

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (MISCELLANEOUS) RULES

INTRODUCTION

Pursuant to section 397(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) has made the Securities and Futures (Miscellaneous) Rules (the Rules) at the **Annex**.

BACKGROUND

The SFO

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the SFC to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council has established the Subcommittee on Draft Subsidiary Legislation to be made under the SFO (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of draft subsidiary legislation, including the vires to make them.

THE PROPOSALS

Major policy considerations

4. The Miscellaneous Rules contain a range of provisions that do not readily fit into other subsidiary legislation made under the SFO. They -

- (a) provide for the service of documents on the SFC under the SFO generally;
- (b) supplement the regulatory regime in Part V of the SFO, requiring an intermediary to –
 - (i) exhibit its licence or certificate of registration in a prominent place at its places of business; and
 - (ii) return its licence or certificate for cancellation or amendment in certain circumstances; and
- (c) supplement Part VIII of the SFO by defining the category of persons within the definition of “auditors” in Part 1 of Schedule 1 to the SFO for the purposes of section 179 of the SFO¹.

5. In accordance with section 398(4) of the SFO, the SFC has consulted the Hong Kong Monetary Authority on a draft of the Rules.

6. The Rules should be read in conjunction with the Securities and Futures (Offences and Penalties) Regulation made by the Chief Executive in Council (which will be published in the Gazette on 13 December 2002). The Regulation provides that a person who, without reasonable excuse, contravenes sections 3(1), 4(1), 4(2) or 4(3) of the Rules (i.e. failure to exhibit or return a licence/certificate as required) commits an offence and is liable to the penalties specified in the Regulation.

¹ The term “auditor” is defined in Part 1 of Schedule 1 to the SFO to be a person registered under the Professional Accountants Ordinance (Cap. 50), who holds a practising certificate, or a person specified in rules made by the SFC under section 397. Section 179 in Part VIII of the SFO provides for the powers of the SFC to conduct a preliminary inquiry into suspected crimes or misconduct in a listed corporation. In the course of such an inquiry, an authorized person may ask an “auditor” under section 179(1)(iv) to produce documents in the nature of “audit working papers” as defined in section 178 and ask for explanation of the documents produced.

THE RULES

7. Section 2 of the Rules prescribes the manner in which documents may be served on the SFC and the manner in which they are to be signed, executed and authenticated. The provision allows electronic service of documents.

8. Section 3 provides that an intermediary shall exhibit its licence or certificate of registration in a prominent place at its principal place of business and, if it has more than one place of business, a certified copy of such document at each of its other places of business. An intermediary shall exhibit a copy of its licence or certificate of registration in lieu of the original where the latter is returned to the SFC for amendment under section 4.

9. Section 4 provides that an intermediary and a licensed representative must return his licence or certificate of registration to the SFC for amendment or cancellation if –

- (a) he ceases to carry on all or any of the regulated activities for which he is licensed or registered for more than one month or such longer period as the SFC may approve in writing;
- (b) the regulated activities for which he is licensed or registered are varied under section 127 of the SFO; or
- (c) it appears to the SFC that an error exists in the licence or certificate of registration and on the request of the SFC.

10. Section 5 prescribes the definition of “auditor” in Part 1 of Schedule 1 to the SFO, for the purposes of section 179 of the SFO, to include a professional accountant or a “practice unit” within the meaning of the Professional Accountants Ordinance (Cap. 50) or a foreign auditor providing services to a corporation the subject of exercising power under section 179 of the SFO.

PUBLIC CONSULTATION

11. Sections 2, 3 and 4 of the Rules were adopted from the draft Securities and Futures (Licensed Persons and Registered Institutions) Rules (LPRI Rules). The SFC released a consultation document and an exposure

draft of the LPRI Rules on 16 November 2001 for comment by the public. The LPRI Rules were considered by the Subcommittee at its meeting on 29 April 2002. Subsequent to the meeting, the SFC decided that the above three provisions should be relocated in the Rules. Other provisions of the LPRI Rules were moved to the Securities and Futures (Licensing and Registration) (Information) Rules (which will be published in the Gazette on 13 December 2002).

12. The SFC released a consultation document and an exposure draft of the Securities and Futures (Miscellaneous) Rules on 2 July 2002 for comment by the public. A total of 11 submissions were received. The SFC has considered all the comments received and revised the Rules as appropriate.

13. A draft of the Rules was considered by the Subcommittee at its meeting on 16 September 2002. No major concerns were expressed by Members of the Subcommittee at the meeting.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial or staffing implications for the Government.

COMMENCEMENT DATE

15. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the target commencement date by the end of 2002.

PUBLICITY

16. The Rules will be published in the Gazette on 13 December 2002. The SFC will issue a press release on the same day.

ENQUIRIES

17. For any enquiries on this brief, please contact Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.

The Securities and Futures Commission
13 December 2002