

9 November 2001

SFC Contract Notes Rules
Securities & Futures Commission
12/F Edinburgh Tower
15 Queen's Road C
Hong Kong

Dear Sir,

We refer to the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules issued for consultation.

We would specifically comment on the following points:

Section 1 Commencement

It mentioned that the Rules shall be operative on the commencement of Part IV but does not mention any transition period during which the existing rules can merge with them.

Section 2 Interpretation

The definition of "floating loss" and "floating profit" seem to relate to forex or futures transactions and not to securities transactions generally. *(Please refer to section 9 below)

"net equity" which by definition includes floating profit and floating loss therefore pose the same problem under section 9 (4)(f)

"relevant contract" is defined as " a contract ...for the purchase, sale, exchange or **other dealing in securities...**" "Dealing in securities" is defined in Part 2 of Schedule 6 and it includes the issuing of forms of debentures or advertisements or prospectus.

Section 6 (1) provides that a contract note must be prepared for every relevant contract. Under the above definition of "dealing in securities", it is not thought that contract notes are relevant in issuing debentures or prospectus etc.

Section 6 (3) which touches on "dealing in securities" and "or other dealing" poses the same problem as mentioned.

Section 6 (3)(c)

It is not clear whether "performance" can mean "partial performance" as distinct from "total performance".

Section 6(4)(iii)(A)

Can it be implied by "the intermediary knows this" that this is not applicable in the case where the intermediary does not know as a matter of fact?

Section 9

Though we note under (4) that the daily statement of account must include information therein itemised, **where applicable**, we feel it necessary to raise our concern in (4)(e).

We believe (4)(e) only applies to Forex or Futures contracts where intermediaries and their clients are ready to identify which contracts are open and thus arrive at either a floating profit or loss at the end of that day.

However, for securities, this is not easily applicable in certain circumstances:

- (a) Where a portfolio or a basket of securities is deposited in a client's account, it is not practical to determine its "cost" which needs breaking down to individual stocks and any figure used might be arbitrary;
- (b) Where a large amount of transactions are accumulated over time, with a series of purchases and sales of individual stocks, floating profits or losses can only be calculated by applying certain accounting principles. Whether it is FIFO or LIFO or some other considerations such as accounting for financial year are a matter of personal choice. It would be beyond the duty of an intermediary to involve in the accounting of a client's portfolio account to the extent of determining profit or loss. It is believed that item (j), namely to provide the amount of margin excess or shortfall at the end of the day is sufficient.

The same comments are applicable to item (h) under rule 11(3) on monthly statements and are not repeated.

Section 11(3)(c)

In the situation where a disposal is initiated by the intermediary, the proceeds are meant to be entered into that client's account. It is not clear what it is meant by "details.. including what happened to the proceeds.." What are the "details" contemplated and in what manner of description should they appear other than accounting?

Yours sincerely,

Wilfred Wong
Chairman
Hong Kong Stockbrokers Association Ltd

cc: Financial Services Bureau
Hong Kong Exchanges and Clearing Ltd
LegCo Bill Committee
Hon. Henry Wu