

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Commission Ordinance (Chapter 24)

FINANCIAL RESOURCES RULES (EXEMPTION) (NO. 2) NOTICE 2000

INTRODUCTION

Pursuant to section 29AA of the Securities and Futures Commission Ordinance, the Securities and Futures Commission (“the Commission”) made the Financial Resources Rules (Exemption) (No.2) Notice 2000 (“the Notice”) at the Annex on 11 August 2000 to exempt dealers and securities margin financiers from the treatment of suspended and unlisted securities as prescribed under the Financial Resources Rules (“FRR”) insofar as they concern shares of Cable and Wireless HKT Limited (“HKT shares”).

BACKGROUND AND ARGUMENT

2. The FRR came into operation on 12 June 2000. It stipulates the financial resources and reporting requirements of securities and futures intermediaries and securities margin financiers.

3. For the purposes of calculating liquid assets of a registered dealer or securities margin financier, section 5(2)(b) of the FRR stipulates that any long positions in securities which have been suspended from trading for 3 or more business days shall be stated at nil value and section 15(a) of the FRR does not allow any unlisted securities to be included in the liquid assets.

4. In relation to the takeover of Cable and Wireless HKT Limited by Pacific Century CyberWorks Limited, the Scheme of Arrangements and related announcements made by the two companies stated that:

- (a) HKT shares would be withdrawn from listing on the Stock Exchange of Hong Kong with effect from 10:00 a.m. on 17 August 2000;

- (b) HKT shareholders may elect for the following:
- (i) Share Alternative: each HKT share would receive 1.1 new Pacific Century CyberWorks Limited shares (“PCCW shares”);
 - (ii) Combination Alternative: each HKT share would receive 0.7116 new PCCW shares and HK\$7.23 (or US\$0.9290) in cash with or without the “Increased Cash Election”¹; or
 - (iii) Mix and Match: HKT shareholders may choose the “Share Alternative” in respect of any part of their holdings of HKT shares and choose the Combination Alternative, with or without the “increased Cash Election”, in respect of the balance of their holdings of HKT shares; and
- (c) by 21 August 2000, new PCCW shares and, where applicable, cash depending on the elections made, would be allotted and dispatched to existing HKT shareholders.

5. Since suspension and withdrawal from listing are involved, the Scheme of Arrangement mentioned above would have an adverse effect on the liquid capital position of dealers and securities margin financiers that had HKT shares as their house positions or had extended margin loans secured by HKT shares.

6. HKT shares were suspended from trading on 9 August 2000 and withdrawn from listing on 17 August 2000. In accordance with sections 5(2)(b) and 15(a) of the FRR, HKT shares should be valued at nil from 12 August 2000 until 21 August 2000 when substitution cash and/or PCCW shares were allotted. It was conceivable that a number of dealers might breach the FRR as a result of this nil valuation and would be required to cease dealing in securities under section 65C of the Securities Ordinance during this period.

¹ The “Increased Cash Election” is the facility for HKT shareholders to elect to increase the amount of cash and reduce the number of new PCCW shares at the rate of HK\$18.62 (or US\$2.392) per new PCCW share.

7. The Commission considered that such breaches of the FRR were technical in nature and an exception ought to be made in this case as HKT shares would be replaced with cash and/or new PCCW shares on 21 August 2000, which can be included in the FRR computation.

8. Based on the above considerations, the Commission made the Notice after being satisfied that:

- (a) The strict application of sections 5(2)(b) and 15(a) of the FRR on HKT shares would be unduly burdensome for the dealers or securities margin financiers; and
- (b) the exercise of the power in this particular case was not contrary to the interest of the investing public and would not undermine the protection to them.

THE NOTICE

9. The Notice provides that dealers and securities margin financiers may value HKT shares based on the Share Alternative or the Combination Alternative from 12 August 2000 to 21 August 2000, so as to eliminate the risk of technical breaches of the FRR.

10. Section 1(1) provides that dealers and securities margin financiers are exempted from section 5(2)(b) of the FRR. Section 1(2) provides that HKT shares be valued based on the Share Alternative or the Combination Alternative.

11. Section 2(1) provides that the exemption under section 1(1) ceases to have effect on 17 August 2000, which was the date when HKT shares were withdrawn from listing on the Stock Exchange of Hong Kong.

12. Section 1(3) provides that from 17 August 2000, dealers and securities margin financiers are exempted from section 15(a) of the FRR as regards the valuation of unlisted HKT shares. Section 1(4) provides that HKT shares should be valued based on Share Alternative or Combination Alternative.

13. Section 2(2) provides that the exemption under section 1(3) ceased to have effect on 22 August 2000, which was the date immediately after the allocation of new PCCW shares to HKT shareholders.

PUBLIC CONSULTATION

14. No public consultation was considered necessary in view of the nature of the exemption.

FINANCIAL AND STAFFING IMPLICATIONS

15. There were no financial and staffing implications for the Government.

LEGISLATIVE TIMETABLE

16. The Notice was published in the Gazette on 12 August 2000 and will be tabled in the Legislative Council on 4 October 2000. Due to the urgency to relieve dealers and securities margin financiers from the risk of technical breach, the Notice came into operation on the date of gazettal.

PUBLICITY

17. The Notice was published in the Gazette on 12 August 2000.

ENQUIRIES

18. For any enquiries on this brief, please contact Mrs Yvonne Mok at 2842 7638 in the Intermediaries and Investment Products Division of the Commission.

The Securities and Futures Commission
29 September 2000