

PART III

EXCHANGE COMPANIES, CLEARING HOUSES, EXCHANGE CONTROLLERS,
INVESTOR COMPENSATION COMPANIES AND AUTOMATED TRADING SERVICES

87. Subrogation of recognized investor
compensation company to rights, etc.
of claimant on payment from
compensation fund

(1) Where a recognized investor compensation company makes
any payment out of the compensation fund in respect of any claim
made under rules made under Part XII -

- (a) the company shall be subrogated, to the extent
which that payment bears to the loss sustained
(without taking into account any compensation paid
or payable out of the compensation fund for the
loss¹) 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;
and

¹ Members considered Paper No. CSA02/01 dated 17 November 2001, and did not propose further amendment to this clause at the Bills Committee meeting on 4 December 2001. The Legal Service Division of the Legislative Council made a technical comment outside the meeting that the meaning of "compensation" referred to in clause 87(1)(a) should be made clearer. We accept the comment and further propose the amendment to qualify "compensation" as that "paid or payable out of the compensation fund for the loss". (Same amendment will be made to clause 235).

(b) the respective rights of the claimant and the company 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 person concerned who is in default; or

(ii) any property held on trust by that person for the claimant,

shall rank equally.

(2) ²~~All amounts~~ assets (whether in cash or otherwise) recovered by the recognized investor compensation company under subsection (1) shall be ~~paid~~ dealt with in such manner as the Commission may direct and shall become part of the compensation fund.

Financial Services Bureau
Securities and Futures Commission
4 January 2002

² This further amendment to Paper No. CSA02/01 to replace “amounts” with “assets (whether in cash or otherwise)” is to cater for the circumstances where assets other than cash are recovered in the exercise of the subrogation rights. The same amendment has been made to clause 230(1)(c), which was considered and accepted by Members at the Bills Committee meeting on 10 December 2001.