



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

Consultation Conclusions on the

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

諮詢總結

Hong Kong
June 2002

香港
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引言

1. 證券及期貨事務監察委員會(證監會)在 2002 年 3 月 28 日發表諮詢文件(該諮詢文件),就涉及即將根據《證券及期貨條例》(2002 年第 5 號)(“該條例”)第 III 及 XII 部設立的新投資者賠償安排的附屬法例草擬本,邀請公眾人士發表意見。該附屬法例草擬本由行政長官會同行政會議及證監會各自根據該條例所訂立的規則組成。
2. 有關的諮詢期在 2002 年 4 月 25 日結束。
3. 本文件旨在為對該諮詢文件感興趣的人士提供有關本會對於在諮詢期內所收到的意見的分析,以及解釋證監會為何作出有關結論。本文件應與該諮詢文件一併閱讀。

公眾諮詢

諮詢程序

4. 除了發出公告邀請各界人士發表意見外,該諮詢文件亦派發予各相關人士及專業團體,以及在證監會網站上登載。
5. 我們共收了 6 份來自消費者委員會、證券商協會有限公司、香港證券專業學會、匯豐金融證券(亞洲)有限公司、香港證券經紀業協會有限公司及一個不願透露名稱的組織的意見書。
6. 有關的意見書內並無任何重大的意見,大部分均支持建議的附屬法例。

諮詢總結

7. 證監會認為無需修改現有的徵費率。《證券及期貨(投資者賠償-徵費)規則》草擬本現已被修改,以確保有關的法例規定能配合目前的慣例。經修訂的《證券及期貨(投資者賠償-徵費)規則》草擬本載於附錄 1。本會並沒有對載於諮詢文件內的其他草擬規則及草擬命令的實質內容作出重大的修訂。草擬規則和草擬命令已進一步修改,以更妥貼地反映政策意向並改進草稿。

意見摘要及證監會的回應

8. 就每條草擬規則所收到的意見摘要及證監會的回應載於以下各表 -
 - i) 《證券及期貨(投資者賠償)規則》,已更改名稱為《證券及期貨(投資者賠償-徵費)規則》(附錄 2);
 - ii) 《證券及期貨(投資者賠償-賠償限額)規則》(附錄 3);

- iii) 《證券及期貨(職能的轉移-投資者賠償公司)令》(附錄 4)；
- iv) 《證券及期貨(投資者賠償-雜項條文)規則》，已更改名稱為《證券及期貨(投資者賠償-申索)規則》(附錄 5)。

擬稿

附件 1

[參考：《證券及期貨條例》第 236、237(1)、244(1)及 244 (4) 條]

《證券及期貨(投資 賠償 — 徵費)規則》 (2002 年第 5 號，第 244(1)條)

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《證券及期貨(投資 賠償 — 徵費)規則》

(由行政長官會同行政會議根據《證券及期貨條例》

(2002 年第 5 號)第 244(1)條訂立)

第 I 部

導言

1. 生效日期

本規則自《證券及期貨條例》(2002 年第 5 號)第 XII 部實施的日期起實施。

2. 釋義

在本規則中，除文意另有所指外 —

擬稿

“交易所”(Exchange Company) —

- (a) 就根據第 II 部須支付的徵費而言，指聯交所；
- (b) 就根據第 III 部須支付的徵費而言，指期交所；

“交易所買賣基金”(exchange traded funds)指符合以下說明的集體投資計劃 —

- (a) 持有證券組合的；
- (b) 經設計以大致上反映該等證券組合的價格及收益表現，並且是具備以實物形式增設和贖回股份的設施；及

擬稿

(c) 以單一證券的形式在聯交所營辦的認可證券市場上市或買賣的；

“交易所買賣基金莊家” (exchange traded funds market maker)指獲聯交所按照聯交所規章註冊為交易所買賣基金莊家的人；

“徵費” (levy)指根據第 II 或 III 部須支付的徵費；

“小型恆生指數期貨合約” (Mini-Hang Seng Index Futures contract)指合約規定是在期交所規章內列明的股票指數期貨合約；

“試驗計劃” (pilot programme)具有聯交所規章給予該詞的涵義；

“試驗計劃莊家” (pilot programme market maker)具有聯交所規章給予該詞的涵義；

“試驗計劃證券” (pilot programme securities)指根據試驗計劃在聯交所營辦的認可證券市場買賣的證券；

擬稿

“轉交”(remittance)指根據第 13 條由交易所向證監會以轉交方式作出的付款；

“股票期貨合約”(stock futures contract)指合約規定是在期交所規章內列明的股票期貨合約。

第 II 部

就證券買賣須支付的徵費

3. 第 II 部的適用範圍

除非某宗證券買賣已根據認可交易所規章在認可證券市場記錄或通知該交易所，否則本部並不就該宗買賣而適用。

擬稿

4. 證券

除第 5、6 及 7 條另有規定外，就賠償基金而言，買賣證券須向證監會支付的徵費須 —

- (a) 由賣方支付，徵費率為售賣證券的成交價的 0.002%；及
- (b) 由買方支付，徵費率為購買證券的成交價的 0.002%。

5. 就股票期權無須支付徵費

就賠償基金而言，買賣股票期權無須向證監會支付徵費。

6. 試驗計劃證券

就賠償基金而言，買賣試驗計劃證券須向證監會支付的徵費 —

- (a) 就賣方而言 —

擬稿

- (i) 除第(ii)節另有規定外，徵費率為售賣證券的成交價的 0.002%；

- (ii) 如賣方是試驗計劃莊家，則徵費率為售賣證券的成交價的 0%；或

擬稿

(b) 就買方而言 —

(i) 除第(ii)節另有規定外，徵費率為購買證券的成交價的 0.002%；

(ii) 如買方是試驗計劃莊家，則徵費率為購買證券的成交價的 0%。

7. 交易所買賣基金

就賠償基金而言，買賣交易所買賣基金須向證監會支付的徵費 —

(a) 就賣方而言 —

(i) 除第(ii)節另有規定外，徵費率為售賣基金的成交價的 0.002%；

(ii) 如賣方是交易所買賣基金莊家，則徵費率為售

擬稿

賣基金的成交價的 0%；或

(b) 就買方而言 —

(i) 除第(ii)節另有規定外，徵費率為購買基金的成交價的 0.002%；

(ii) 如買方是交易所買賣基金莊家，則徵費率為購買基金的成交價的 0%。

擬稿

第 III 部

就期貨合約買賣須支付的徵費

8. 第 III 部的適用範圍

除非某宗期貨合約買賣是在認可期貨市場交易的，否則本部並不就該宗買賣而適用。

9. 期貨合約

除第 10 及 11 條另有規定外，就賠償基金而言，買賣期貨合約須向證監會支付的徵費 —

(a) 由賣方支付，款額為\$0.50；及

(b) 由買方支付，款額為\$0.50。

擬稿

10. 小型恆生指數期貨合約

就賠償基金而言，買賣小型恆生指數期貨合約須支付的徵費 —

(a) 就賣方而言，款額為\$0.10；或

(b) 就買方而言，款額為\$0.10。

擬稿

11. 股票期貨合約

就賠償基金而言，買賣股票期貨合約或該合約的期權須支付的徵費 —

(a) 就賣方而言，款額為\$0.10；或

(b) 就買方而言，款額為\$0.10。

第 IV 部

支付方式及附帶事宜

12. 支付徵費

(1) 根據本規則須支付徵費的人，須以交易所規章中不時訂明的方式向代證監會收費的交易所支付徵費。

擬稿

(2) 根據本條須支付的徵費款額，可作為拖欠證監會的民事債項追討。

13. 交易所須收取及轉交徵費

交易所須收取根據第 12 條付予它的徵費，並在第 21 條的規限下，須以下述方式向證監會以轉交方式支付徵費 —

- (a) 將徵費存入證監會指明的銀行帳戶；
- (b) 在收取徵費的月份的下一個月的第 15 天支付，如第 15 天當日不是營業日，則須在下一個營業日支付。

擬稿

14. 交易所須將未轉交的徵費存放

交易所須 —

- (a) 代證監會持有有關徵費；並
- (b) 在收取有關徵費後在合理地切實可行的範圍內盡快將該徵費存入《銀行業條例》(第 155 章)所指的銀行，

直至按照第 13 條將該徵費轉交證監會為止。

15. 關於轉交的申報表

(1) 交易所須在每次轉交徵費的日期後 7 天內，向證監會提交一份關於該次轉交的申報表。

(2) 根據第(1)款提交的申報表須 —

擬稿

- (a) 符合證監會指明的格式；
- (b) 由獲交易所一般地或為此目的而授權的一位交易所董事簽署；及
- (c) 載有證監會指明的資料。

16. 調整轉交款額及申報表

交易所可調整任何申報表及其關乎的轉交的款額，以反映之前的申報表或轉交(視屬何情況而定)的任何錯誤。

擬稿

17. 逾期轉交附加費

(1) 如交易所沒有根據本規則在規定的時間轉交徵費，它須向證監會支付逾期轉交附加費，款額為徵費款額乘以具有《法定貨幣紙幣發行條例》(第65章)第2條的涵義的所有發鈔銀行的最優惠貸款利率的平均息率加2%，按日計算，從開始拖欠當日起計直至有關徵費獲轉交為止。

(2) 根據第(1)款須支付的逾期轉交附加費及第(1)款提述的徵費，可作為拖欠證監會的民事債項追討。

(3) 證監會須將根據第(1)款付予它的逾期轉交附加費付予賠償基金。

18. 帳目

交易所須就所有關於徵費的收取和轉交的財務往來備存妥善帳目。

19. 證監會可查閱帳目

擬稿

為確定交易所是否正遵從或已遵從本規則的任何條文，獲證監會書面授權的人可於任何合理時間，在出示有關授權書的文本後查閱和複印根據第 18 條備存的帳目。

20. 報告

(1) 除第(3)款另有規定外，交易所須在每年 3 月 31 日之後的 1 個月內，或在證監會一般地或就個別個案指明的較長限期內，向證監會提交一份報告，核證根據第 15 條就截至該年 3 月 31 日為止的 12 個月內的所有轉交而提交的申報表均是正確無誤及符合本規則的。

(2) 根據第(1)款提交的報告須 —

(a) 符合證監會指明的格式；及

擬稿

(b) 由交易所根據《公司條例》(第 32 章)委任的核數師擬備及核證，開支由交易所負擔。

(3) 交易所根據第(1)款提交的第一份報告須處理就 2003 年 3 月 31 日或之前作出的所有轉交而提交的申報表。

21. 退還徵費

(1) 凡任何人已支付徵費，他可以下述理由，向證監會申請退還有關徵費 —

(a) 他事實上無須支付該筆徵費；或

(b) 他其後變為無須支付該筆徵費。

(2) 根據第(1)款提出的申請須 —

(a) 以書面提出；及

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(b) 附有所有有關資料。

(3) 證監會如信納申請人實屬無須支付或變為無須支付已支付的徵費，則須退還有關徵費予申請人。

22. 沒有支付徵費的通知

凡交易所知悉有人沒有支付須由該人支付的徵費，它須在合理地切實可行的範圍內盡快以書面將該沒有支付徵費之事通知證監會。

23. 提供資料

(1) 證監會可藉向交易所發出書面通知而要求交易所提供該通知書內指明的關於收取、存放和轉交徵費的資料。

擬稿

(2) 如有根據第(1)款發出的通知，交易所須在合理地切實可行的範圍內盡快提供該通知書內指明的資料。

行政會議秘書

行政會議廳

2002 年 月 日

註釋

本規則為根據《證券及期貨條例》(2002年第5號)第236條設立的賠

擬稿

償基金訂明提供經費的方法，規定就某些證券及期貨合約須支付徵費。本規則亦訂明支付徵費的方式及某些附帶事宜。

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

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

* Section reference was not quoted by the respondent.

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

* Section reference was not quoted by the respondent.

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

* Section reference was not quoted by the respondent.

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

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

* Section reference was not quoted by the respondent.

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

* Section reference was not quoted by the respondent.

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

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

* Section reference was not quoted by the respondent.

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

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

* Section reference was not quoted by the respondent.

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

* Section reference was not quoted by the respondent.

List of Respondents

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

* Section reference was not quoted by the respondent.