

## **LEGISLATIVE COUNCIL BRIEF**

### **Securities and Futures Commission Ordinance (Cap. 24)**

#### **FINANCIAL RESOURCES (AMENDMENT) RULES 2000**

##### **INTRODUCTION**

Pursuant to section 28 of the Securities and Futures Commission Ordinance, the Securities and Futures Commission (“the Commission”), after consultation with the Financial Secretary, made the Financial Resources (Amendment) Rules 2000 (“the Amendment Rules”) at Annex on 16 October 2000 to rectify two minor inadvertent errors noted in the Financial Resources Rules (“FRR”).

##### **BACKGROUND AND ARGUMENTS**

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

3. The Commission had subsequently noted two inadvertent errors in the FRR. The first error was the omission of the reference to “adviser” in the definition of “approved subordinated loan”. This was clearly an oversight given that the related definition of “net tangible assets” in relation to an adviser (detailing how the regulatory capital of an adviser is to be computed) means the sum of shareholder’s funds and approved subordinated loans in the case of a corporation. In the case of a sole proprietor or a partnership, the definition provides for the exclusion of approved subordinated loans from total liabilities.

4. The flawed definition made it impossible for advisers to use subordinated loans to supplement their capital base for the purposes of meeting the requisite regulatory capital level and restricted their financial flexibility.

5. The second error was the inclusion of “Eurex”, instead of “Deutsche Börse AG”, in Part I of Schedule 5 to the FRR as a stock

market. “Eurex” was included on the understanding that it replaced the Frankfurt Stock Exchange (now renamed as the Deutsche Börse AG). This was incorrect as Eurex only incorporated the German options market but not the stock market.

6. The consequence of omitting the German stock market in Part I of Schedule 5 was that the applicable haircut percentage of the value of German shares of which the dealer or securities margin financier was the beneficial owner was raised to 50%, instead of the intended 20%. Moreover, as the Trustee Ordinance (Cap. 29) makes reference to Schedule 5 to the FRR in specifying the authorised investments in which a trustee may invest any trust funds, the error inadvertently restricted a trustee’s choice in investment.

7. The Commission made the Amendment Rules to restore the original policy intention and relieve intermediaries from the compliance burdens that arise from the inadvertent errors.

## **THE AMENDMENT RULES**

8. Section 1 of the Amendment Rules adds the reference of an adviser” to the definition of “approved subordinated loan”.

9. Section 2 repeals the reference of “Eurex” and substitutes it with “Deutsche Börse AG” in Part I of Schedule 5 to the FRR.

## **PUBLIC CONSULTATION**

10. No public consultation was considered necessary as the amendments are straightforward and technical in nature.

## **FINANCIAL AND STAFFING IMPLICATIONS**

11. There are no financial and staffing implications for the Government.

## **LEGISLATIVE TIMETABLE**

12. The Amendment Rules will be published in the Gazette on 20 October 2000 and will be tabled in the Legislative Council on 25 October 2000. Due to the urgency to restore the original policy intention in the FRR, the Amendment Rules will come into effect on the day of gazettal.

## **PUBLICITY**

13. The Amendment Rules will be published in the Gazette on 20 October 2000.

## **ENQUIRIES**

14. For any enquiries on this brief, please contact Mrs Yvonne Mok at 2842 7638 in the Intermediaries and Investment Products Division of the Commission or Ms Noelle Tai at 2840 9252 in the Legal Services Division of the Commission.

The Securities and Futures Commission  
19 October 2000

## **FINANCIAL RESOURCES (AMENDMENT) RULES 2000**

(Made by the Securities and Futures Commission under section 28 of the Securities and Futures Commission Ordinance (Cap.24) after consultation with the Financial Secretary)

### **1. Interpretation**

Section 2 of the Financial Resources Rules (Cap.24 sub.leg.) is amended in the definition of “approved subordinated loan”, by repealing “or securities margin financier” and substituting “, a securities margin financier or an adviser”.

### **2. Stock markets**

Schedule 5 is amended in Part I, by repealing “Eurex” and substituting “Deutsche Börse AG”.

Andrew SHENG  
Chairman,  
Securities and Futures Commission

16 October 2000

### **Explanatory Note**

The purpose of these Rules is to amend the Financial Resources Rules (Cap.24 sub.leg.) to rectify minor errors noted in the said Rules.