

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

Part XII of and Schedule 9 to the Securities and Futures Bill  
Clause-by-clause examination

**Part XII**

At Annex A is the updated mark-up version of Part XII of the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

**Schedule 9**

2. At Annex B is the updated mark-up version of Schedule 9 (clauses 71 to 74) to the Securities and Futures Bill, with the proposed amendments thereto. The reasons for the amendments are set out in the footnotes.

**Securities and Futures Commission  
Financial Services Bureau  
31 July 2001**

## PART XII

## INVESTOR COMPENSATION

**228. Interpretation of Part XII**

In this Part, unless the context otherwise requires -  
"compensation" (賠償) means compensation payable out of the  
compensation fund under rules made under section 236;

<sup>1</sup>"default" ( ) means a default to be prescribed by  
rules made under section 236;

"Futures Exchange Compensation Fund" (期交所賠償基金) means the  
compensation fund established under Part VIII of the  
repealed Commodities Trading Ordinance;

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<sup>1</sup> At the Bills Committee meeting on 4 May 2001, Members expressed the view that while accepting the need for a flexible approach, i.e. by way of subsidiary legislation, to prescribe investor compensation arrangements such that future market development can be accommodated, the primary legislation should set out as appropriate those major elements that have been decided upon. We accept this view and accordingly reflect them in this purpose clause having regard to the result of the consultation conducted in March/April 2001. (Please refer to Paper 11B/01 dated 31 July, 2001.) Any subsidiary legislation to be made under clause 236 has to be subject to the overall purpose of the investor compensation arrangements as stipulated in clause 229.

"Unified Exchange Compensation Fund" (聯交所賠償基金) means the compensation fund established under Part X of the repealed Securities Ordinance.

## 229. Establishment of compensation fund<sup>1</sup>

(1) The Commission shall establish and maintain a compensation fund, to be known as the Investor Compensation Fund in English and "投資者賠償基金" in Chinese, for the purposes of this Part, providing, in accordance with rules made under section 236, a measure of compensation to clients of a specified person who sustain a loss by reason of a default committed by the specified person or any of his associated persons in connection with trading in specified securities or futures contracts.

(2) In this section -  
"associated person" ( \_\_\_\_\_ ), in relation to a specified person, means -

- (a) an employee of the specified person;
- (b) a person ("first-mentioned person") who may under section 160 receive or hold client assets of the specified person, or an employee of the first-mentioned person; or
- (c) such other persons as may be prescribed by rules made under section 236;

"specified person" ( \_\_\_\_\_ ) means -

(a) an intermediary licensed or exempt for Type 1 or 2 regulated activity;

(b) an intermediary licensed for Type 8 regulated activity; or

(c) such other person as may be prescribed by rules made under section 236;

"specified securities or futures contracts" ( \_\_\_\_\_ ) means any securities or futures contracts listed or traded or to be listed or traded on -

(a) a recognized stock market or recognized futures market; or

(b) such other markets as may be prescribed by rules made under section 236.

**230. Money constituting the compensation fund**

(1) The compensation fund shall consist of -

(a) all amounts paid to the Commission or a recognized investor compensation company in accordance with rules made under this Part;

<sup>2</sup>(aa) all amounts paid by the Commission into the compensation fund under subsection (2)(b);

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<sup>2</sup> The proposed new clauses 230(1)(aa) and 230(2)(b) work together to enable the SFC to inject money out of its reserves, which are derived primarily from transaction levies, as appropriate.

- (b) all amounts paid into the compensation fund under sections 72(2) or (8)(b), 73(2) or (8)(b) and 74(11) of Schedule 9;
- (c) all amounts recovered by the Commission or a recognized investor compensation company in exercise of a right of action conferred by section 87 or 235;
- (d) all amounts borrowed under subsection (2);
- (e) any return or profit received on an investment made under section 233;
- (f) all other amounts lawfully paid into the compensation fund.

(2) With the consent in writing of the Financial Secretary, the Commission may ~~—~~

(a) for the purposes of the compensation fund, borrow from any authorized financial institution on such terms and at such rates of interest as it considers acceptable and ~~may~~ charge any investments acquired under section 233 by way of security for any such loan~~—~~;

<sup>2</sup>(b) pay into the compensation fund from its reserves such amount of money as it thinks fit.

### **231. Money to be kept in account**

The Commission shall open at one or more authorized financial institutions one or more accounts and shall, pending

their application in accordance with this Part, pay into or transfer to such account or accounts all amounts forming part of the compensation fund.

**232. Accounts of compensation fund**

(1) The Commission shall keep proper accounts of the compensation fund.

(2) The Commission may, if it considers it necessary to do so -

(a) maintain separate accounts in respect of the amounts that are respectively paid into the compensation fund under sections 72, 73 and 74 of Schedule 9;

(b) maintain separate accounts in respect of the compensation fund -

(i) for different -

(A) recognized exchange companies;

(B) markets operated by recognized exchange companies;

(C) persons providing automated trading services; or

(D) classes of investors; or

(ii) for the better and more effectual management or administration of the fund;

- (c) maintain sub-accounts in respect of the separate accounts referred to in paragraph (a) or (b) in such manner as it considers appropriate.

(3) The Commission shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare -

- (a) a financial statement made up to (and including) the last day of that year; and
- (b) in the case where separate accounts are maintained under subsection (2)(a) or (b) or sub-accounts are maintained under subsection (2)(c) -
  - (i) a consolidated financial statement made up to (and including) the last day of that year, in respect of the separate accounts or sub-accounts (as the case may be); and
  - (ii) a separate financial statement made up to (and including) the last day of that year, in respect of each separate account or sub-account (as the case may be).

(4) A financial statement prepared under subsection (3) shall be signed by the chairman and at least one non-executive director of the Commission.

(5) The Commission shall appoint an auditor to audit the compensation fund.

(6) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each financial statement prepared under subsection (3) and shall submit the report to the Commission.

(7) An auditor's report prepared under subsection (6) shall contain a statement made by the auditor as to whether in his opinion the financial statement gives a true and fair view of the matters to which the statement relates.

(8) The auditor appointed under this section may call for and inspect such books and records of the Commission or any recognized investor compensation company as he may require in order to perform his functions under this section.

(9) Not later than 4 months after the end of each financial year the Commission shall cause -

(a) a copy of -

(i) each audited financial statement in respect of that financial year; and

(ii) the auditor's report on each such financial statement,

to be sent to the Financial Secretary; and

- (b) a copy of each such audited financial statement to be published in the Gazette.

(10) In this section, "financial statement" (財務報表) means a statement which contains all of the following documents -

- (a) a revenue and expenditure account;
- (b) a balance sheet; and
- (c) a cash flow statement.

### **233. Investment of moneys**

(1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part -

- (a) on fixed deposit with an authorized financial institution; or
- (b) in securities in which trustees are authorized by law to invest trust funds.

(2) Any return or profit on an investment of moneys by the Commission under subsection (1) shall be added to the compensation fund.

(3) A fixed deposit receipt and other document evidencing the investment of money under subsection (1) may be kept in the office of the Commission or deposited for safe keeping with an authorized financial institution.

**234. Payments out of the compensation fund**

(1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in such order as the Commission may determine one or more of the following amounts -

- (a) all legal and other expenses incurred -
  - (i) in investigating or defending claims for compensation made under rules made under this Part;
  - (ii) in relation to the compensation fund;
  - (iii) in the exercise by the Commission of the rights, powers, and authorities vested in it by this Part or rules made under this Part in relation to the compensation fund;
  - (iv) in the exercise by a recognized investor compensation company of a function transferred to it under section 80 or provided for under rules made under this Part;
- (b) the expenses incurred in the management or administration of the compensation fund;
- (c) the expenses incurred in obtaining insurance, surety, guarantee or other security, or in making any financial arrangement, in respect of

claims for compensation made under rules made under this Part;

- (d) interest on any sum borrowed under section 230(2);
- (e) the amounts of claims for compensation, costs of and incidental to the making and proving of such claims and interest on compensation, as allowed under rules made under this Part;
- (f) all other money payable out of the compensation fund in accordance with rules made under this Part.

(2) Where the Commission considers that the amount at credit in either the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund is insufficient to enable -

- (a) the payment of the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund (as the case may be); and
- (b) the repayment of the amounts deposited in cash with the Commission under section 104 of the repealed Securities Ordinance or section 82 of the repealed Commodities Trading Ordinance (as the case may be),

then the Commission shall, subject to subsection (3), pay into the Unified Exchange Compensation Fund or the Futures Exchange

Compensation Fund (as the case may be) out of the compensation fund such amount as it considers equitable.

(3) The aggregate amounts paid under subsection (2) to the Unified Exchange Compensation Fund or the Futures Exchange Compensation Fund shall not exceed the respective aggregate amounts paid into the compensation fund under section 72(2) or 73(2) of Schedule 9 (as the case may be).

(4) In the event that the compensation fund is dissolved, the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay -

(a) to the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, to the liquidator of the Stock Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Unified Exchange Compensation Fund under section 72(2) and (8)(b) of Schedule 9, and on any such payment being made those amounts shall form part of the assets of the Stock Exchange Company or, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32); and

(b) to the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, to

the liquidator of the Futures Exchange Company the whole or a portion of that part of the compensation fund which is derived from the Futures Exchange Compensation Fund under section 73(2) and (8)(b) of Schedule 9, and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company or, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

**235. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund<sup>3</sup>**

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<sup>3</sup> As mentioned at the Bills Committee meeting on 4 May 2001, the amendments were proposed to reflect the High Court decision in the Forlux case in interpreting the origin provision of clause 235(1)(a) (i.e. section 118 of the Securities Ordinance), being that the SFC should have no priority in the distribution of "assets" recovered over investors who have received compensation from the compensation fund; and to apply similar principles in clause 235(1)(b). As set out in Paper CE02/01 dated 7 June 2001 and considered by Members on 15 June in the context of Part III, we have already proposed similar amendments to clause 87, the equivalent of clause 235. Since then, we have made further technical refinement to clarify the intention as now incorporated in this proposed clause 235. This final version agreed upon would be duplicated as clause 87.

(1) Where the Commission makes any payment out of the compensation fund in respect of any claim for compensation made under rules made under this Part -

(a) the Commission shall be subrogated, to the extent ~~of that payment, which that payment bears~~ to the loss sustained (without taking into account any compensation) by the claimant by reason of the default on which the claim was based, to all the rights and remedies of the claimant in relation to the loss ~~sustained by him by reason of the default on which the claim was based;~~ and

~~and~~

(b) ~~the claimant shall have no right~~ respective rights of the claimant and the Commission in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of the loss =

(i) any sum out of the assets of ~~the exchange participant or other~~ person concerned who is in default, ~~or where the loss was caused by the defalcation, fraud or misfeasance of an employee of that exchange participant or that other person, the~~

~~assets of that employee, until the  
Commission has; or  
been reimbursed the full amount of its payment~~  
(ii) any property held on trust by that  
person for the claimant,  
shall rank equally.

(2) All amounts recovered by the Commission under subsection (1) shall become part of the compensation fund.

**236. Rules by Chief Executive in Council  
and Commission**

(1) The Chief Executive in Council may make rules for the following matters -

- (a) the means of funding the compensation fund;
- (b) the maximum amount of compensation that may be paid to a person making a claim for compensation;
- (c) the maintenance of sub-accounts under section 232(2)(c), payments to be made from such sub-accounts and the apportionment between different sub-accounts of expenses incurred in relation to the compensation fund and of interest earned on the fund;
- (d) providing for the better carrying out of the objects and purposes of this Part.

(2) Without prejudice to section 384(9) and (10), the Commission may, subject to subsection (3), make rules which are not inconsistent with rules made by the Chief Executive in Council under subsection (1), for the following matters -

- (a) the circumstances in which a person is entitled to claim compensation, including any matter referred to in section 228 or 229(2) which is to be or may be prescribed by rules made under this section<sup>4</sup>;
- (b) the manner in which the claim for compensation is to be made;
- (c) the payment of costs of and incidental to the making and proving of a claim for compensation;
- (d) the payment of interest on the amount of compensation;
- (e) the information or documents to be supplied to the Commission for the purpose of enabling the Commission to determine the application;
- (f) the persons or classes of persons who are not entitled to make a claim for compensation;

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<sup>4</sup> This is to make clear that the power to supplement the major elements referred to in clauses 228 and 229 falls within the coverage of clause 236(2)(a), the exercise of which has to be in consultation with the Financial Secretary as required under clause 236(3).

- (g) the circumstances and manner in which the Commission may call for claims for compensation;
- (h) the circumstances and manner in which the Commission may determine, deal with and pay a claim for compensation;
- (i) enabling the Commission -
  - (i) to submit a claim for compensation as a proof of debt in any winding-up or bankruptcy proceedings;
  - (ii) to pay compensation in the form of securities and to purchase securities for that purpose; and
  - (iii) to require the assignment of a claimant's rights of action as a pre-condition for the payment of compensation;
- (j) the functions of a recognized investor compensation company in relation to the management or administration of the compensation fund;
- (k) the formulation of proper accounting and auditing systems with respect to the management or administration of the compensation fund for which a recognized investor compensation

company may be responsible upon a transfer of a function to it under section 80;

- (l) arrangements that are to be made when a recognized investor compensation company is wound up;
- (m) the obtaining of such insurance, surety, guarantee or other security or the making of such financial arrangement as may be necessary or appropriate for the better carrying out of the objects and purposes of this Part;
- (n) providing for the better carrying out of the objects and purposes of this Part.

(3) The Commission shall consult the Financial Secretary before making rules under subsection (2) for the matters specified in paragraphs (a) and (f) of that subsection.

<sup>5</sup>(4) In making any rules under subsection (1)(a), the Chief Executive in Council shall ensure that the funds of the compensation fund shall, so far as practicable, be derived from the securities and futures industry.

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<sup>5</sup> This amendment is to reflect the policy intention that as far as practicable, the funding of the investor compensation arrangements should follow the user-pay principle.

Schedule 9

**Part XII of this Ordinance (Investor compensation)**

71. (1) In sections 72 to 74 -

"Futures Exchange Compensation Fund" (期交所賠償基金) and "Unified Exchange Compensation Fund" (聯交所賠償基金) have the meanings respectively assigned to them in section 228 of this Ordinance;

"repealed Commodities Trading Rules" (已廢除的《商品交易規則》) means the Commodities Trading (Dealers, Commodity Trading Advisers and Representatives) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Contract Levy Rules" (已廢除的《合約徵費規則》) means the Commodities Trading (Contract Levy) Rules (Cap. 250 sub. leg.) repealed under section 392 of this Ordinance;

"repealed Securities Rules" (已廢除的《證券規則》) means the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) repealed under section 392 of this Ordinance.

(2) For the avoidance of doubt, it is hereby declared that nothing in sections 72 to 74 shall be construed as enabling a claim to be made which is barred under any enactment or rule of law.

Unified Exchange Compensation Fund

72. (1) Despite the repeals effected by section 392 of this Ordinance, Part X of the repealed Securities Ordinance shall, subject to this section, continue to apply to and in relation to

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(a) any claim for compensation from the Unified Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day, as if that section had not been enacted, subject to the following modifications -

(i) section 112 of that Part X shall cease to apply as from the appointed day;

(ii) for any reference to the Unified Exchange, there shall be substituted a reference to a recognized stock market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Stock Exchange Company within the meaning of this Ordinance; and

(iv) the expressions "dealing in securities", "exchange participant", "listed", "securities" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Unified Exchange

Compensation Fund as it considers appropriate, having regard to

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- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund; and
- (b) the amounts deposited in cash under section 104 of the repealed Securities Ordinance, which have not previously been reimbursed under this section.<sup>1</sup>

<sup>1</sup>(2A) Where the Commission considers that the amount at credit in the Unified Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Unified Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance.

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<sup>1</sup> The proposed amendments confers the SFC with the flexibility to refund the cash deposit made under section 104 of the Securities Ordinance at an earlier time to the Stock Exchange Company if it is satisfied that the balance of the Unified Exchange Compensation Fund is sufficient to satisfy all possible claims against the fund. We expect that the Stock Exchange Company would return such deposit to its participants in a manner like that set out in section 106 of the Securities Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Stock Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation from the Unified Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Unified Exchange Compensation Fund, he shall lodge his claim in writing with the Stock Exchange Company -

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

(5) A claim made under subsection (4) shall be regarded as a claim made under section 109 of the repealed Securities Ordinance and other provisions of Part X of that Ordinance shall apply accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Stock Exchange Company otherwise determines, be barred.

(7) After -

(a) all claims made or continued under this section have been disposed of; and

(b) all outstanding liabilities against the Unified Exchange Compensation Fund have been satisfied,

the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

(8) Any balance mentioned in subsection (7) shall -

- (a) be used to ~~repay~~reimburse the Stock Exchange Company or, if the Stock Exchange Company is in liquidation, the liquidator of the Stock Exchange Company, for the amounts deposited in cash under section 104 of the repealed Securities Ordinance, ~~to the extent that the balance is sufficient for this purpose and provided such deposits~~which have not previously been repaid; ~~and on any such payment being made those amounts shall form part of the assets of the Stock Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32)~~reimbursed under this section;<sup>1</sup> and
- (b) if there is any remaining balance, be paid into the compensation fund.

<sup>1</sup>(8A) Upon any reimbursement referred to in subsection (2A) or (8)(a), the amount of the reimbursement shall form part of the assets of the Stock Exchange Company and, if it is in liquidation,

shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(9) Where a claim for compensation from the Unified Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Unified Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section -  
"appointed day" (指定日期) means the date appointed under subsection

(11);

"default" (違責) means a default referred to in section 109(1) of the repealed Securities Ordinance.

#### Futures Exchange Compensation Fund

73. (1) Despite the repeals effected by section 392 of this Ordinance, Part VIII of the repealed Commodities Trading Ordinance

and the repealed Contract Levy Rules shall, subject to this section, continue to apply to and in relation to -

(a) any claim for compensation from the Futures Exchange Compensation Fund made under that Part before the appointed day; or

(b) any default occurring before the appointed day, as if that section had not been enacted, subject to the following modifications -

(i) section 89 of that Part VIII shall cease to apply as from the appointed day;

(ii) for any reference to the Commodity Exchange, there shall be substituted a reference to a recognized futures market within the meaning of this Ordinance;

(iii) for any reference to the Exchange Company, there shall be substituted a reference to the Futures Exchange Company within the meaning of this Ordinance; and

(iv) the expressions "exchange participant", "futures contracts" and "trading right" shall respectively be construed in accordance with this Ordinance.

(2) The Commission may after the appointed day pay into the compensation fund such sum of money from the Futures Exchange Compensation Fund as it considers appropriate, having regard to

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- (a) the amounts which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund; and
- (b) the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, which have not previously been reimbursed under this section<sup>2</sup>.

<sup>2</sup>(2A) Where the Commission considers that the amount at credit in the Futures Exchange Compensation Fund exceeds the total amount which the Commission considers to be necessary to meet any claims or likely claims against the Futures Exchange Compensation Fund, the Commission may after the appointed day apply the excess to reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, for the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance.

(3) As soon as reasonably practicable after the appointed day, the Futures Exchange Company shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after

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<sup>2</sup> This amendment is of similar nature to that proposed to clause 72 regarding the Unified Exchange Compensation Fund. Please refer to Note 1 for details.

the publication of the notice, on or before which a claim for compensation from the Futures Exchange Compensation Fund may be made by any person.

(4) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation from the Futures Exchange Compensation Fund, he shall lodge his claim in writing with the Futures Exchange Company -

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

(5) A claim made under subsection (4) shall be regarded as a claim made under section 87 of the repealed Commodities Trading Ordinance and other provisions of Part VIII of that Ordinance shall apply accordingly.

(6) A claim that is not made within the time limited by subsection (4) shall, unless the Futures Exchange Company otherwise determines, be barred.

(7) After -

- (a) all claims made or continued under this section have been disposed of; and
  - (b) all outstanding liabilities against the Futures Exchange Compensation Fund have been satisfied,
- the Commission shall apply any balance remaining in the Fund in accordance with subsection (8).

(8) Any balance mentioned in subsection (7) shall -

<sup>2</sup>(a) be used to ~~repay~~reimburse the Futures Exchange Company or, if the Futures Exchange Company is in liquidation, the liquidator of the Futures Exchange Company, ~~for~~ the amounts deposited in cash under section 82 of the repealed Commodities Trading Ordinance, ~~to the extent that the balance is sufficient for this purpose and provided such deposits which have not previously been repaid; and on any such payment being made those amounts shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32); and~~ reimbursed under this section; and

(b) if there is any remaining balance, be paid into the compensation fund.

<sup>2</sup>(8A) Upon any reimbursement referred to in subsection (2A) or (8)(a), the amount of the reimbursement shall form part of the assets of the Futures Exchange Company and, if it is in liquidation, shall be available to the liquidator for distribution in accordance with the Companies Ordinance (Cap. 32).

(9) Where a claim for compensation from the Futures Exchange Compensation Fund is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission

is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall apply the amount in accordance with subsection (8).

(10) Except as provided in this section, no claim for compensation from the Futures Exchange Compensation Fund may be made after the appointed day.

(11) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(12) In this section -  
"appointed day" (指定日期) means the date appointed under subsection

(11);

"default" (違責) means a default referred to in section 87(1) of the repealed Commodities Trading Ordinance.

#### Dealers Deposit Scheme

74. (1) Despite the repeals effected by section 392 of this Ordinance -

- (a) sections 52 (except subsections (1), (1A) and (6)) and 52A of the repealed Securities Ordinance;
- (b) rules 2, 4, 5 and 6 (other than rule 6(4)) of the repealed Securities Rules;

(c) section 33 of the repealed Commodities Trading Ordinance; and

(d) Parts I and III (other than rule 15(5)) of the repealed Commodities Trading Rules,

shall, subject to this section, continue to apply for the purposes of this section as if that section 392 had not been enacted.

(2) Where, prior to the appointed day -

(a) there arises any of the circumstances described in section 52(2) or (11) of the repealed Securities Ordinance or section 33(1) or (11) of the repealed Commodities Trading Ordinance; and

(b) no transfer, payment, forfeiture or application for release of the deposit (as the case may be) paid or deposited by the dealer concerned has been made pursuant to either of those sections,

then such transfer, payment, forfeiture or application for release and any subsequent application of such deposit may be made under the applicable provisions specified in subsection (1).

(3) A claim for compensation made before the appointed day in respect of a default occurring prior to that day that has not been disposed of may be continued and disposed of under subsection (1).

(4) As soon as reasonably practicable after the appointed day, the Commission shall publish in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying

a date, not being earlier than 3 months after the publication of the notice, on or before which a claim for compensation against the deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance may be made.

(5) Where, in respect of a default occurring prior to the appointed day, a person wishes to start a claim for compensation against any deposit referred to in subsection (4), he shall lodge his claim in writing with the Commission -

- (a) if a notice under subsection (4) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after he became aware of the default giving rise to the claim.

(6) A claim made under subsection (5) shall be regarded as a claim made under rule 6(5) of the repealed Securities Rules or rule 15(6) of the repealed Commodities Trading Rules (as the case may be), and other provisions of the Rules shall apply accordingly.

(7) A claim that is not made within the time limited by subsection (5) shall, unless the Commission otherwise determines, be barred.

(8) Where a claim made or continued under this section is not allowed or the amount or amounts determined to be payable as compensation do not exceed the amount of the deposit, the Commission shall repay the deposit to which the claim relates or the remaining balance of the deposit (as the case may be) to the dealer concerned.

(9) Where -

(a) a deposit made under section 52 of the repealed Securities Ordinance or section 31 of the repealed Commodities Trading Ordinance has not been or is not required to be disposed of under the Ordinance; and

(b) the deposit is not required to be disposed of under this section,

the Commission shall repay the deposit to the dealer concerned.

(10) Where a claim made or continued under this section is allowed (whether in full or in part) but the amount allowed cannot be paid to the claimant because the Commission is unable to locate the claimant, then the Commission shall hold for the claimant the amount allowed for 3 years beginning with the date on which the claim is allowed, after which time the Commission shall repay the amount to the dealer concerned.

(11) Where -

(a) a deposit or its remaining balance is required to be repaid to a dealer under subsection (8) or (9) or any amount is required to be repaid to a dealer under subsection (10); but

(b) the Commission is unable to locate the dealer for the purpose of repayment during the period of 3 years beginning with -

(i) in the case of subsection (8), the date of the determination of the claim;

(ii) in the case of subsection (9), the appointed day; or

(iii) in the case of subsection (10), the end of the 3-year period referred to in that subsection,

the Commission shall pay the deposit or the remaining balance or the amount (as the case may be) to the compensation fund.

(12) Except as provided in this section, no claim for compensation may be made against any deposit forfeited under section 52(2)(c) of the repealed Securities Ordinance or section 33(1)(c) of the repealed Commodities Trading Ordinance after the appointed day.

(13) The Secretary for Financial Services may by notice published in the Gazette appoint a date as the appointed day for the purposes of this section.

(14) In this section -  
"appointed day" (指定日期) means the date appointed under subsection

(13);

"default" (違責) means a default referred to in rule 6(2) of the repealed Securities Rules or rule 15(2) of the repealed Commodities Trading Rules.