the revised offer document concerned; or

(ii) where section 5(6)(b)(ii) applies, the draft concerned (being the draft as revised to include the revised offer as described in that section 5(6)(b)(ii)),

is submitted to the Executive.

(2) The fee prescribed in section 6(a) shall be payable at the time when the application concerned is made to the Takeovers

Panel or the Takeovers Appeal Committee (as the case may be).

(3) The fee prescribed in section 8(1) shall be payable at the time when the application concerned is made to the Executive.

#### PART 4

#### FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(b) OF ORDINANCE

#### **10. Fees which under Ordinance are prescribed by rules**

A fee described in column 2 of Schedule 3 is prescribed, opposite the description, in column 3 of that Schedule.

#### PART 5

#### MISCELLANEOUS

#### **11. Waiver of fees**

(1) Subject to subsection (2), the Commission may, in relation to any person or class of persons -

(a) waive, in whole or in part, the payment of any fee provided for under these Rules; or

(b) refund, in whole or in part, any fee paid as provided for under these Rules,

if it is of the opinion that otherwise the payment of the fee would be unduly burdensome or inappropriate.

(2) The Commission may only -

(a) waive the payment of the fee prescribed in item 6

of Schedule 1 to the extent that the fee exceeds \$1,200;

- (b) waive the payment of the fee prescribed in item 7 of Schedule 1 to the extent that the fee exceeds \$600.

(3) Where a corporation, an authorized financial institution or an individual -

- (a) is, or applies to be, licensed, registered or approved for Type 1 or Type 2 regulated activity under section 116, 119, 120(1), 126 or 127(1) of the Ordinance; and
- (b) is, or applies to be, licensed, registered or approved for Type 7 regulated activity under section 116, 119, 120(1), 126 or 127(1) of the Ordinance,

if the carrying on, or proposed carrying on, of Type 7 regulated activity by the corporation, authorized financial institution or individual (as the case may be) is incidental to the carrying on, or proposed carrying on, of Type 1 or Type 2 (as the case may be) regulated activity by the corporation, authorized financial institution or individual (as the case may be) -

- (c) the payment of -
  - (i) the fee prescribed in item 3, under paragraph (A), of Schedule 3 for Type 7 regulated activity;
  - (ii) the fee prescribed in item 5 of Schedule

- 3 for Type 7 regulated activity;
  - (iii) the fee prescribed in item 6, under paragraph (A), of Schedule 3 for Type 7 regulated activity;
  - (iv) the fee prescribed in item 12 of Schedule 3 for Type 7 regulated activity;
  - (v) the fee prescribed in item 13(a)(i), under paragraph (A), of Schedule 3 for Type 7 regulated activity;
  - (vi) the fee prescribed in item 13(b)(i), under paragraph (A), of Schedule 3 for Type 7 regulated activity; and
  - (vii) the fee prescribed in item 13(c)(i) of Schedule 3 for Type 7 regulated activity, shall be waived; and
- (d) the payment of the annual fee prescribed in item 18 of Schedule 3 for Type 7 regulated activity shall be waived.

(4) Where the occurrence of an event occasions the need to make an application under section 122(1) or (2), 126(1), 127(1) or 134(1) of the Ordinance as well as an application for which a fee is prescribed in item 9(a) or (b) (as the case may be) of Schedule 1, the payment of the fee prescribed in item 9(a) or (b) (as the case may be) of that Schedule for the latter application shall be waived.

(5) In this section -

- (a) where any fee prescribed in an item in Schedule 3 is described as being so prescribed under paragraph (A), the reference to the fee so described shall be construed as a reference only to the part of the fee that is so prescribed under such paragraph (A) that appears in that item in column 3 of that Schedule; and
- (b) without prejudice to paragraph (a), where any fee prescribed in an item in Schedule 3 (whether or not it is also described as being so prescribed under paragraph (A)) is described as being so prescribed for Type 7 regulated activity, the reference to the fee so described shall be construed as a reference only to the part of the fee that is so prescribed with reference to that regulated activity (however described).

SCHEDULE 1

[ss. 2, 3 & 11]

FEEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(i),  
(iii) AND (iv) OF ORDINANCE

Item	Description	Amount
------	-------------	--------

**Fees relating to Part III of Ordinance**

1.	Annual fee payable in respect of	\$10,000
----	----------------------------------	----------

authorization of the provision of  
 automated trading services under  
 section 95(2) of the Ordinance

**Fees relating to Part IV of Ordinance**

2. Fee payable on an application under  
 section 104(1) of the Ordinance for -

- |     |  |  |
|-----|--|--|
| (a) | authorization of a collective investment scheme -  | \$40,000, plus \$5,000 for each such fund  |
|     | (i) within which there is, or could be, more than one fund; or                           | (excluding any such fund which is already within or  |
|     | (ii) which maintains, or is capable of maintaining, more than one fund                   | maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance) |
| (b) | authorization of any other collective investment scheme                                  | \$20,000   |
| (c) | extension of authorization of a collective investment scheme to cover an additional fund | \$5,000 (excluding any such fund which is already within or  |

maintained by  
another collective  
investment scheme  
which has been  
authorized under  
section 104 of the  
Ordinance)

3. Fee payable in respect of -

- (a) authorization of a collective investment scheme under section 104 of the Ordinance -
    - (i) within which there is, or could be, more than one fund; or
    - (ii) which maintains, or is capable of maintaining, more than one fund
  - (b) authorization of any other collective investment scheme under section 104 of the Ordinance
- \$20,000, plus \$2,500  
for each such fund  
(excluding any such  
fund which is  
already within or  
maintained by  
another collective  
investment scheme  
which has been  
authorized under  
section 104 of the  
Ordinance)  
\$10,000

(c) extension of authorization of a collective investment scheme under section 104 of the Ordinance to cover an additional fund \$2,500 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)

4. Annual fee payable in respect of authorization of a collective investment scheme under section 104 of the Ordinance which is not limited to a period of less than 12 months -

(a) in the case of a collective investment scheme - \$7,500, plus \$4,500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been

- (i) within which there is, or could be, more than one fund; or
- (ii) which maintains, or is capable of maintaining, more than one fund



authorized under  
 section 104 of the  
 Ordinance)

- |  |                 |
|--|-----------------|
| <p>(b) in the case of any other<br/>             collective investment scheme</p>  | <p>\$6,000</p>  |
| <p>5. Fee payable on an application for<br/>          extension of the period of<br/>          authorization of any collective<br/>          investment scheme under section 104 of<br/>          the Ordinance which authorization is<br/>          limited to a period of less than 12<br/>          months</p>  | <p>\$20,000</p> |
| <p>6. Fee payable on an application under<br/>          section 105(1) of the Ordinance for<br/>          authorization of the issue of an<br/>          advertisement, invitation or document<br/>          other than that in respect of any<br/>          collective investment scheme which is<br/>          authorized under section 104 of the<br/>          Ordinance</p> | <p>\$20,000</p> |
| <p>7. Fee payable in respect of<br/>          authorization of the issue of an</p>   | <p>\$10,000</p> |

advertisement, invitation or document under section 105 of the Ordinance other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance

8. Fee payable on an application to modify a previous authorization under section 105 of the Ordinance of the issue of an advertisement, invitation or document in respect of -
- |   |         |
|---|---------|
| (a) any instrument specified in Part 2 of Schedule 4 to the Ordinance     | \$3,000 |
| (b) any certificate of deposit  | \$3,000 |
| (c) any securities other than interests in a collective investment scheme | \$3,000 |

**Fees relating to Part V of Ordinance**

9. Fee payable on an application -
- |   |       |
|---|-------|
| (a) for the grant of a licence under section 116, 117, 120 or 121 of the Ordinance where a licensed | \$200 |
|---|-------|

corporation or licensed  
 representative has substantially  
 changed its or his particulars  
 since the grant of the existing  
 licence

(b) for the grant of a certificate of registration under section 119 of the Ordinance where a registered institution has substantially changed its particulars since the grant of the existing certificate of registration \$200

10. Fee payable for renewal of a modification or waiver referred to in item 16(e), (f), (g), (h), (i) or (j) of Schedule 3 \$4,000

11. Fee payable pursuant to section 136(6)(b) of the Ordinance for certification of a copy of a document as a true copy \$200

**Fees relating to Part VI of Ordinance**

12. Fee payable -
- (a) (subject to paragraph (c)) on an application under section 155(3)(a) of the Ordinance for approval in respect of an alteration of date on which the financial year ends \$2,000
  - (b) (subject to paragraph (c)) on an application under section 155(3)(b) of the Ordinance for approval in respect of the adoption of a period which exceeds 12 months as the financial year \$2,000
  - (c) on an application for approval in respect of both of the matters referred to in paragraphs (a) and (b) respectively \$2,000
13. Fee payable on an application under section 156(4) of the Ordinance for extension of the period within which financial statements and other documents, and any auditor's report, are required to be submitted under \$2,000

section 156(1) or (2) of the Ordinance

**Fees relating to Part XV of Ordinance**

- |     |  |          |
|-----|--|----------|
| 14. | Fee payable on an application under section 309(2) or (3) of the Ordinance for exemption from all or any of the provisions of Part XV of the Ordinance | \$24,000 |
|-----|--|----------|

**Miscellaneous fees**

- |     |   |          |
|-----|---|----------|
| 15. | Fee payable on submission of any information or document to the Commission requiring its consideration and advice (including any advice relating to the application of Part IV of the Ordinance and any advice relating to the authorization for registration of a prospectus under section 38D or 342C of the Companies Ordinance (Cap. 32)) | \$10,000 |
| 16. | Fee payable on an application pursuant to section 11 of the Securities and Futures (Client Securities) Rules  | \$6,000  |

(L.N. of 2002) for any approval

- |     |  |          |
|-----|--|----------|
| 17. | Fee payable for renewal of an approval referred to in item 16  | \$4,000  |
| 18. | Fee payable on an application pursuant to section 4(2)(b) of the Securities and Futures (Client Money) Rules (L.N. of 2002) for any approval                           | \$6,000  |
| 19. | Fee payable for renewal of an approval referred to in item 18  | \$4,000  |
| 20. | Fee payable for renewal of an approval referred to in item 19 of Schedule 3  | \$4,000  |
| 21. | Fee payable on an application under section 38D or 342C of the Companies Ordinance (Cap. 32) for authorization for registration of a prospectus under that Ordinance - |          |
|     | (a) in the case of rights issue prospectus   | \$15,000 |
|     | (b) in the case of Eurobond issue prospectus   | \$15,000 |

(c)	in the case of warrant issue prospectus	\$10,000
(d)	in the case of any prospectus relating to interests in a collective investment scheme	nil
(e)	in the case of any prospectus, not referred to in paragraph (a), (b), (c) or (d), which offers any shares in or debentures of a corporation that has been approved by a recognized exchange company for listing on a recognized stock market	\$30,000
(f)	in the case of any other prospectus	\$30,000
22.	Fee payable for a copy of a document provided by the Commission in the performance of a function under any of the relevant provisions for which no fee is otherwise prescribed in this Schedule	\$9 per page

## SCHEDULE 2

[s. 5]

FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(a)(ii)  
OF ORDINANCE

Applicable value	Fee
Not exceeding \$75,000,000	\$25,000
Exceeding \$75,000,000 but not exceeding \$125,000,000	\$75,000
Exceeding \$125,000,000 but not exceeding \$300,000,000	\$150,000
Exceeding \$300,000,000 but not exceeding \$600,000,000	\$250,000
Exceeding \$600,000,000 but not exceeding \$1,200,000,000	\$350,000
Exceeding \$1,200,000,000 but not exceeding \$2,000,000,000	\$500,000
Exceeding \$2,000,000,000	\$500,000, plus 0.1% of the value over \$2,000,000,000



## SCHEDULE 3

[ss. 10 & 11  
& Sch. 1]FEES PRESCRIBED FOR PURPOSES OF SECTION 395(1)(b)  
OF ORDINANCE

Item	Description	Amount
------	-------------	--------

**Fees relating to Part III of Ordinance**

- |    |  |              |
|----|--|--------------|
| 1. | Prescribed application fee payable under section 96(1)(b) of the Ordinance on an application for authorization to provide automated trading services           | \$10,000     |
| 2. | Prescribed fee payable under section 99(5)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 99 of the Ordinance | \$9 per page |

**Fees relating to Part V of Ordinance**

- |    |  |   |
|----|--|---|
| 3. | Prescribed fee payable under section 116(1) of the Ordinance on an application for the grant | (A) \$4,740 for each regulated activity other than Type 3 |
|----|--|---|

- of a licence for a licensed corporation
- regulated activity;  
and  
(B) \$129,730 for Type 3 regulated activity
4. Prescribed fee payable under section 117(1) of the Ordinance on an application for the grant of a licence for a licensed corporation for a period not exceeding 3 months
- \$4,900 for each regulated activity
5. Prescribed fee payable under section 119(1) of the Ordinance on an application for registration as a registered institution
- \$23,500 for each regulated activity
6. Prescribed fee payable under section 120(1) of the Ordinance on an application for the grant of a licence for a licensed representative
- (A) \$1,790 for each regulated activity other than Type 3 regulated activity;  
and  
(B) \$2,420 for Type 3 regulated activity

7. Prescribed fee payable under \$800  
section 120(2) of the Ordinance  
on an application for the grant  
of a provisional licence for a  
licensed representative
  
8. Prescribed fee payable under \$1,850 for each regulated  
section 121(1) of the Ordinance activity  
on an application for the grant  
of a licence for a licensed  
representative for a period not  
exceeding 3 months
  
9. Prescribed fee payable under \$200  
section 122(1) of the Ordinance  
on an application for approval of  
an accreditation of a licensed  
representative
  
10. Prescribed fee payable under \$200 for each regulated  
section 122(2) of the Ordinance activity  
on an application for approval of  
a transfer of an accreditation of  
a licensed representative

11. Prescribed fee payable under \$200  
 section 124(1) of the Ordinance  
 on an application for issue of a  
 duplicate of a licence or  
 certificate of registration
12. Prescribed fee payable under \$2,950 for each regulated  
 section 126(1) of the Ordinance activity  
 on an application for approval of  
 a person as a responsible officer
13. Prescribed fee payable under  
 section 127(1) of the Ordinance  
 on an application for variation  
 of any regulated activity -  
 (a) in the case of a licensed  
 corporation -
- (i) for adding any (A) \$4,740 for each  
 regulated activity regulated activity  
other than Type 3  
regulated activity;  
and
- (B) \$129,730 for Type 3  
regulated activity

(ii) (subject to \$200 for each regulated  
subparagraph (iii)) activity  
for removing any  
regulated activity

(iii) for removing all nil  
regulated  
activities  
specified in the  
licence

(b) in the case of a licensed  
representative -

(i) for adding any (A) \$1,790 for each  
regulated activity regulated activity  
other than Type 3  
regulated activity;  
and  
(B) \$2,420 for Type 3  
regulated activity

(ii) (subject to \$200 for each regulated  
subparagraph (iii)) activity  
for removing any  
regulated activity

(iii) for removing all nil  
regulated  
activities

specified in the  
licence

(c) in the case of a registered  
institution -

(i) for adding any regulated activity \$23,500 for each regulated activity

(ii) (subject to subparagraph (iii)) activity for removing any regulated activity \$200 for each regulated activity

(iii) for removing all regulated activities specified in the certificate of registration nil

14. Prescribed fee payable under section 130(1) of the Ordinance on an application for approval of premises \$1,000

15. Prescribed fee payable under section 132(1) of the Ordinance on an application for approval to \$3,000

become or continue to be a  
substantial shareholder

16. Prescribed fee payable under  
section 134(1) of the Ordinance  
on an application for the grant  
of a modification or waiver in  
respect of -
- |   |         |
|---|---------|
| (a) any condition specified in<br>section 118 of the Ordinance<br>or imposed under section 116,<br>117, 119, 120, 121, 126 or<br>132 of the Ordinance or any<br>of the requirements of<br>section 121(2)(a) of the<br>Ordinance | \$2,000 |
| (b) any of the requirements of<br>sections 116(2)(b) and 125(1)<br>and (2) of the Ordinance   | \$2,000 |
| (c) any of the requirements of<br>sections 116(2)(c) and 130 of<br>the Ordinance  | \$2,000 |
| (d) any of the requirements of<br>section 129 of the Ordinance  | \$4,000 |
| (e) any of the requirements of  | \$6,000 |

- the Securities and Futures  
(Financial Resources) Rules  
(L.N. of 2002) (other than  
one relating to hedging or  
arbitrage programmes)
- (f) any of the requirements of  
the Securities and Futures  
(Financial Resources) Rules  
(L.N. of 2002), relating to  
hedging or arbitrage  
programmes -
- (i) where at least one \$10,000  
side of the  
portfolio is less  
than \$10,000,000
- (ii) in any other case \$20,000
- (g) any of the requirements of \$6,000  
the Securities and Futures  
(Client Securities) Rules  
(L.N. of 2002)
- (h) any of the requirements of \$6,000  
the Securities and Futures  
(Client Money) Rules (L.N.  
of 2002)
- (i) any of the requirements of \$6,000



the Securities and Futures  
 (Keeping of Records) Rules  
 (L.N. of 2002)

(j) any of the requirements of \$6,000  
 the Securities and Futures  
 (Contract Notes, Statements  
 of Account and Receipts)  
 Rules (L.N. of 2002)

17. Prescribed fee payable under \$9 per page  
 section 136(5)(b) of the  
 Ordinance for a copy of an entry  
 in or extract of a register  
 maintained under section 136 of  
 the Ordinance

18. Prescribed annual fee payable  
 under section 138(1) of the  
 Ordinance -

(a) in the case of a corporation (A) \$4,740 for each  
 licensed under section 116 regulated activity  
 of the Ordinance other than Type 3  
 regulated activity;  
 and  
 (B) \$129,730 for Type 3

regulated activity

(b) in the case of an individual  
licensed under section  
120(1) of the Ordinance -

(i)	to the extent of	(A)	\$1,790 for each
	any regulated		regulated activity
	activity for which		other than Type 3
	the individual is		regulated activity;
	not approved as a		and
	responsible officer	(B)	\$2,420 for Type 3
	under section		regulated activity
	126(1) of the		
	Ordinance		

(ii)	to the extent of	(A)	\$4,740 for each
	any regulated		regulated activity
	activity for which		other than Type 3
	the individual is		regulated activity;
	approved as a		and
	responsible officer	(B)	\$5,370 for Type 3
	under section		regulated activity
	126(1) of the		
	Ordinance		

(c)	in the case of a registered	\$35,000 for each regulated
	institution	activity

**Miscellaneous fees**

- |     |   |          |
|-----|---|----------|
| 19. | Prescribed fee payable under<br>section 58 of the Securities and<br>Futures (Financial Resources)<br>Rules (L.N. of 2002) on an<br>application for any approval   | \$6,000  |
| 20. | Prescribed application fee<br>payable under section 8(2)(b) of<br>the Securities and Futures<br>(Disclosure of Interests -<br>Securities Borrowing and Lending)<br>Rules (L.N. of 2002) on an<br>application for approval as an<br>approved lending agent | \$24,000 |

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### **Explanatory Note**

These Rules are made by the Chief Executive in Council under section 395 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Securities and Futures Commission. They require and provide for the payment to the Commission of, and prescribe, fees for matters relating to applications to the Commission or performance of functions under the relevant provisions. They also prescribe fees which under the Ordinance are prescribed by rules.

2. The Rules also enable the Commission to waive the payment of any fee that is provided for under the Rules.

**SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS -  
EXCLUSIONS) REGULATION**

(Made by the Chief Executive in Council under  
section 376(1) of the Securities and  
Futures Ordinance (Cap. 571))

**1. Commencement**

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

**2. Interpretation**

In this Regulation, unless the context otherwise requires -  
"associated corporation" (相聯法團) has the meaning assigned to it by  
section 308 of the Ordinance;

"back-to-back contract" (背對背合約) means a contract -

- (a) made between an intermediary and its client, pursuant to a previous agreement made between them, for the sale or purchase of a stock futures contract or a stock options contract;
- (b) the terms of which are identical to those of an exchange contract entered into by the intermediary pursuant to the instructions of the client; and
- (c) entered into by the intermediary -
  - (i) where the intermediary is a purchaser under the corresponding exchange contract, as a seller; and

(ii) where the intermediary is a seller under the corresponding exchange contract, as a purchaser;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity;

"conditional offer" (有條件要約) means an offer to purchase shares in a listed corporation made by or on behalf of an offeror to the holders of all the shares or all the shares of a particular class in the listed corporation other than (in either case) shares held by or on behalf of -

- (a) the offeror;
- (b) the offeror's holding company, the offeror's subsidiary or a subsidiary of the offeror's holding company; or
- (c) any person who has agreed that no such offer is to be made in respect of the shares he holds,

subject to the condition that acceptances have to be received in respect of such proportion of the shares for which the offer is made as specified in, or ascertained by reference to, the terms of the offer;

"exchange contract" (交易所合約) means a contract entered into by an intermediary and another intermediary for the sale or purchase of a stock futures contract or a stock options contract through the trading facilities provided by, and subject to the rules of, the relevant exchange company;

"listed corporation" (上市法團) has the meaning assigned to it by section 308 of the Ordinance;

"Official Trustee" (法定受託人) means the Official Trustee appointed under, or the person acting as the Official Trustee by virtue of, section 66 of the Trustee Ordinance (Cap. 29);

"recognized occupational retirement scheme" (認可職業退休計劃) has the meaning assigned to it by section 2(1) and (2A) of the Inland Revenue Ordinance (Cap. 112);

"relevant exchange company" (有關交易所公司), in relation to -

(a) dealings in stock futures contracts, means the Futures Exchange Company; or

(b) dealings in stock options contracts, means the Stock Exchange Company;

"relevant share capital" (有關股本) has the meaning assigned to it by section 308 of the Ordinance;

"short position" (淡倉) has the meaning assigned to it by section 308 of the Ordinance;

"stock futures contract" (股票期貨合約) means a stock futures contract specified in column 2 of Schedule 1 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. of 2002);

"stock options contract" (股票期權合約) means a stock options contract specified in column 2 of Schedule 2 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. of 2002);

"trading day" (交易日) means a day other than -

- (a) a public holiday;
- (b) a Saturday;
- (c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (d) a day throughout or for part of which trading on a recognized stock market is suspended.

**3. Prescribed interests and short positions to be disregarded for the purpose of notification**

(1) The following interests, and short positions, in shares comprised in the relevant share capital of a listed corporation are prescribed for the purposes of section 323 of the Ordinance -

- (a) an interest or short position of a person in his capacity as a beneficiary under a trust constituted exclusively for the purposes of a recognized occupational retirement scheme;
  - (b) an interest or short position of the Official Trustee held in his official capacity;
  - (c) an interest acquired by the offeror as a result of the acceptance of a conditional offer by the shareholders of the listed corporation, being an interest subsisting while the condition of the offer remains unfulfilled;
- and



(d) subject to subsection (2), an interest or short position which an intermediary licensed or registered for Type 1 or Type 2 regulated activity has by virtue of its -

(i) entering into an exchange contract in the ordinary course of its business as such an intermediary pursuant to the instructions of its client who is a person other than a related corporation of the intermediary; and

(ii) designating the exchange contract as being entered into for the account of the client.

(2) For the purposes of subsection (1)(d), an interest or short position shall not be regarded as being prescribed for the purposes of section 323 of the Ordinance unless the intermediary concerned also enters into a back-to-back contract with its client on the same day as entering into an exchange contract pursuant to the instructions of the client.

**4. Prescribed interests and short positions to be disregarded for the purpose of notification by director and chief executive**

The following interests in shares in or debentures of, and short positions in shares in, a listed corporation or any associated corporation of the listed corporation, are prescribed for the purposes of section 346 of the Ordinance -

(a) an interest or short position of a person in his capacity as a trustee of any trust, or as a personal representative of any estate, of which the Official

Trustee is also a trustee (otherwise than as a custodian trustee) or a personal representative(as the case may be);

- (b) an interest or short position of a person in his capacity as a trustee of, or as a beneficiary under, a trust constituted exclusively for the purposes of a recognized occupational retirement scheme; and
- (c) an interest or short position which a person is taken to have under section 344(3) of the Ordinance, where it is an interest or short position (as the case may be) of the corporation concerned in its capacity as a trustee of any such trust as is referred to in paragraph (b).

**5. Exclusion from requirements for notification in certain circumstances of change in nature of interest**

A person is not required to give notification under section 324 of the Ordinance, where a duty of disclosure arises under section 310(1) of the Ordinance in the circumstances specified in section 313(1)(d) of the Ordinance because of a change in the nature of the person's interest in shares comprised in the relevant share capital of the listed corporation concerned, if the change is due to his entering into a contract for the sale of the shares so comprised in which he is interested, under which he is required to deliver the shares to the purchaser under the contract within 4 trading days after the date of the contract.

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**Explanatory Note**

This Regulation prescribes certain interests and short positions which are to be disregarded, in addition to the interests and short positions set out in sections 323(1) and 346(1) of the Securities and Futures Ordinance (Cap. 571) ("the Ordinance"), for the purpose of notification by substantial shareholders and directors or chief executives of listed corporations. It also excludes substantial shareholders from the requirement to give notification where they come under a duty of disclosure under section 310(1) of the Ordinance in certain circumstances because of a change in the nature of their interests.

**SECURITIES AND FUTURES (OFFENCES AND PENALTIES)  
REGULATION**

(Made by the Chief Executive in Council under section 398(6) of the  
Securities and Futures Ordinance (Cap. 571))

**1. Commencement**

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

**2. Offences**

Any person who, without reasonable excuse, contravenes a provision specified in column 2 of the Schedule commits an offence and is liable on conviction to the penalty specified in column 3 of that Schedule opposite the reference to that provision.

**SCHEDULE**

[s. 2]

Item	Specified provision	Specified penalty
1.	Section 3(1) of the Securities and Futures (Miscellaneous) Rules (L.N. of 2002)	A fine at level 5
2.	Section 4(1) of the Securities and Futures (Miscellaneous) Rules (L.N. of 2002)	A fine at level 6
3.	Section 4(2) of the Securities and Futures (Miscellaneous) Rules (L.N. of 2002)	A fine at level 6

4. Section 4(3) of the Securities and Futures (Miscellaneous) Rules (L.N. of 2002) A fine at level 6

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#### **Explanatory Note**

This Regulation is made by the Chief Executive in Council under section 398(6) of the Securities and Futures Ordinance (Cap. 571). It provides that a person who contravenes any specified provision of the Securities and Futures (Miscellaneous) Rules (L.N. of 2002) commits an offence and is liable to a specified penalty.

**SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF  
SCHEDULE 8) ORDER 2002**

(Made by the Chief Executive in Council under section 234  
of the Securities and Futures Ordinance (Cap. 571))

**1. Commencement**

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

**2. Securities and Futures Appeals Tribunal**

Schedule 8 to the Securities and Futures Ordinance (Cap. 571) is amended -

(a) in Part 2 -

(i) in Division 1, by adding -

- |  |  |
|--|--|
| "73. Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (L.N. of 2002)                                      | Objection to a listing of securities.                          |
| 74. Section 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (L.N. of 2002)                                    | Imposition of any condition.                                   |
| 75. Section 8(3) of the Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. of 2002) | Refusal to approve a corporation as an approved lending agent. |

- |     |  |                              |
|-----|--|------------------------------|
| 76. | Section 8(4) of the Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. of 2002) | Imposition of any condition. |
| 77. | Section 8(6) of the Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. of 2002) | Withdrawal of an approval.   |
| 78. | Section 4(4)(c) of the Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. of 2002)               | Refusal to give notice.";    |

(ii) in Division 3, by adding -

- |     |  |   |
|-----|--|---|
| "1. | Section 4(4) of the Securities and Futures (Investor Compensation - Claims) Rules (L.N. of 2002) | Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Securities and Futures (Investor Compensation - Claims) Rules (L.N. of 2002) is not barred. |
| 2.  | Section 7(1)(a), (b) or (c) of the Securities and Futures (Investor                              | Determination as to whether there has been a  |

Compensation - default, as  
 Claims) Rules to the date  
 (L.N. of 2002) of default,  
 or as to  
 whether a  
 claimant is  
 entitled to  
 compensation.

3. Section 7(2) of Determination  
 the Securities of a  
 and Futures provisional  
 (Investor amount of  
 Compensation - compensation.  
 Claims) Rules  
 (L.N. of 2002)
4. Section 9(3) of Aggregation  
 the Securities of separate  
 and Futures claims or  
 (Investor parts of  
 Compensation - those  
 Claims) Rules claims." ;  
 (L.N. of 2002)

(b) in Part 3, in Division 5, by adding -

- "16. A specified Section 6(5) of the  
 decision set out in Securities and  
 item 73 of Division Futures (Stock  
 1 of Part 2. Market Listing)  
 Rules (L.N. of  
 2002).
17. A specified Section 6(5) of the  
 decision set out in Securities and  
 item 74 of Division Futures (Stock  
 1 of Part 2. Market Listing)  
 Rules (L.N. of  
 2002).".

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**Explanatory Note**

This Order is made by the Chief Executive in Council under section 234 of the Securities and Futures Ordinance (Cap. 571). It amends Divisions 1 and 3 of Part 2 of Schedule 8 to the Ordinance by adding certain decisions of the Securities and Futures Commission or a recognized investor compensation company to the list of specified decisions which may be reviewed by the Securities and Futures Appeals Tribunal. In addition, it adds to Division 5 of Part 3 of Schedule 8 to the Ordinance certain specified decisions of the Commission which take effect earlier than the period specified in section 232(2)(a), (b) or (c) of the Ordinance.

**Functions conferred upon the Securities and Futures Commission (SFC) under the Companies Ordinance (Cap. 32) to be transferred to the Stock Exchange of Hong Kong Limited under the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order**

<b>Sections in Companies Ordinance</b>	<b>Details</b>
<b><i>Part II</i></b>	
38B(2A)(b)	This section empowers the SFC to specify and authorize the form and manner of publication of any extract from or abridged version of a prospectus.
38D(3)	A company incorporated in Hong Kong shall make its application in writing to the SFC for authorisation for registration of its prospectus with the Companies Registrar.
38D(5)	This section empowers the SFC to authorize/refuse to authorize the registration of a prospectus issued by a company incorporated in Hong Kong with the Companies Registrar.
<b><i>Part XII</i></b>	
342C(3)	A company incorporated outside Hong Kong shall make its application in writing to the SFC for authorisation for registration of its prospectus with the Companies Registrar.
342C(5)	This section empowers the SFC to authorize/refuse to authorize the registration of a prospectus issued by a company incorporated outside Hong Kong.

**SUMMARY OF PROPOSED FEES UNDER THE SECURITIES AND FUTURES (FEES) RULES (AT ANNEX H) AND EXISTING FEES**

<b>Item</b>	<b>Description of Proposed Fee under the Securities and Futures (Fees) Rules</b>	<b>Proposed Fee (\$)</b>	<b>Amount of Existing Fee (\$)</b>	<b>Reference in Current Legislation</b>
	<b>SCHEDULE 1</b>			
	<b>Fees relating to Part III of Ordinance</b>			
1.	Annual fee payable in respect of authorization of the provision of automated trading services under section 95(2) of the Ordinance	10,000	n/a	new
	<b>Fees relating to Part IV of Ordinance</b>			
2.	Fee payable on an application under section 104(1) of the Ordinance for -			
	(a) authorization of a collective investment scheme – (i) within which there is, or could be, more than one fund; or (ii) which maintains, or is capable of maintaining, more than one fund	40,000, plus 5,000 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)	40,000, plus 5,000 for each fund in respect of which authorization is sought (for unit trusts and mutual fund corporations only) <b>or</b> 20,000-30,000 (for other investment products)	SFC (Fees) Rules <sup>1</sup> , Sch 1: 7(a) & (b), 10(a) & (b)
	(b) authorization of any other collective investment scheme	20,000	20,000	SFC (Fees) Rules, Sch 1: 7(c), 10(a) & (b)
	(c) extension of authorization of a collective investment scheme to cover an additional fund	5,000 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)	5,000	SFC (Fees) Rules, Sch 1 : 7(d)

<sup>1</sup> SFC (Fees) Rules : Securities and Futures Commission (Fees) Rules (Cap. 24 sub. leg. C)

3.	Fee payable in respect of -			
	(a) authorization of a collective investment scheme under section 104 of the Ordinance – (i) within which there is, or could be, more than one fund; or (ii) which maintains, or is capable of maintaining, more than one fund	20,000, plus 2,500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)	20,000, plus 2,500 for each fund to which authorization extends (for unit trusts and mutual fund corporations only) <b>or</b> 10,000-20,000 (for other investment products)	SFC (Fees) Rules, Sch 1: 8(a) & (b), 11(a) & (b)
	(b) authorization of any other collective investment scheme under section 104 of the Ordinance	10,000	10,000	SFC (Fees) Rules, Sch 1: 8(c), 11(a) & (b)
	(c) extension of authorization of a collective investment scheme under section 104 of the Ordinance to cover an additional fund	2,500 (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)	2,500	SFC (Fees) Rules, Sch 1: 8(d)
4.	Annual fee payable in respect of authorization of a collective investment scheme under section 104 of the Ordinance which is not limited to a period of less than 12 months -			
	(a) in the case of a collective investment scheme – (i) within which there is, or could be, more than one fund; or (ii) which maintains, or is capable of maintaining, more than one fund	7,500, plus 4,500 for each such fund (excluding any such fund which is already within or maintained by another collective investment scheme which has been authorized under section 104 of the Ordinance)	7,500 plus 4,500 in respect of each fund (for unit trusts and mutual fund corporations only) <b>or</b> 6,000 (for other investment products)	SFC (Fees) Rules, Sch 1: 9 (a) & (b), 12
	(b) in the case of any other collective investment scheme	6,000	6,000	SFC (Fees) Rules, Sch 1: 9(c) & 12
5.	Fee payable on an application for extension of the period of authorization of any collective investment scheme under section 104 of the Ordinance which authorization is limited to a period of less than 12 months	20,000	10,000-20,000	New and SFC (Fees) Rules, Sch 1: 14(a) & (b)

6.	Fee payable on an application under section 105(1) of the Ordinance for authorization of the issue of an advertisement, invitation or document other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	20,000	20,000-30,000	SFC (Fees) Rules, Sch 1: 10(a) & (b)
7.	Fee payable in respect of authorization of the issue of an advertisement, invitation or document under section 105 of the Ordinance other than that in respect of any collective investment scheme which is authorized under section 104 of the Ordinance	10,000	10,000-20,000	SFC (Fees) Rules, Sch 1: 11(a) & (b)
8.	Fee payable on an application to modify a previous authorization under section 105 of the Ordinance of the issue of an advertisement, invitation or document in respect of -			
	(a) any instrument specified in Part 2 of Schedule 4 to the Ordinance	3,000	3,000	SFC (Fees) Rules, Sch 1: 13(a)
	(b) any certificate of deposit	3,000	3,000	SFC (Fees) Rules, Sch 1: 13(b)
	(c) any securities other than interests in a collective investment scheme	3,000	3,000	SFC (Fees) Rules, Sch 1: 13(c)
	<b>Fees relating to Part V of Ordinance</b>			
9.	Fee payable on an application -			
	(a) for the grant of a licence under section 116, 117, 120 or 121 of the Ordinance where a licensed corporation or licensed representative has substantially changed its or his particulars since the grant of the existing licence	200	200	SFC (Fees) rules, Sch 1: 21
			210	LEFT (Fees) Rules <sup>2</sup> , Sch : 3
	(b) for the grant of a certificate of registration under section 119 of the Ordinance where a registered institution has substantially changed its particulars since the grant of the existing certificate of registration	200	n/a	new
10.	Fee payable for renewal of a modification or waiver referred to in item 16(e), (f), (g), (h), (i) or (j) of Schedule 3	4,000	4,500	Similar to SFC (Fees) Rules, Sch 1: 26(d)
11.	Fee payable pursuant to section 136(6)(b) of the Ordinance for certification of a copy of a document as a true copy	200	200	SFC (Fees) Rules, Sch 1: 19

<sup>2</sup> LFET (Fees) Rules : Leveraged Foreign Exchange Trading (Fees) Rules (Cap. 451 sub. leg. F)

	<b>Fees relating to Part VI of Ordinance</b>			
12.	Fee payable –			
	(a) (subject to paragraph (c)) on an application under section 155(3)(a) of the Ordinance for approval in respect of an alteration of date on which the financial year ends	2,000	2,000	SFC (Fees) Rules, Sch 1: 22(a)
	(b) (subject to paragraph (c)) on an application under section 155(3)(b) of the Ordinance for approval in respect of the adoption of a period which exceeds 12 months as the financial year	2,000	2,000	Similar to SFC (Fees) Rules, Sch 1: 22(a) & (c)
	(c) on an application for approval in respect of both of the matters referred to in paragraphs (a) and (b) respectively	2,000	n/a	new
13.	Fee payable on an application under section 156(4) of the Ordinance for extension of the period within which financial statements and other documents, and any auditor's report, are required to be submitted under section 156(1) or (2) of the Ordinance	2,000	2,000	SFC (Fees) Rules, Sch 1: 22(b)
	<b>Fees relating to Part XV of Ordinance</b>			
14.	Fee payable on an application under section 309(2) or (3) of the Ordinance for exemption from all or any of the provisions of Part XV of the Ordinance	24,000	24,000	SFC (Fees) Rules, Sch 1: 29
	<b>Miscellaneous fees</b>			
15.	Fee payable on submission of any information or document to the Commission requiring its consideration and advice (including any advice relating to the application of Part IV of the Ordinance and any advice relating to the authorization for registration of a prospectus under section 38D or 342C of the Companies Ordinance (Cap. 32))	10,000	10,000	SFC (Fees) Rules, Sch 1: 16
16.	Fee payable on an application pursuant to section 11 of the Securities and Futures (Client Securities) Rules (L.N. of 2002) for any approval	6,000	n/a	new
17.	Fee payable for renewal of an approval referred to in item 16	4,000	n/a	new
18.	Fee payable on an application pursuant to section 4(2)(b) of the Securities and Futures (Client Money) Rules (L.N. of 2002) for any approval	6,000	n/a	new
19.	Fee payable for renewal of an approval referred to in item 18	4,000	n/a	new
20.	Fee payable for renewal of an approval referred to in item 19 of Schedule 3	4,000	n/a	new

21.	Fee payable on an application under section 38D or 342C of the Companies Ordinance (Cap. 32) for authorization for registration of a prospectus under that Ordinance -			
	(a) in the case of rights issue prospectus	15,000	15,000	SFC (Fees) Rules, Sch 1: 28(a)
	(b) in the case of Eurobond issue prospectus	15,000	15,000	SFC (Fees) Rules, Sch 1: 28(b)
	(c) in the case of warrant issue prospectus	10,000	10,000	SFC (Fees) Rules, Sch 1: 28(c)
	(d) in the case of any prospectus relating to interests in a collective investment scheme	nil	nil	SFC (Fees) Rules, Sch 1: 28(f)
	(e) in the case of any prospectus, not referred to in paragraph (a), (b), (c) or (d), which offers any shares in or debentures of a corporation that have been approved by a recognized exchange company for listing on a recognized stock market	30,000	30,000	SFC (Fees) Rules, Sch 1: 28(g)
	(f) in the case of any other prospectus	30,000	30,000	SFC (Fees) Rules, Sch 1: 28(h)
22.	Fee payable for a copy of a document provided by the Commission in the performance of a function under any of the relevant provisions for which no fee is otherwise prescribed in this Schedule	9 per page	9 per page	SFC (Fees) Rules, Sch 1: 20

Item	Description of Proposed Fee	Proposed Fee (\$)	Amount of Existing Fee (\$)	Reference in Current Legislation
	<b>SCHEDULE 3</b>			
	<b>Fees relating to Part III of Ordinance</b>			
1.	Prescribed application fee payable under section 96(1)(b) of the Ordinance on an application for authorization to provide automated trading services	10,000	n/a	new
2.	Prescribed fee payable under section 99(5)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 99 of the Ordinance	9 per page	n/a	new

<b>Fees relating to Part V of Ordinance</b>				
3.	Prescribed fee payable under section 116(1) of the Ordinance on an application for the grant of a licence for a licensed corporation	(A) 4,740 for each regulated activity other than Type 3 regulated activity; and	4,900	SFC (Fees) Rules, Sch 1: 1(a) & (c), 2(a) & (c)
		(B) 129,730 for Type 3 regulated activity	133,750	LEFT (Fees) Rules, Sch: 1(a)
4.	Prescribed fee payable under section 117(1) of the Ordinance on an application for the grant of a licence for a licensed corporation for a period not exceeding 3 months	4,900 for each regulated activity	n/a	new
5.	Prescribed fee payable under section 119(1) of the Ordinance on an application for registration as a registered institution	23,500 for each regulated activity	23,500 (exempt dealer)  7,000 (exempt investment adviser)	SFC (Fees) Rules, Sch 1: 5(a)  5(b)
6.	Prescribed fee payable under section 120(1) of the Ordinance on an application for the grant of a licence for a licensed representative	(A) 1,790 for each regulated activity other than Type 3 regulated activity; and	1,850	SFC (Fees) Rules, Sch 1: 1(b) & (d), 2(b) & (d)
		(B) 2,420 for Type 3 regulated activity	2,500	LEFT (Fees) Rules, Sch: 1(b)
7.	Prescribed fee payable under section 120(2) of the Ordinance on an application for the grant of a provisional licence for a licensed representative	800	n/a	new
8.	Prescribed fee payable under section 121(1) of the Ordinance on an application for the grant of a licence for a licensed representative for a period not exceeding 3 months	1,850 for each regulated activity	1,850 <sup>3</sup>	SFC (Fees) Rules, Sch 1: 1(b) & (d); 2(b) & (d)
9.	Prescribed fee payable under section 122(1) of the Ordinance on an application for approval of an accreditation of a licensed representative	200	200 <sup>4</sup>	New, but similar to SFC (Fees) Rules, Sch 1: 21
10.	Prescribed fee payable under section 122(2) of the Ordinance on an application for approval of a transfer of an accreditation of a licensed representative	200 for each regulated activity	200 <sup>4</sup>	New, but similar to SFC (Fees) Rules, Sch 1: 21
11.	Prescribed fee payable under section 124(1) of the Ordinance on an application for issue of a duplicate of a licence or certificate of registration	200	200	SFC (Fees) Rules, Sch 1: 18

<sup>3</sup> Under the current regime, a usual application fee would be applicable in this circumstance

<sup>4</sup> Under the current regime, a certificate amendment fee would be applicable in this circumstance



12.	Prescribed fee payable under section 126(1) of the Ordinance on an application for approval of a person as a responsible officer	2,950 for each regulated activity	4,900 <sup>5</sup>	SFC (Fees) Rules, Sch 1: 1(a) & (c); 2(a) & (c)
13.	Prescribed fee payable under section 127(1) of the Ordinance on an application for variation of any regulated activity -			
	(a) in the case of a licensed corporation -			
	(i) for adding any regulated activity	(A) 4,740 for each regulated activity other than Type 3 regulated activity; and	4,900 <sup>3</sup>	SFC (Fees) Rules, Sch 1: 1(a) & (c); 2(a) & (c)
		(B) 129,730 for Type 3 regulated activity	133,750 <sup>3</sup>	LFET (Fees) Rules, Sch: 1(a)
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	200 for each regulated activity	200 <sup>4</sup>	SFC (Fees) Rules, Sch 1: 21
	(iii) for removing all regulated activities specified in the licence	nil	nil	
	(b) in the case of a licensed representative -			
	(i) for adding any regulated activity	(A) 1,790 for each regulated activity other than Type 3 regulated activity; and	1,850 <sup>3</sup>	SFC (Fees) Rules, Sch 1: 1(b) & (d); 2(b) & (d)
		(B) 2,420 for Type 3 regulated activity	2,500 <sup>3</sup>	LFET (Fees) Rules, Sch: 1(b)
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	200 for each regulated activity	200 <sup>4</sup>	SFC (Fees) Rules, Sch 1: 21
	(iii) for removing all regulated activities specified in the licence	nil	nil	
	(c) in the case of a registered institution -			
	(i) for adding any regulated activity	23,500 for each regulated activity	23,500	SFC (Fees) Rules, Sch 1: 5(a)
	(ii) (subject to subparagraph (iii)) for removing any regulated activity	200 for each regulated activity	n/a	new
	(iii) for removing all regulated activities specified in the certificate of registration	nil	n/a	

<sup>5</sup> Responsible officers assume similar supervisory responsibilities of current dealing/investment adviser directors. Under the new regime, for an individual to become a responsible officer, he will need to pay the application fee for approval as a responsible officer (\$2,950), the total being \$4,740 (i.e. \$1,790 + \$2,950).

14.	Prescribed fee payable under section 130(1) of the Ordinance on an application for approval of premises	1,000	6,950	Application wider, but similar to LFET (Fees) Rules, Sch: 12
15.	Prescribed fee payable under section 132(1) of the Ordinance on an application for approval to become or continue to be a substantial shareholder	3,000	6,950	Application wider, but similar to LFET (Fees) Rules, Sch: 18
16.	Prescribed fee payable under section 134(1) of the Ordinance on an application for the grant of a modification or waiver in respect of -			
	(a) any condition specified in section 118 of the Ordinance or imposed under section 116, 117, 119, 120, 121, 126 or 132 of the Ordinance or any of the requirements of section 121(2)(a) of the Ordinance	2,000	n/a	new
	(b) any of the requirements of sections 116(2)(b) and 125(1) and (2) of the Ordinance	2,000	n/a	new
	(c) any of the requirements of sections 116(2)(c) and 130 of the Ordinance	2,000	2,000  6,950	SFC (Fees) Rules, Sch 1: 26(e)  LFET (Fees) Rules Sch: 7(b)
	(d) any of the requirements of section 129 of the Ordinance	4,000	6,950	Application wider, but similar to LFET (Fees) Rules, Sch: 7(a)
	(e) any of the requirements of the Securities and Futures (Financial Resources) Rules (L.N. of 2002) (other than one relating to hedging or arbitrage programmes)	6,000	6,500	SFC (Fees) Rules, Sch 1: 24(a)
	(f) any of the requirements of the Securities and Futures (Financial Resources) Rules (L.N. of 2002), relating to hedging or arbitrage programmes -			
	(i) where at least one side of the portfolio is less than \$10,000,000	10,000	10,000	SFC (Fees) Rules, Sch 1: 24 (c) (i)
	(ii) in any other case	20,000	20,000	SFC (Fees) Rules, Sch 1: 24 (c) (ii)
	(g) any of the requirements of the Securities and Futures (Client Securities) Rules (L.N. of 2002)	6,000	6,500	SFC (Fees) Rules, Sch 1: 26 (c)-(cc)

	(h) any of the requirements of the Securities and Futures (Client Money) Rules (L.N. of 2002)	6,000	4,500	SFC (Fees) Rules, Sch 1: 26(da) & (db)
	(i) any of the requirements of the Securities and Futures (Keeping of Records) Rules (L.N. of 2002)	6,000	6,500	Application wider, but similar to SFC (fees) Rules, Sch 1: 31(d)
	(j) any of the requirements of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (L.N. of 2002)	6,000	6,500	Application wider, but similar to SFC (Fees) Rules, Sch 1: 31(d)
17.	Prescribed fee payable under section 136(5)(b) of the Ordinance for a copy of an entry in or extract of a register maintained under section 136 of the Ordinance	9 per page	9 per page	SFC (Fees) Rules, Sch 1: 20
18.	Prescribed annual fee payable under section 138(1) of the Ordinance -			
	(a) in the case of a corporation licensed under section 116 of the Ordinance	(A) 4,740 for each regulated activity other than Type 3 regulated activity; and	4,900	SFC (Fees) Rules, Sch 1: 3(a) & (c); 4(a) & (c)
		(B) 129,730 for Type 3 regulated activity	133,750	LEFT (Fees) Rules, Sch: 2(a)
	(b) in the case of an individual licensed under section 120(1) of the Ordinance -			
	(i) to the extent of any regulated activity for which the individual is not approved as a responsible officer under section 126(1) of the Ordinance	(A) 1,790 for each regulated activity other than Type 3 regulated activity; and	1,850	SFC (Fees) Rules, Sch 1: 3(b) & (d); 4(b) & (d)
		(B) 2,420 for Type 3 regulated activity	2,500	LEFT (Fees) Rules, Sch: 2(b)
	(ii) to the extent of any regulated activity for which the individual is approved as a responsible officer under section 126(1) of the Ordinance	(A) 4,740 for each regulated activity other than Type 3 regulated activity; and	4,900 <sup>5</sup>	SFC (Fees) Rules, Sch 1: 3(a) & (c); 4(a) & (c)
		(B) 5,370 for Type 3 regulated activity	2,500 <sup>6</sup>	LEFT (Fees) Rules, Sch: 2(b)
	(c) in the case of a registered institution	35,000 for each regulated activity	14,000 (exempt dealer) 7,000 (exempt investment adviser)	SFC (Fees) Rules, Sch 1: 6(a) 6(b)

<sup>6</sup> Responsible directors of leveraged foreign exchange traders are currently only required to pay annual fees as representatives

	<b>Miscellaneous fees</b>			
19.	Prescribed fee payable under section 58 of the Securities and Futures (Financial Resources) Rules (L.N. of 2002) on an application for any approval	6,000	4,900-7,500	SFC (Fees) Rules, Sch 1: 27
20.	Prescribed fee payable under section 8(2)(b) of the Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules (L.N. of 2002) on an application for approval as an approved lending agent	24,000	n/a	new

## **DETAILS OF THE ORDERS/RULES/REGULATIONS**

### **Securities and Futures (Levy) Order**

1. The Securities and Futures (Levy) Order at Annex A is made under section 394(1) of the Ordinance. It specifies –
  - (a) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of securities is 0.005% of the consideration, save that no levy is payable in respect of stock options, or by market makers in respect of pilot programme securities or exchange traded funds (sections 3-7); and
  - (b) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of a futures contract is \$1.00, save that the amount of levy payable in respect of Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts, stock futures contracts or options on a stock futures contract is \$0.20, and no levy is payable in respect of currency futures contracts and new futures contracts (sections 8-13).

### **Securities and Futures (Levy) Rules**

2. The Securities and Futures (Levy) Rules at Annex B are made under section 394(5) of the Ordinance. They prescribe –
  - (a) the manner in which payment of levies must be made and imposes charges for late payment of such levies (sections 3-7); and
  - (b) incidental matters relating to the keeping and examination of accounts of recognized exchanges companies and refunds, etc (sections 8-12).

### **Securities and Futures (Investor Compensation – Levy) Rules**

3. The Securities and Futures (Investor Compensation – Levy) Rules at Annex C are made under section 244(1) of the Ordinance. They prescribe –
  - (a) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of securities is 0.002% of the consideration, save that no levy is payable in respect of stock options, or by market makers in respect of pilot programme securities or exchange traded funds (sections 3-7);

- (b) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of a futures contract is \$0.50, save that the amount of levy payable in respect of Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts, stock futures contracts or options on a stock futures contract is \$0.10 (sections 8-11);
- (c) the manner in which payment of levies must be made and impose charges for late payment of such levies (sections 12-17); and
- (d) incidental matters relating to the keeping and examination of accounts of recognized exchanges companies and refunds, etc (sections 18-23).

### **Securities and Futures (Investor Compensation – Compensation Limits) Rules**

4. The Securities and Futures (Investor Compensation – Compensation Limits) Rules at Annex D are made under 244(1) of the Ordinance. Section 3 specifies the maximum amount of compensation that may be paid to a person making a claim for compensation under the Investor Compensation Fund under the Securities and Futures (Investor Compensation – Claims) Rules shall be \$150,000.

### **Securities and Futures (Transfer of Functions – Investor Compensation Company) Order**

5. The Securities and Futures (Transfer of Functions – Investor Compensation Company) Order at Annex E is made under section 80 of the Ordinance. Section 3 transfers to the Investor Compensation Company Limited the functions conferred upon the SFC by the provisions of the Ordinance and the Securities and Futures (Investor Compensation – Claims) Rules<sup>1</sup> as set out in the Schedule to the Order, in relation to the compensation fund established under Part XII of the Ordinance.

### **Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002**

6. The Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 at Annex F amends the Prevention of Bribery Ordinance (Cap. 201) (POBO) by way of a consequential amendment under the Ordinance. In effect, any recognized investor compensation company or their relevant personnel would be subject to the POBO.

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<sup>1</sup> The Securities and Futures (Investor Compensation – Claims) Rules are made by the SFC, and published in the Gazette on 13 December 2002.

## **Securities and Futures (Transfer of Functions – Stock Exchange Company) Order**

7. The Securities and Futures (Transfer of Functions – Stock Exchange Company) Order at Annex G is made under section 25 of the Ordinance. Section 3 transfers certain functions of the SFC in relation to prospectuses under the Companies Ordinance (Cap. 32) to the Stock Exchange of Hong Kong Limited (SEHK). Section 4 provides that the SEHK is entitled to charge and retain any fees payable in relation to the functions transferred to it under the Order.

## **Securities and Futures (Fees) Rules**

8. The Securities and Futures (Fees) Rules at Annex H are made under section 395 of the Ordinance.

9. Part 2 of the Rules sets out the requirements for paying the fees set out in Schedule 1, including fees in respect of the authorization of automated trading services, collective investment schemes, applications for waivers of various requirements under the Ordinance, and authorization of prospectuses under the Companies Ordinance (Cap. 32), etc.

10. Part 3 of the Rules and Schedule 2 provide for the requirements for payment of fees for functions performed by the SFC, the Takeovers Panel and the Takeovers Appeal Committee in relation to takeovers and mergers or share repurchases under the Codes on Takeovers and Mergers and Share Repurchases.

11. Part 4 of the Rules and Schedule 3 provide for fees for matters which the Ordinance provides are, or may be, prescribed by rules. They include application fees and annual fees in respect of licensing and registration of intermediaries, etc.

12. Part 5 of the Rules provides for SFC's powers to waive or refund fees in whole or in part.

## **Securities and Futures (Disclosure of Interests – Exclusions) Regulation**

13. The Securities and Futures (Disclosure of Interests – Exclusions) Regulation at Annex I is made under section 376(1) of the Ordinance. Section 3 prescribes certain interests and short positions which are to be disregarded, in addition to the interests or short positions listed under sections 323(1) of the Ordinance, for the purpose of notification by substantial shareholders. Section 4 prescribes certain interests and short positions which are to be disregarded, in

addition to the interests or short positions listed under sections 346(1) of the Ordinance, for the purpose of notification by directors or chief executives of a listed corporation. Section 5 provides that a substantial shareholder is excluded from the requirement to give notification when he enters into a contract for the sales of shares pending settlement of the shares within a short period. This is to avoid double disclosure obligation as the substantial shareholder is already required to give notification at the settlement of the transaction.

### **Securities and Futures (Offences and Penalties) Regulation**

14. The Securities and Futures (Offences and Penalties) Regulation at Annex J is made under section 398(6) of the Ordinance. It provides that a person who contravenes sections 3(1), 4(1), 4(2) and 4(3) of the Securities and Futures (Miscellaneous) Rules<sup>2</sup> commits an offence and is liable to a specified penalty.

### **Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002**

15. The Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 at Annex K is made under section 234 of the Ordinance.

16. Section 2(a)(i) of the Order adds the following decisions of the SFC to Division 1 of Part 2 of Schedule 8 to the Ordinance so that they are subject to review by the SFAT –

(a) Decisions made under the Securities and Futures (Stock Market Listing) Rules<sup>3</sup>

Section 6(2)	Objection to an application for listing of securities on a stock market
Section 6(3)(b)	Imposition of any condition when SFC does not object to a listing

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<sup>2</sup> The Securities and Futures (Miscellaneous) Rules are made by the SFC, and published in the Gazette on 13 December 2002.

<sup>3</sup> The Securities and Futures (Stock Market Listing) Rules are made by the SFC, and are published in the Gazette on 13 December 2002.



(b) Decisions made under the Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules<sup>4</sup>

Section 8(3)	Refusal to approve a corporation as an approved lending agent
Section 8(4)	Imposition of any condition when giving an approval under section 8(3)
Section 8(6)	Withdrawal of an approval given to an approved lending agent

(c) Decisions made under the Securities and Futures (Contracts Limits and Reportable Positions) Rules<sup>5</sup>

Section 4(4)(c)	Refusal to give a notice to allow a person to hold or control futures contracts or options contracts in excess of the limits prescribed in the rules
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17. Section 2(a)(ii) of the Order adds the following decisions of a recognized investor compensation company performing a function of the SFC to Division 3 of Part 2 of Schedule 8 to the Ordinance so that they are subject to review by the SFAT -

Decisions made under the Securities and Futures (Investor Compensation – Claims) Rules

Section 4(4)	Refusal to determine that a claim which is not lodged within the time limit provided in section 4(3) of the Rules is not barred
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<sup>4</sup> The Securities and Futures (Disclosure of Interests – Securities Borrowing and Lending) Rules are made by the SFC, and are published in the Gazette on 13 December 2002.

<sup>5</sup> The Securities and Futures (Contracts Limits and Reportable Positions) Rules are made by the SFC, and are published in the Gazette on 13 December 2002.

Section 7(1)(a), (b) or (c)	Determination as to whether there has been a default, as to the date of default, or as to whether a claimant is entitled to compensation
Section 7(2)	Determination of a provisional amount of compensation
Section 9(3)	Aggregation of separate claims or parts of those claims

18. In addition, section 2(b) of the Order amends Division 5 of Part 3 of Schedule 8 to the Ordinance to include decisions of the SFC made under sections 6(2) and 6(3)(b) of the Securities and Futures (Stock Market Listing) Rules (see paragraph 16(a) above), so that they will take immediate effect according to section 6(5) therein.

## **An Overview of the Securities and Futures Ordinance (Cap. 571)**

### **Objectives and Major Initiatives**

#### **OBJECTIVES**

The Securities and Futures Ordinance (Cap. 571) (the Ordinance) consolidates and modernises 10 existing Ordinances relating to financial and investment products, regulation of the securities and futures market, and the protection of investors, and modernise our regulatory framework for the securities and futures market to keep it on par with prevailing international standards.

#### **Guiding principles in drafting the Ordinance**

2. The following principles were adhered to when drafting the Ordinance -

- (a) the new regime should be on par with international standards and compatible with international practices, with necessary adjustments to address local characteristics;
- (b) a reasonable balance should be struck between protecting investors and facilitating market development;
- (c) procedures and processes should be simplified and made user-friendly wherever possible to minimize the regulatory burden;
- (d) the exercise of regulatory powers should be subject to adequate checks and balances; and
- (e) there should be a smooth transition from the existing to the new regulatory framework.

#### **Benefits**

3. We believe that the new regulatory regime would have a number of benefits. In particular, the Ordinance -

- (a) puts in place a more transparent and coherent regulatory regime, compared to the matrix of requirements set out in 10 different Ordinances;

- (b) simplifies certain regulatory arrangements to reduce compliance burden of intermediaries and market users;
- (c) closes existing regulatory gaps to promote market confidence;
- (d) enhances the standard of corporate governance;
- (e) enhances investor protection;
- (f) minimises market misconduct and systemic risks;
- (g) facilitates innovation and competition; and
- (h) puts in place a more effective regulation framework in an increasingly sophisticated and fast changing financial market.

## **MAJOR INITIATIVES**

4. The following paragraphs set out the major initiatives and proposals enshrined in the Ordinance.

### **Improving the regulation of market intermediaries**

5. The Ordinance introduces a single licensing regime, under which an intermediary will need only one single licence to engage in activities concerning securities, futures contracts and other investment products regulated by the Securities and Futures Commission (SFC). This will help reduce administrative costs and compliance burden, and meet the needs of future market developments.

6. The Ordinance clearly prescribes the persons who are required to apply to the SFC to become "responsible officers" of an intermediary firm to better regulate the senior management of intermediaries.

7. The SFC is empowered to impose civil fines to punish improper conduct by intermediaries. This will provide the SFC with an alternative means of disciplinary action to reflect in a more proportionate manner the severity of the misconduct.

### **Establishing a level playing field**

8. The Ordinance levels the regulatory requirements applying to securities businesses of banks and licensed brokers. The Hong Kong

Monetary Authority (HKMA) will remain the front-line regulator and will perform its day-to-day regulatory functions, in relation to the securities arms of banks, in a manner and according to standards that are consistent with those applied by the SFC to licensed brokers. The new regulatory framework will be underpinned by a revised Memorandum of Understanding to be drawn up between the SFC and the HKMA.

### **Combating market misconduct**

9. The Ordinance establishes a new civil Market Misconduct Tribunal (MMT) to deal with a wider range of market misconduct in addition to insider dealing, including price rigging, stock market manipulation and disclosure of false or misleading information inducing transactions in securities and futures contracts. The MMT may, by way of civil sanctions, order payment of the profit gained or loss avoided, restrict a person's access to the markets, and disqualify a person from being a director or other officer of any corporation, etc.

10. The existing criminal route to deal with market misconduct offences will be expanded to cover a wider range of offences, with an increased maximum penalty of \$10 million fine and 10 years' imprisonment.

### **Enhancing transparency of listed companies**

11. The Ordinance enhances the disclosure regime for securities interests of listed corporations for better transparency, including those held by directors, chief executives and substantial shareholders of the listed corporations concerned. For example, in line with international standards, the initial shareholding disclosure threshold for substantial shareholders is reduced from 10% to 5%; and the disclosure notification period from 5 days to 3 business days.

### **Enhancing SFC's investigatory powers**

12. The Ordinance enhances the investigatory powers of the SFC to inquire into possible misconduct of listed companies, including the power to seek assistance from a listed company's bank, auditor or business counterpart so as to verify information obtained from the listed company. This facilitates

the SFC to investigate market misconduct that would prejudice the interest of shareholders of listed companies.

### **Providing immunity to auditors**

13. The Ordinance provides auditors of listed companies who report to the SFC any suspected fraud or misconduct in the management of a listed company with statutory immunity from civil liability under the common law, if such reports are made in good faith. This would encourage auditors who have identified possible fraud or irregularity in conducting an audit of a listed company to protect the public interest by reporting to the SFC.

### **Investor compensation**

14. The Ordinance introduces a flexible framework for the establishment of a new investor compensation scheme. Detailed rules for the operation of the new compensation scheme, including the per investor compensation ceiling, are to be stipulated in subsidiary legislation.

### **Empowering investors**

15. To better empower investors, the Ordinance creates a private cause of civil action for a person to seek compensation for pecuniary losses suffered as a result of relying on any public communication relating to securities or futures contracts, which is false or misleading. Such compensation may be sought from the person responsible for disseminating the information, e.g. directors or senior officers of a company.

16. The Ordinance also creates a private cause of civil action for a person to sue another person for recovery of pecuniary losses resulting from the latter's market misconduct, such as insider dealing and stock market manipulation.

17. As a deterrent, these initiatives will also help improve the standard of disclosure by listed companies to the market generally.

## **Transparency and accountability of the SFC**

18. The Ordinance enhances the existing accountability arrangements for the SFC and creating additional checks and balances to guard against possible abuse of powers. For example, the regulatory objectives of the SFC are now clearly spelt out under the new legislation.

19. The Ordinance also establishes a new full-time appellate body, the Securities and Futures Appeals Tribunal. It will be chaired by a judge and review all major regulatory decisions made by the SFC and other regulatory bodies under the Ordinance.

## **Facilitating market development**

20. The Ordinance also puts in place a flexible framework for the regulation of automated trading services and new financial products in order to facilitate market innovation and development.