

**《證券及期貨條例》附屬法例擬稿  
小組委員會**

**《證券及期貨(雜項)規則》  
《證券及期貨(罪行及罰則)規例》**

本文件載述證券及期貨事務監察委員會(證監會)的  
以下建議 -

- (a) 根據《證券及期貨條例》(第 571 章)(條例)第 397(1)條訂立規則，就某些雜項事宜作出規定，例如向證監會送達通知、要求中介人展示其牌照或註冊證明書、將有關牌照或證明書交還證監會，以及為施行條例第 179 條而訂明條例附表 1 第 1 部內“核數師”一詞的定義；及
- (b) 建議行政長官會同行政會議訂立規例，規定任何人若違反以上(a)項所訂立的規則的某些條文，即屬犯罪並可處以指明罰則。

**建議**

2. 證監會建議根據條例第 397(1)條訂立《證券及期貨(雜項)規則》，規則擬稿現載於附件 1，以及建議行政長官會同行政會議根據條例第 398(6)條，訂立《證券及期貨(罪行及罰則)規例》，規例擬稿現載於附件 2。

## 《證券及期貨(雜項)規則》

### *訂立規則的權力*

3. 條例第397(1)(g)及(h)條賦權證監會訂立規則，規定為條例的目的而須提交、送交存檔、呈交或保留的文件及資料，以指明方式提交、送交存檔、呈交或保留，及以指明表格或格式及方式填具、簽署、簽立及認證。

4. 條例第397(1)(b)條賦權證監會訂立規則，訂明就展示牌照及註冊證明書的事宜，並規定須為任何指明目的將牌照及註冊證明書交回證監會。

5. 根據條例附表1第1部所載的定義，“核數師”一詞是指根據《專業會計師條例》(第50章)註冊和持有執業證書的專業會計師，或根據證監會在條例第397條下訂立的規則訂明的其他人。第397(1)(o)條賦權證監會訂明條例所規定可藉根據第397條訂立的規則訂明的事宜。

6. 證監會已根據條例第398(4)條的規定，就規則擬稿諮詢金融管理專員的意見。

7. 證監會認為，按規則擬稿內容訂立有關規則，並不會超越其立法權限。

### *規則擬稿的主要內容*

8. 附件1所載的規則擬稿，將由證監會根據條例第397(1)條訂立。

9. 規則擬稿第3條訂明向證監會送達文件的方式，以及簽署、簽立及認證該等文件的方式。

10. 規則擬稿第4條規定中介人必須在其主要營業地點的顯眼處，展示其牌照或註冊證明書，如該中介人有多於一個營業地點，便須在其每個其他營業地點展示該文件的核證副本。

11. 規則擬稿第5條規定，中介人及持牌代表必須在下述情況下，在7個營業日內將其牌照或註冊證明書交回證監會(以作修改或取消) -

- (a) 該人已終止進行其獲發牌或獲註冊進行的所有受規管活動，為期超逾1個月，或一段獲證監會書面核准的較長期間；
- (b) 其獲發牌或獲註冊進行的受規管活動已根據條例第127條有所更改；或
- (c) 證監會覺得有關牌照或註冊證明書內存在錯誤，並要求交回該牌照或註冊證明書。

12. 規則擬稿第6條訂明為施行該條例第179條<sup>1</sup>，而訂明條例附表1第1部內“核數師”一詞的定義。根據該定義，“核數師”包括專業會計師或《專業會計師條例》中所指的“執業單位”<sup>2</sup>，或向一家受證監會根據條例第179條查訊的公司提供服務的海外核數師。

## 《證券及期貨(罪行及罰則)規例》

### 訂立規例的權力

13. 條例第398(6)條規定，凡條例沒有規定違反證監會根據條例訂立的有關規則構成罪行，則行政長官會同行政會議

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<sup>1</sup> 條例第VIII部第179條訂明證監會有權對上市公司的涉嫌罪行或失當行為進行初步查訊。在查訊的過程中，獲授權人可要求第179(1)(iv)條所指的“核數師”交出屬於第178條所界定的“審計工作材料”性質的文件，及要求就所交出的文件給予解釋。

<sup>2</sup> 根據《專業會計師條例》，“執業單位”指 -

- (a) 依據該條例從事會計執業的 -
  - (i) 執業會計師事務所；或
  - (ii) 註冊核數師事務所；或
  - (iii) 執業會計師及註冊核數師事務所；
- (b) 依據該條例獨自從事會計執業的執業會計師或註冊核數師；或
- (c) 執業法團。

可訂立規例，訂定任何人違反該等規則的指明條文，即屬犯罪，並可處以不超過第398(6)條所訂的指明罰則。

14. 我們已就訂立規例擬稿的立法權限一事諮詢律政司的意見，所得的意見是按規例擬稿內容訂立有關規例，並不會超越立法權限。

### ***規例擬稿的主要內容***

15. 規例擬稿訂明，任何人沒有遵守規則擬稿第4或第5條的規定(見上文第10及11段)即屬犯罪，並可處規例列明的罰則。

16. 規例擬稿訂明，如中介人沒有遵守規則擬稿第4條的規定，即屬犯罪，並須繳付第5級罰款(即\$50,000)。建議的罰則與未有根據條例第135條就若干事宜(例如終止進行任何受規管活動)向證監會作出匯報的罰則相若。

17. 規例擬稿亦訂明，如中介人或持牌代表沒有遵守規則擬稿第5條的規定，即屬犯罪，並須繳付第6級罰款(即\$100,000)。建議的罰則與違反條例第123(3)條適用於持牌代表的類似罪行的罰則是一致的。

## **諮詢公眾**

### ***規則擬稿***

18. 規則擬稿第3、4及5條沿自《證券及期貨(持牌人及註冊機構)規則》的擬稿，而委員已在2002年4月29日舉行的小組會議上審閱過上述規則的擬稿(見第CB(1)1564/01-02(02)號文件)。會後證監會認為上述3項條文應改為納入《證券及期貨(雜項)規則》的擬稿內。

19. 證監會在2002年7月2日發表《證券及期貨(雜項)規則》的諮詢文件及諮詢擬稿，以諮詢公眾意見。證監會接獲11份意見書，並因應接獲的意見，對規則擬稿作出以下的主要修訂 -

- (a) 鑑於市場人士關注到資料私穩及客戶資料保密的問題，原本要求中介人設立申訴登記冊供公眾查閱的建議(即諮詢擬稿第 4 條)已被刪除。證監會將考慮在適用於中介人的《操守準則》中加入類似規定，而有關登記冊將須提供予監管機構查閱。
- (b) 由於香港會計師公會曾就規則擬稿中“核數師”的建議定義涵蓋核數師的僱員和顧問表示關注，證監會就此與該會進行進一步討論。因應該會所表達的關注，證監會已參照《專業會計師條例》中“執業單位”的定義對有關定義加以修訂。

### **規例擬稿**

20. 證監會於 2002 年 7 月 26 日發表規例擬稿的諮詢文件及諮詢擬稿，以諮詢公眾意見。證監會收到 1 份意見書，經考慮後認為毋須對規例擬稿作出修訂，但會就規例擬稿作出輕微改動，以改善條文的行文。

21. 現附上下列文件供委員參考 -

- (a) 有關規則擬稿及規例擬稿的諮詢文件(分別載於附件 3 及附件 4)，當中載有相關的政策，以及有關規則及規例的諮詢擬稿。經修訂的規則擬稿及規例擬稿分別載於附件 1 及附件 2，供委員審閱；及
- (b) 有關規則擬稿及規例擬稿的諮詢總結報告(分別載於附件 5 及附件 6)，當中載有諮詢所得的總結及證監會就接獲意見作出的回應。附件 5 並夾附了以表列方式載述的有關規則擬稿的意見摘要及證監會的回應。

## 未來工作

22. 視乎委員的意見，有關規則擬稿及規例擬稿將會提交有關當局審批。規則擬稿及規例擬稿如獲得批准，將會在憲報刊登，然後循正常程序呈交立法會省覽。按現時計劃，有關規則及規例會在《證券及期貨條例》正式生效時實施。

證券及期貨事務監察委員會  
財經事務及庫務局  
2002年9月12日

# 擬稿

附件 1

[ 參考：《證券及期貨條例》第 116、119、120、135、179、397 及 402 條及附表 1 第 1 部（“核數師”的定義） ]

## 《證券及期貨（雜項）規則》

（由證券及期貨事務監察委員會根據《證券及期貨條例》  
（第 571 章）第 397(1) 條訂立）

### 1. 生效日期

本規則自《證券及期貨條例》（第 571 章）第 XVI 部開始實施的日期起實施。

### 2. 釋義

在本規則中，“相關法團”（relevant corporation）指根據本條例第 179(1)(i) 或 (ii) 條已向或可向其發出指示的法團。

### 3. 向證監會送達文件

(1) 除本條例其他條文另有規定外，凡為本條例的任何條文的目的有任何文件須送達（不論如何描述）證監會，該文件 —

(a) 如屬非電子形式的文件，則須 —

(i) 由專人交付；

(ii) 藉郵寄送交；或

(iii) 藉傳真傳送往證監會在其網址中聯絡詳情的版面上指明的傳真號碼；或

(b) 如屬電子形式的文件，則須 —

(i) 藉證監會批准的電子方式送交；或

(ii) 藉電子郵遞傳送，

往證監會在其網址中聯絡詳情的版面上指明的電子接收設施。

(2) 除本條例其他條文另有規定外，凡為本條例的任何條文的目  
的有任何文件須送達(不論如何描述)證監會，該文件 —

(a) 如屬已根據本條例第 402 條就其指明表格的文件，則  
除第(3)款另有規定外，該文件須按該表格所載的指  
令及指示所指明的方式簽署、簽立及認證；或

(b) 如屬沒有根據本條例第 402 條就其指明表格的文件，  
則該文件須由送達該文件的人或其正式授權的代  
表，或獲首述的人授權代其如此行事的其他人簽署、  
簽立及認證。

(3) 就第(2)款而言，如該文件是採用電子形式，則簽署須採用數  
碼簽署形式。

(4) 如證監會信納申請人在本條例所規定的時限內將文件提交或  
呈交證監會或送交證監會存檔會有極大的實際困難，則證監會可應任何人  
向其提出的申請藉書面通知而酌情將該時限按其指示的時間及條款延長。

#### **4. 須展示牌照或註冊證明書**

中介人須在其主要營業地點的顯眼處展示其牌照或註冊證明書(視  
屬何情況而定)，如該中介人有多於一個營業地點，則須在其每個其他營業  
地點的顯眼處展示該牌照或註冊證明書(視屬何情況而定)的核證副本，以  
代替正本。



## 5. 交回牌照或註冊證明書

如中介人或持牌代表終止進行其獲發牌或獲註冊進行的所有或任何受規管活動，為期 —

- (a) 超逾一個月，自該項終止的日期起計；或
- (b) 一段較長期間，按證監會以書面批准者而定，

則該中介人或持牌代表須於(a)或(b)段(視屬何情況而定)所提述的期間結束後7個營業日內，交回證監會取消或修訂。

(2) 如在中介人或持牌代表的牌照或註冊證明書(視屬何情況而定)內指明的任何受規管活動根據本條例第127條有所更改，則該中介人或持牌代表須在如此更改該受規管活動後7個營業日內向證監會交回牌照或註冊證明書(視屬何情況而定)，以作修訂。

(3) 如證監會覺得牌照或註冊證明書內存在錯誤，證監會可藉書面通知要求其合理地相信管有該牌照或註冊證明書(視屬何情況而定)的人，向證監會交回該牌照或註冊證明書，而該人須於書面通知的日期起的7個營業日內向證監會交回牌照或註冊證明書(視屬何情況而定)，以作修訂。

## 6. 為施行本條例第179條 而訂明為核數師的人

就本條例附表1第1部中“核數師”的定義而言，為施行本條例第179條，現將下列人士訂明為該定義所指的人 —

- (a) 向或已向相關法團提供服務並根據《專業會計師條例》(第50章)註冊和持有執業證書的專業會計師；
- (b) 向或已向相關法團提供服務的《專業會計師條例》(第50章)所指的任何執業單位；

- (c) 為香港以外某地方的成文法則的目的而曾委任(不論是否仍如此獲委任)為相關法團的核數師的人，而該成文法則施加於該人的責任相當於《公司條例》(第32章)施加於核數師者。

證券及期貨事務監察委員會  
主席

2002 年

### 註釋

本規則由證券及期貨事務監察委員會根據《證券及期貨條例》(第 571 章) (“本條例”) 第 397(1) 條訂立。本規則訂明須呈交予證監會的文件的一般規定(包括送達和執行方式)(第 3 條)。本規則並規定須展示牌照或註冊證明書(第 4 條)，以及進一步訂明在何種情況下須將牌照或註冊證明書交回證監會取消或修訂(第 5 條)。本規則亦訂明，就本條例附表 1 第 1 部中“核數師”的定義而言，為施行本條例第 179 條，哪些人士是該定義所指的人(第 6 條)。

# 擬稿

附件 2

[ 參考：《證券及期貨條例》第 398 條 ]

## 《證券及期貨(罪行及罰則)規例》

(由行政長官會同行政會議根據《證券及期貨條例》  
(第 571 章)第 398(6)條訂立)

### 1. 生效日期

本規例自《證券及期貨條例》(第 571 章)第 XVI 部開始實施的日期起實施。

### 2. 罪行

任何人無合理辯解而違反附表第 2 欄所指明的條文，即屬犯罪，一經定罪，可處該附表第 3 欄中與該條文的提述相對之處所指明的罰則。

附表

[第 2 條]

項	指明條文	指明罰則
1.	《證券及期貨(雜項)規則》(2002 年第 [ ] 號法律公告)第 4 條	第 5 級罰款
2.	《證券及期貨(雜項)規則》(2002 年第 [ ] 號法律公告)第 5(1)條	第 6 級罰款
3.	《證券及期貨(雜項)規則》(2002 年第 [ ] 號法律公告)第 5(2)條	第 6 級罰款
4.	《證券及期貨(雜項)規則》(2002 年第 [ ] 號法律公告)第 5(3)條	第 6 級罰款

行政會議秘書

行政會議廳

2002 年 月 日

### 註釋

本規例由行政長官會同行政會議根據《證券及期貨條例》(第 571 章)第 398(6)條訂立。本規例訂明，任何人違反《證券及期貨(雜項)規則》(2002 年第 [ ] 號法律公告)的任何指明條文，即屬犯罪並可處指明罰則。



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

**A Consultation Paper on the Securities  
and Futures (Miscellaneous) Rules**

《證券及期貨(雜項條文)規則》  
諮詢文件

Hong Kong  
July 2002

香港  
2002年7月

## 諮詢

本諮詢文件邀請公眾人士就證券及期貨事務監察委員會(證監會)建議在《證券及期貨條例》(2002年第5號)(該條例)生效時，根據該條例第397(1)條訂立的《證券及期貨(雜項條文)規則》的草擬本(《草擬規則》)，發表意見。

### 引言

1. 顧名思義，《雜項條文規則》載有一系列無法被納入根據該條例而訂立的其他附屬法例內的條文。基於以下提出的理由，證監會只就《草擬規則》的第4及7條，邀請公眾人士發表意見。

#### 第3、5及6條

2. 第3、5及6條原本載於證監會在2001年11月發表以供諮詢的《證券及期貨(持牌人及註冊機構)規則》的草擬本內 – 但有關條文目前已大部分被納入新訂立的《證券及期貨(中介人資料)規則》的草擬本內，並已作出修訂，以反映在諮詢期內所收到的並獲證監會接納的意見。《證券及期貨(持牌人及註冊機構)規則》的諮詢總結內載列證監會所收到的意見及其回應。由於本會已就這些條文進行公開諮詢，因此不會再進一步徵詢公眾意見。

#### 《草擬規則》第4條

3. 《草擬規則》第4條規定中介人必須維持申訴登記冊，以及在辦公時間內提供該登記冊給其客戶或感興趣的投資大眾查閱。這項規定的引入有助保障投資者的利益及可提高透明度，以確保客戶的申訴得到處理。

#### 《草擬規則》第7條

4. 該條例第179條賦權獲證監會授權的人查訊屬或曾屬上市法團的法團的涉嫌罪行或失當行為。在該查訊的過程中，獲授權人可飭令“核數師”交出屬於審計工作底稿性質的文件，及飭令該“核數師”解釋所交出的文件。《草擬規則》第7條詳細解釋為施行該條例第179條而載於該條例附表1第1部的“核數師”一詞的定義。

5. “核數師”一詞在該條例附表1內的定義是指根據《專業會計師條》註冊和持有執業證書的專業會計師，或證監會根據該條例第397條訂立的規則訂明的任何人。

6. 然而，根據《專業會計師條》註冊和持有執業證書的人通常會由一個審計小組來協助其工作。關於某項審計的大部分工作都由這個小組執行，而這個小組會由審計公司內的較低層職員或為該項審計而聘請的顧問(例如估值師)所組成。為了確保獲授權人飭令交出有關文件的權力不會出現漏洞，以及確保可要求適當的審計小組成員或顧問就某份文件作出解釋，證監會在《草擬規則》第7條內建議將為施行第179條而被視為核數師的人士的類別範圍擴闊至包括以下人士：

- 前核數師；
- 根據海外法例而獲委任的核數師；及
- 為審計目的而獲核數師僱用或聘用的人士，不論該人本身是否“核數師”。

7. 根據目前的立法制度內的若干監控機制，由證監會所訂立的任何規則，都必須受到立法會不反對或不提出修訂方為通過這個議決程序的規限。此外，《證券及期貨條例》第398條亦規定必須就有關規則進行公開諮詢。因此，證監會現發表該《草擬規則》(見附件1)，以諮詢公眾意見。

8. 公眾人士可以在證監會的辦事處及證監會的網站(<http://www.hksfc.org.hk>)免費索閱或下載本諮詢文件及有關附件。

9. 證監會誠邀對本諮詢文件感興趣的人士在**2002年7月26日或之前**，就《草擬規則》提交書面意見，或就可能對《草擬規則》產生重大影響的有關事宜發表意見。任何人士如欲就有關諮詢文件發表意見，應說明其所代表的機構的詳細資料。此外，證監會鼓勵任何建議證監會採取其他方案的人士，同時提交其對《草擬規則》的建議修訂條文。

## 政策新猷

10. 雖然《草擬規則》第4條(建議中介人應備存申訴登記冊)是一項新的政策措施，但有關條文是以目前的《操守準則》內更為廣泛的有關處理申訴的規定作為藍本的。由於“核數師”的限制性定義將不會在該條例第179條的範圍內適用，因此第7條並不涉及政策修訂。

## 其他事項

11. 請注意，評論者的姓名／名稱及其提交的意見書的內容，可能會在證監會網站及其他由證監會刊發的文件中發表。因此，請參閱夾附於本諮詢文件的個人資料收集聲明。

12. 假若你不希望證監會發表你的姓名／名稱，請在提交意見書時明確要求證監會不要公布你的姓名／名稱。

13. 書面意見可以下列方式送交 -

郵寄： 證監會(雜項條文規則)  
香港皇后大道中15號  
置地廣場公爵大廈12樓

圖文傳真： (852) 2868 0252

網上呈交： <http://www.hksfc.org.hk>

電子郵件： [miscellaneous\\_rules@hksfc.org.hk](mailto:miscellaneous_rules@hksfc.org.hk)

14. 《草擬規則》必須與《證券及期貨條例》一併閱讀。



## 個人資料收集聲明書

1. 本個人資料收集聲明書(“聲明書”)是按照香港個人資料私隱專員公署發出的指引編寫的。本聲明書列出證券及期貨事務監察委員會(“證監會”)收集你的個人資料<sup>1</sup>的用途、你就證監會使用你的個人資料而同意的事項，以及你根據《個人資料(私隱)條例》(“《私隱條例》”)享有的權利。

### 收集資料的目的

2. 證監會可能會為以下其中一個或以上的目的，使用你就本諮詢文件提交的意見書中所提供的個人資料：
  - 執行依據證監會獲賦與的權力而制訂或公布的有關條例、規則、規定、守則及指引
  - 根據有關條例執行證監會的法定職能
  - 進行研究或統計
  - 其他法例所容許的目的

### 轉移個人資料

3. 證監會就諮詢文件徵詢公眾意見時，可向香港或其他地區的公眾人士披露其所取得的個人資料。此外，證監會亦可能會向公眾人士披露就諮詢文件發表意見的人士的姓名／名稱及其意見書的全部／部分內容。證監會可以在諮詢期內或諮詢期完結時，將上述資料刊載於本會網站或由本會印製的刊物之內。

### 查閱資料

4. 根據《私隱條例》的規定，你有權要求查閱或改正你的個人資料。上述權利包括你有權索取你就諮詢文件提交的意見書中所提供的個人資料的副本。證監會有權就處理任何查閱資料的要求收取合理的費用。

### 查詢

5. 對於就諮詢文件提交的意見書中所提供的個人資料的任何查詢，或要求查閱或改正個人資料，請以書面形式向以下人士提出：

個人資料私隱主任  
證券及期貨事務監察委員會  
香港皇后大道中 15 號  
置地廣場公爵大廈 12 樓

你亦可向證監會索閱本會的保障私隱政策聲明的副本。

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<sup>1</sup> 個人資料是指《個人資料(私隱)條例》(第 486 章)所界定的個人資料。

《證券及期貨(雜項條文)規則》

(由證券及期貨事務監察委員會根據《證券及期貨條例》(2002 年第 5 號)  
第 397(1) 條訂立)

1. 生效日期

本規則自《證券及期貨條例》(2002 年第 5 號)第 XVI 部開始實施的日期起實施。

2. 釋義

在本規則中，除文意另有所指外 —  
“文件”(document) 包括任何文件(不論實際如何稱述)。

3. 提交、呈交或送交證監會存檔的文件的一般規定

(1) 凡任何文件根據任何有關條文(第 XV 部除外)須提交、呈交或送交證監會存檔，則該文件必須 —

(a) 就並非採用電子表格的文件而言 —

- (i) 由專人交付；
- (ii) 以郵寄方式送交；或
- (iii) 在事先獲得證監會同意的情況下，藉傳真傳送往證監會指明的傳真號碼；或

(b) 就採用電子表格的文件而言 —

- (i) 透過證監會核准的電子方式傳送；或
- (ii) 藉電子郵遞傳送，

往證監會指明的電子接收設施。

(2) 除本條例另有規定外，凡任何文件根據任何有關條文須提交、呈交或送交證監會存檔 –

(a) 如屬已根據本條例第 402 條就其指明表格的文件，除第(3)款另有規定外，該文件須以載於該表格內的該等指令及指示指明的方式簽署；

(b) 在其他情況下，該文件須由須將文件提交、呈交或送交證監會存檔的人或其獲正式授權的代表簽署；

(3) 就第 (2)款而言，如該文件是採用電子表格，則該簽署須採用數碼簽署的形式。

(4) 凡證監會信納申請人在任何有關條文所規定的時限內將文件提交、呈交或送交證監會存檔方面有極大的實際困難，則該會可以書面方式通知按其認為需要的範圍酌情延長有關時限。

#### 4. 申訴登記冊

(1) 每個中介人均須就收到或傳達予該中介人的、有關該中介人或其任何高級人員、僱員及由該中介人以其他方式聘用的人士的行為的申訴，備存登記冊。

(2) 凡中介人從任何人收到申訴，該中介人有責任在登記冊內記錄收到的申訴及記項的日期。

(3) 第(2)款委予的責任，須在該責任產生當日後 3 個營業日內履行。

(4) 除非登記冊本身已採用索引形式編排，否則中介人須備存一份索引，列出已記錄在登記冊的姓名或名稱，並就每一姓名或名稱載有足夠指示，以使查閱者容易找到記錄在該姓名或名稱旁邊的資料。

(5) 登記冊及任何索引須備存於中介人的主要營業地點，及於營業時間內供任何人免費查閱。

(6) 凡中介人屬註冊機構，第(1)款內有關中介人須備存申訴登記冊的規定，須解釋為就所收到的或傳達予該註冊機構的、有關該中介人或其高級人員、僱員及由該中介人以其他方式聘用的人士的行為的申訴備存登記冊的規定，而有關行為只與構成該中介人獲註冊進行的任何受規管活動的業務有關。

5. 須展示牌照或註冊證明書

中介人須在其主要營業地點的顯眼處展示其牌照或註冊證明書(視屬何情況而定)，及如該中介人有多於一個營業地點，便須在其每個其他營業地點展示該文件的核證副本以代替正本。

6. 交還牌照或註冊證明書

(1) 如中介人終止進行其獲發牌或註冊進行的任何或全部受規管活動一段期間，而該段期間 -

- (a) 由該項終止的日期起計，已超逾一個月；或
- (b) 已持續一段獲證監會書面核准的較長期間，

便須在該項終止的日期起計1個月期間屆滿之後，或證監會根據第(b)段書面核准的較長期間屆滿之後的7個營業日內，將中介人的牌照或註冊證明書(視屬何情況而定)交還證監會保存。

(2) 如中介人或持牌代表獲發牌或註冊進行的受規管活動根據本條例第127條有所更改，則該中介人或持牌代表須向證監會交出牌照或註冊證明書(視屬何情況而定)以作修改。

(3) 如證監會覺得牌照或註冊證明書內存在錯誤，該會可要求其合理地相信管有任何該牌照或註冊證明書(視屬何情況而定)的人，向該會交出該牌照或註冊證明書，以更正有關錯誤。

7. 為施行本條例第 179 條而被訂明為核數師的人

就本條例附表 1 第 1 部內“核數師”的定義而言，為施行本條例第 179 條，以下人士亦被訂明為屬於該定義的範圍之內 -

- (a) 先前曾是根據《專業會計師條例》(第50章)獲註冊及持有執業證明書的專業會計師的人(不論該人目前是否仍如此獲得註冊或持有該證明書)；
- (b) 為香港以外某地方的成文法則的目的而委任為該法團的核數師的人，而該成文法則施加於該人的責任相當於《公司條例》(第32章)施加於核數師的責任；或
- (c) 獲該法團的核數師為審計該法團的帳目或在與其審計該法團的帳目的職能有關連的情況下僱用或以其他方式聘用的人(不論該人是否根據《專業會計師條例》(第50章)獲註冊及持有執業證明書的專業會計師)。

證券及期貨事務監察委員會

主席

2002 年

註釋

本規則由證券及期貨事務監察委員會根據《證券及期貨條例》(2002 年第 5 號)第 397(1)條訂立，訂明須送交予證監會的文件的一般規定(包括執行方式)。本規則規定每個中介人須就其所收到或傳達予該中介人的有關該中介人、其高級人員或僱員的行為的申訴備存登記冊。本規則又規定須展示牌照或註冊證明書，以及進一步訂明在何種情況下須將牌照或註冊證明書交還證監會以作註銷或修改。本規則亦訂明就本條例附表 1 第 1 部內“核數師”的定義而言，為施行本條例第 179 條，哪些人士亦被訂明為屬於該定義的範圍內。



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

**A Consultation Paper on the Draft Securities  
and Futures (Offences and Penalties)  
Regulations**

**《證券及期貨(罪行及罰則)規例》草擬本  
諮詢文件**

Hong Kong  
July 2002

香港  
2002年7月

## 諮詢

本諮詢文件邀請公眾人士就《證券及期貨(罪行及罰則)規例》草擬本(“《草擬規例》”)發表意見。證券及期貨事務監察委員會(“證監會”)提議向行政長官會同行政會議建議，在《證券及期貨條例》(2002年第5號)(“該條例”)生效時，根據該條例第398(6)條訂立《草擬規例》。

### 引言

1. 該條例第 XVI 部規定，凡該條例沒有指明違反證監會根據該條例訂立的有關規則即屬犯罪，則行政長官會同行政會議可訂立規例，訂定任何人違反該等規則的指明條文，即屬犯罪並可處以罰則。
2. 《草擬規例》規定，任何人沒有遵守《證券及期貨(雜項條文)規則》(“《雜項條文規則》”)草擬本的某些條文，即屬犯罪(並同時載列有關罰則)。《雜項條文規則》載列不適宜直接載入根據該條例訂立的其他附屬法例的一系列條文。
3. 根據目前的立法制度內的若干監控機制，由行政長官會同行政會議所訂立的任何規例，都必須通過立法會不反對或不提出修訂方能生效的議決程序。證監會現於建議行政長官會同行政會議訂立《草擬規例》之前，先行發表《草擬規例》(見附件1)，以諮詢公眾意見。
4. 公眾人士可以在證監會的辦事處及證監會的網站(<http://www.hksfc.org.hk>)免費索閱或下載本諮詢文件及有關附件。
5. 證監會誠邀對有關事宜感興趣的人士在2002年8月16日或之前，就《草擬規例》提交書面意見，或就可能對《草擬規例》產生重大影響的有關事宜發表意見。任何人士如欲就本諮詢文件發表意見，應說明其所代表的機構的詳細資料。此外，證監會鼓勵任何建議證監會採取其他方案的人士，同時提交其對《草擬規例》的建議修訂條文。

### 《草擬規例》

6. 《草擬規例》訂明沒有遵守《雜項條文規則》草擬本某些條文的人士所涉及的罪行及向其施加的有關罰則。《草擬規例》建議的罰款級別，已顧及到該等罪行的性質及就該條例的類似罪行所訂定的罰則。
7. 凡中介人沒有按《雜項條文規則》第5條的規定，在其主要營業地點展示其牌照或註冊證明書，及如該中介人有多於一個營業地點，該中介人

沒有按上述規定，在其每個其他營業地點展示該文件的核證副本，該中介人須繳付第5級罰款(即\$50,000)。鑑於該等罪行的性質，證監會認為適宜將有關罰則定於該級別的罰款，亦即該條例第V部規定的最低級別的罰款。有關的罰則項目現時載於根據《證券條例》第146A條訂立的現行《證券(罪行及罰則)規例》內。

8. 如中介人終止進行其獲發牌或註冊進行的全部受規管活動或更改其獲發牌或註冊進行的受規管活動，該中介人必須依據《雜項條文規則》第6條將其牌照或註冊證明書交回證監會。證監會亦可要求中介人交回牌照或註冊證明書，以更正存在於該等文件的錯誤。沒有遵守該項條文者須繳付第6級罰款(即\$100,000)。該項罰則建議已顧及到就違反該條例第120(12)條的類似罪行而向獲發臨時牌照的持牌代表施加的罰則。

9. 證監會的用意是確保《草擬規例》易於理解，例如，《草擬規例》已在可能的情況下以淺白的英語來撰寫，從而配合這個目標。證監會歡迎業內人士提出任何具體可行的改善建議，以精簡程序使業界更易於遵守該條例及《草擬規例》的規定。

#### 政策新猷

10. 《草擬規例》並不涉及新的政策修訂，並且純粹旨在落實已於《雜項條文規則》草擬本闡釋的有關政策。

#### 其他事項

11. 請注意，評論者的姓名／名稱及其提交的意見書的內容，可能會在證監會網站及其他由證監會刊發的文件中發表。因此，請參閱夾附於本諮詢文件的個人資料收集聲明。

12. 你可能不希望證監會發表你的姓名／名稱。如果你希望提出這項要求，請在提交意見書時明確要求證監會不公布你的姓名／名稱。

13. 書面意見可以下列方式提交——

郵寄： 證監會 (罪行及罰則規例)  
香港皇后大道中15號  
置地廣場公爵大廈12樓

圖文傳真： (852) 2293 5755

網上呈交： <http://www.hksfc.org.hk>



電子郵件： [Offences\\_and\\_Penalties\\_Regulations@hksfc.org.hk](mailto:Offences_and_Penalties_Regulations@hksfc.org.hk)

14. 《草擬規例》必須與《證券及期貨條例》一併閱讀。

## 個人資料收集聲明書

1. 本個人資料收集聲明書(“聲明書”)是按照香港個人資料私隱專員公署發出的指引編寫的。本聲明書列出證券及期貨事務監察委員會(“證監會”)收集你的個人資料<sup>1</sup>的用途、你就證監會使用你的個人資料而同意的事項，以及你根據《個人資料(私隱)條例》(“《私隱條例》”)享有的權利。

### 收集資料的目的

2. 證監會可能會為以下其中一個或以上的目的，使用你就本諮詢文件提交的意見書中所提供的個人資料：
  - 執行依據證監會獲賦與的權力而制訂或公布的有關條例、規則、規定、守則及指引
  - 根據有關條例執行證監會的法定職能
  - 進行研究或統計
  - 其他法例所容許的目的

### 轉移個人資料

3. 證監會就諮詢文件徵詢公眾意見時，可向香港或其他地區的公眾人士披露其所取得的個人資料。此外，證監會亦可能會向公眾人士披露就諮詢文件發表意見的人士的姓名 / 名稱及其意見書的全部 / 部分內容。證監會可以在諮詢期內或諮詢期完結時，將上述資料刊載於本會網站或由本會刊發的文件之內。

### 查閱資料

4. 根據《私隱條例》的規定，你有權要求查閱或改正你的個人資料。上述權利包括你有權索取你就諮詢文件提交的意見書中所提供的個人資料的副本。證監會有權就處理任何查閱資料的要求收取合理的費用。

### 查詢

5. 對於就諮詢文件提交的意見書中所提供的個人資料的任何查詢，或要求查閱或改正個人資料，請以書面形式向以下人士提出：

個人資料私隱主任  
證券及期貨事務監察委員會  
香港皇后大道中 15 號  
置地廣場公爵大廈 12 樓

你亦可向證監會索閱本會的保障私隱政策聲明的副本。

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<sup>1</sup> 個人資料是指《個人資料(私隱)條例》(第 486 章)所界定的個人資料。

## 《證券及期貨(罪行及罰則)規例》

(由行政長官會同行政會議根據《證券及期貨條例》  
(2002 年第 5 號)第 398(6)條訂立)

### 1. 生效日期

本規例自《證券及期貨條例》(2002 年第 5 號)第 XVI 部的指定生效日期起實施。

### 2. 罪行

任何人無合理辯解而違反附表第 2 欄所指明的條文，即屬犯罪，一經定罪，可處該附表第 3 欄中與該條文的提述相對之處所指明的罰則。

附表

[第 2 條]

項	指明條文	指明罰則
1.	《證券及期貨(雜項條文)規則》(2002 年第[ ]號法律公告)第 5 條	第 5 級罰款
2.	《證券及期貨(雜項條文)規則》(2002 年第[ ]號法律公告)第 6 條	第 6 級罰款

行政會議秘書

行政會議廳

2002 年 月 日

### 註釋

本規例由行政長官會同行政會議根據《證券及期貨條例》(2002 年第 5 號)第 398(6)條訂立。本規例訂明，任何人違反《證券及期貨(雜項條文)規則》(2002 年第[ ]號法律公告)的任何指明條文，即屬犯罪並可處指明罰則。



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

## Consultation Conclusions on the Draft Securities and Futures (Miscellaneous) Rules

《證券及期貨(雜項)規則》草擬本  
諮詢文件總結

Hong Kong  
September 2002

香港  
2002年9月

## 引言

1. 證券及期貨事務監察委員會(證監會)在 2002 年 7 月 2 日發表《證券及期貨(雜項)規則》草擬本(“《草擬規則》”)的諮詢文件。諮詢期至 2002 年 7 月 26 日結束。
2. 《草擬規則》載有一系列難以納入根據《證券及期貨條例》而訂立的其他附屬法例內的條文。本文件旨在為對《草擬規則》感興趣的人士，分析回應者在諮詢期內提出的意見，及解釋證監會在作出有關總結時的理據。本文件應與該《諮詢文件》一併閱讀。
3. 證監會共收到 11 份來自業界人士、法律界專業人士及其他有興趣人士的意見書。所有該等意見書的內容已載於證監會網站之內。

## 意見摘要及證監會的回應

4. 除第 4 及第 7 條外，回應者對《草擬規則》沒有提出反對意見，而有關意見書主要集中於一些細節問題及要求澄清某些事項。因此，除第 4 及第 7 條外，《草擬規則》不會作出根本的改動。回應者就《草擬規則》提出的意見摘要及證監會的回應載於附件之內。

## 第 3、5 及 6 條

5. 第 3、5 及 6 條原本載於證監會在 2001 年 11 月發表以供諮詢的《證券及期貨(持牌人及註冊機構)規則》的草擬本內 – 但有關條文目前已大部分被納入新擬訂的《證券及期貨(發牌及註冊)(資料)規則》的草擬本內，並已作出修訂，以反映證監會在諮詢期內所收到並接納的意見。《證券及期貨(持牌人及註冊機構)規則》的諮詢總結內載列證監會所收到的意見及其回應。由於本會已就這些條文進行公開諮詢，因此不會再進一步徵詢公眾意見。

## 第 4 條

6. 《草擬規則》第 4 條規定中介人必須備存申訴登記冊，以及在辦公時間內提供該登記冊給其客戶或感興趣的投資大眾查閱。若干回應者對有關建議的不同範疇表示關注。證監會已決定不將有關條文包括在該規則之內。取而代之的是證監會將如若干回應者建議那樣，考慮將有關備存申訴登記冊的規定加入《操守準則》之內。證監會的初步意見認為有關登記冊應提供予監管機構查閱，但卻不會提供予公眾人士查閱。

## 第7條

7. 該條例第179條賦權獲證監會授權的人查訊屬於或曾屬於上市法團的法團的涉嫌罪行或失當行為。在有關查訊過程中，獲授權人可飭令“核數師”交出屬於審計工作底稿性質的文件，及飭令該“核數師”解釋所交出的文件。證監會建議將為施行第179條而被視為核數師的人士的類別範圍擴闊，包括以下人士：
  - 前核數師；
  - 根據海外法例而獲委任的核數師；及
  - 為審計目的而獲核數師僱用或聘用的人士，不論該人本身是否“核數師”。
8. 為施行《證券及期貨條例》，香港會計師公會贊成參考《專業會計師條例》(第50章)內所用的“執業單位”一詞來修訂“核數師”一詞的定義。此外，該公會考慮到由於有關文件屬於執業單位的財產，因此獲授權人不應要求初級僱員及顧問交出有關文件或就文件作出解釋。該公會亦認為初級僱員及顧問並非第179條原本要針對的對象。
9. 儘管證監會並不完全同意香港會計師公會就技術上提出的所有意見，但注意到該公會就其對第179條的原意的了解所表達出的細緻關注。證監會將會撤回該規則中將核數師的定義擴大至所有僱員及顧問的部分。然而，證監會注意到律師會及公司秘書公會的意見書基本上卻支持證監會應具有從這些人士取得文件及要求該等人士作出解釋的能力。證監會將會因應該條例及該規則在運作上的經驗，檢討是否有需要在日後作出有關修訂。
10. 證監會將會保留定義中適用於過往或現在的香港註冊核數師及外國核數師的部分。我們注意到律師會及公司秘書公會均質疑證監會是否有權執行要求外國核數師交出文件或就文件作出解釋的權力。這將會視乎情況而定。我們認為，鑑於香港有為數不少的外國註冊公司，該項權力是相當重要的。該項權力亦會有助證監會在無法倚靠本身的權力要求外國核數師交出文件或就文件作出解釋時，可以尋求國際合作安排所提供的協助。
11. 對於回應者就《諮詢文件》提出的寶貴建議及意見，證監會謹此致謝。

#	Section Reference	Area Commented	Market Comments	SFC's Responses
1.	Rule 4	Complaints Register	<p><b>CASH Financial Services Group Limited</b></p> <p>We agree the intermediaries should maintain a complaint register but disagree to make it available for inspection by its clients and especially member of the investing public.</p> <p>We are concerned about the usefulness of opening up the complaint register. It is natural that an intermediary with a large client base will have more complaints than those smaller counterparts. Similarly, an intermediary targeting the retail market will have more complaints than those targeting the institutional market. Disclosure of such information may mislead the clients and the investing public instead of guiding them.</p> <p>We are also concerned about the type of information to be maintained in the complaint register and accessible by the clients and the investing public. As it is not clearly set out the in the draft rule, it is extremely undesirable if any personal data of clients or any confidential information of the intermediary be disclosed.</p> <p>All in all, we believe the disclosure of disciplinary record of an intermediary of the past 5 years as set out in the Draft Securities and Futures (License Persons and Registered Institutions) Rules is adequate for the client and investing public to assess the soundness of the intermediary. Public access to the complaint register is indeed unnecessary and will do more harm than good.</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by a few respondents, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p>
2.	Rule 4	Complaints Register	<p><b>The HK Association of Online Brokers</b></p> <p>In most of the cases, complaints from clients are minor oral queries/disputes unrelated to the “misconducts” of the</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered</p>



## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>intermediary or its officers. It is not clear whether these would fall into the definition of “complaints”. Recording such complaints may not be practical and will increase the administration burden for licensed intermediaries.</p> <p>The SFC stated in the Consultation Paper that Complaints Register is introduced in the interests of investor protection and transparency would help to ensure that client complaints are being addressed. However, we do not consider making the Complaints Register available for inspection by the public an effective means of investor protection because only limited information (such as date, name of complainant, brief description of the complaint) can be obtained from the Complaints Register. Also, some complaints may finally be proved to be unfounded. It is therefore unreasonable for the intermediaries to make available Complaints Register for public inspection. Complaints Register should be restricted to intermediaries’ complaint handling and management review purposes. We would suggest that the Complaints Register be made available for inspection by the relevant regulatory authorities instead of by “any person”.</p> <p>We agree that transparency would help to ensure client complaints will be properly addressed. However, the intermediaries should not be obliged to make the Complaints Register available for inspection by all members of the public. Normally client complaints will be followed up by designated officer of the intermediaries and written reply will be directly provided to complainants on resolution. If clients’ complaints are not satisfactorily resolved, the clients will lodge their complaints to the SFC. For those intermediaries/officers who have breached the SFC rules and regulations, they will be dealt with by the</p>	<p>all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of “complaints” for the purposes of the register, we agree with some respondents that they should be limited to written complaints not resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>SFC under any prescribed rules and any resultant sanctions will be made known to the public accordingly.</p> <p>Complaints Register (or related documents) may contain personal details of clients and other parties involved in the complaints. Releasing such information without the consent from the parties involved may contravene the Hong Kong Personal Data (Privacy) Ordinance. The SFC should clarify whether releasing broker's Complaints Register for inspection by the public comply with any applicable laws.</p> <p>The SFC should provide comparison on what are the regulatory requirements of other jurisdictions on complaints issue and advise whether the said proposal is at par with similar standard of other markets.</p> <p>The draft appears to give impression of over-regulation. We sincerely hope the SFC will re-consider its proposals.</p>	
3.	Rule 4	Complaints Register	<p><b>The Hong Kong Association of Banks</b></p> <p>We believe that the primary role of the SFC is to ensure that intermediaries have effective arrangements to handle customer complaints. The Supervisory Policy Manual of the Hong Kong Monetary Authority (with which registered institutions are also required to comply) requires authorised institutions to keep a register of customer complaints for inspection by the HKMA. The proposed SFC's requirement of the complaints register to be made available to the public at large without charge appears excessive and might raise not only compliance issues for registered institutions (in terms of the confidentially requirements under the HKMA Guideline) but also privacy</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by several respondents, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of "complaints" for the purposes of the register, we agree with a few respondents that they</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>concern insofar as the identity of the complainants is concerned. Furthermore, whilst the consultation paper refers to clients or interested members of the investing public, there is no equivalent qualification in the Rules themselves. We suggest that the right of access be appropriately curtailed.</p> <p>The registers kept by authorised institutions as required under the HKMA's Supervisory Policy Manual would include complaints concerning regulated activities under the new Securities and Futures Ordinance. For the sake of consistency, we suggest that it would be preferable for the SFC's requirement of a complaints register to be incorporated in the SFC's Code of Conduct rather than the Rules.</p> <p>The requirement that the complaint has to be recorded within 3 business days does not seem reasonable. We believe that it should be sufficient to require the complaint to be recorded in the register within a reasonable time.</p> <p>The HKMA Guideline does not require record keeping of complaints that can be resolved by the close of business on the next business day of receipt. Consideration might be given to providing a similar exemption in the SFC requirement.</p> <p>The requirement that the register should be indexed by name may also be too restrictive since banks may adopt different approaches to this. Provided that suitable records are kept, this requirement should be removed.</p> <p>A registered institution often carries out regulated activities through different group entities. It is more practical for a</p>	<p>should be limited to written complaints not resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners. Further, in view that the register would not be made public, it should be sufficient to require complaints to be recorded within a reasonable time.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>registered institution to keep one central register instead of separate registers for separate entities. We suggest that the requirement be amended to permit the complaints register to be kept centrally at the principal place of business or a designated place of the business of one of the group entities.</p>	
4.	Rule 4	Complaints Register	<p><b>The Hong Kong Institute of Company Secretaries</b></p> <p>HKICS considers that section 4 of the draft Rules to be a positive measure in protecting the interests of investors.</p> <p>Given that subsection 5 entitles “any person” to inspect the register required to be kept by an intermediary, a potential client of an intermediary may so inspect <u>before</u> he decides to become a client of that intermediary. Time is therefore of essence. We recommend that the timeframe within which the duty imposed on an intermediary to record in the register the complaint received under subsection (2) be shortened from the proposed 3 business days to 24 hours.</p>	<p>The requirement to maintain a public complaint register imposed by section 4 of the draft Rules have been opposed by most of the respondents. Having noted their concerns, in particular, the data privacy and client confidentiality issues, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by a few respondents, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the time frame for recording complaints, in view that the register would not be made public, it should be sufficient to require complaints to be recorded within a reasonable time.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
5.	Rule 4	Complaints Register	<p><b>The Hongkong &amp; Shanghai Banking Corporation Group</b></p> <p>While we agree with the principle that intermediaries should maintain a register of complaints, we are of the view that this requirement should not be set out in subsidiary legislation. We believe it would be more appropriate for this requirement to be included in the SFC's Code of Conduct for Registered Persons.</p> <p>We also have concerns with the following propositions as set out in Section 4 of the draft rules:</p> <ol style="list-style-type: none"> <li>1. we are concerned with the proposal that the register should be made available to the public for the following reasons: <ul style="list-style-type: none"> <li>- Clients may not wish their identity to be disclosed to the public while they may wish to make complaints. Making the complaints register available to the public may discourage clients from making complaints.</li> <li>- Some complaints may be frivolous, vexatious or immaterial. While they may have to be recorded in the register, it is of no benefit to the complainant or the intermediary for such information to be made available to the public. If a complaint becomes the subject of subsequent litigation, it is not in the interest of the complainant or intermediary for information on the complaint to be made available to the public.</li> <li>- A complaints register available to the public may</li> </ul> </li> </ol>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct. Further, in view that the register would not be made public, it should be sufficient to require complaints to be recorded within a reasonable time.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>attract the attention of the mass media which may use information in such registers to sensationalise news stories, which again would be of no benefit to the complainant, the intermediary or the investing public.</p> <p>2. The requirement that an index of names be maintained in the register is confusing. It is unclear as to whether this should be an index of the names of the complainants. We do not believe that maintaining such an index is unnecessary as complaints can be recorded in chronological order when they have occurred. We recommend that the requirement to keep an index be removed.</p> <p>3. the requirement that the complaint has to be recorded within 3 business days may be impractical. We believe that as long as the complaint is recorded in the register within a reasonable time, that should be sufficient to protect the interest of the complainant.</p>	
6.	Rule 4	Complaints Register	<p><b>HSBC Broking Securities (Asia) Limited</b></p> <p>While we agree with the principle that intermediaries should maintain a register of complaints, we are of the view that this requirement should not be mandated by law. We believe that it is more appropriate for this requirement to be set out in the SFC's Code of Conduct for Registered Persons. Handling of complaints should be viewed as a conduct issue relevant to the fitness and properness of the registered person rather than a subject for legislation.</p> <p>We would like the Commission to clearly define</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>“complaints” for the purpose of the Rules. Many client’s grievances are arguably related to conduct of the registered person but are not caused by any negligence of the registered person but instead caused by the market condition. For example, there are instances where clients complain about the execution price that is not within the control of the registered person. It is not clear whether verbal complaints must also be included in the register. We would like to propose that verbal complaints be excluded from the Rules. Where complaints are not reduced in writing, it is not always clear whether a client’s grievances amount to a complaint, especially in a retail securities business where many of the clients’ “complaints” are not directly related to the registered person’s conduct or service while some of them are also without merit. We do not see any benefit to the complainant, the intermediary or the investing public for including verbal complaints in a register which does not justify the resulting administrative cost.</p> <p>We also have concerns with the following propositions as set out in Section 4 of the Draft Rules.</p> <ol style="list-style-type: none"> <li>1. We are concerned with the proposal that the complaints register should be made available to the public for the reasons that:-             <ol style="list-style-type: none"> <li>i. Clients may not wish for their identifies and their account information to be disclosed to the public. Making the complaints register available to the public may discourage clients from making complaints. The Commission should consider the potential conflict between the purpose of a public complaints register and</li> </ol> </li> </ol>	

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>data protection laws;</p> <ul style="list-style-type: none"> <li>ii. Some complaints may be frivolous, vexatious or immaterial. While they should be recorded in the register, it is of no benefit to the complainant or the intermediary for such information to be made available to the public. If a complaint becomes the subject of a subsequent litigation, it is not in the interest of the complainant or the intermediary for information regarding the complaint to be made public;</li> <li>iii. A complaints register available to the public may attract the attention of the mass media which may use information in such registers to sensationalize news stories, which again would be of no benefit to the complainant, the intermediary or the investing public; and</li> <li>iv. The administrative cost of keeping a complaints register available to the public "without charge" far outweighs the benefit of such public register. This right is subject to abuse by unscrupulous people including the intermediary's clients.</li> </ul> <p>2. The requirement to keep an index under section 4(4) is superfluous as the law should not mandate how a complaints register is to be kept as long as there is a general requirement that the records of complaints can be readily located.</p> <p>3. The Commission should specify a time period</p>	



## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>whereby a complaint needs to remain in the register.</p> <p>4. There is no definition of “complaint”. This is subjective concept, as what once person may regard as a complaint another may not. Also there is no materiality test. For example, it is common practice for institutional clients to challenge the execution price for orders. In general, this would not be regarded as a “complaint”.</p> <p>5. Except in relation to registered institutions, there is no indication that the requirement only relates to complaints received in the course of carrying on regulated activities. What does “concerning the conduct of the intermediary etc” mean? Often complaints/disputes are of a commercial nature rather than related to a breach of conduct of business rule or other specific rules and regulations. It seems unfair that commercial disputes should be required to be disclosed as complaints when there has been no regulatory misconduct.</p> <p>6. What is meant by “or communicated to”? It seems to us that it adds nothing to the word “received”.</p> <p>7. When does the duty to record the complaint arise? When is the intermediary taken to receive the complaint?</p> <p>8. Personal details of clients should not be disclosed in the complaints register due to issues of client confidentiality. Also, it is likely clients will not want their complaints being subject to public disclosure.</p>	

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>9. The Consultation Paper says the requirement to open the register up for inspection is to enable “clients or an interested member of the investing public” to inspect the register. However, Section 4 states that “any person” may inspect the register. This could include members of the press. If the register is to be open to inspection, it should only be available to clients and potential clients.</p> <p>We strongly recommend that the Commission reconsider the need to set out administrative matter in handling complaints in subsidiary legislation. We understand that the purpose of the Rules with regard to complaints register is to enable the public to have full knowledge of the conduct of the registered person. However, as disciplinary record and registration status of a registered period is already fully disclosed to the public, a complaints register available to the public does not serve any added benefit and is in conflict with the right of privacy of the clients.</p>	
7.	Rule 4	Complaints Register	<p><b>Linklaters on behalf of 6 financial institutions</b></p> <p>As a general comment the Group does not believe there are any investor protection benefits in requiring intermediaries to maintain a complaints register and open it for public inspection. The Group believes that rather than requiring a complaints register to be available for public inspection, the SFC should issue guidelines on complaints handling procedures similar to the provisions in the Code of Conduct for Registered Persons. In addition, any investor that is dissatisfied with the way in which an intermediary dealt with a complaint could report that intermediary to the SFC. If the SFC regarded the complaint as sufficiently serious it would then be able to</p>	<p>We note the comments, and having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of “complaints” for the purposes of the register, we agree with some respondents that they should be limited to written complaints not</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>investigate the intermediary. The SFC has sufficient powers to issue public reprimands etc if it believes the investing public should be made aware of an intermediary's misconduct.</p> <p>The Group is not aware of any other jurisdictions that require a complaints register to be open for public inspection.</p> <p>The requirement to maintain the complaints register raises a number of issues as set out below.</p> <ol style="list-style-type: none"> <li>1. An intermediary is required to keep a register of all complaints received by or communicated to the intermediary. This does not appear to be limited to complaints received from clients. The fact that a person has complained does not mean that the complaint is justified or even factually correct. However, the complaints register is likely to give the impression that all complaints are justified. Does an intermediary have to enter a complaint that it believes is factually incorrect? Can an intermediary set out its response to such complaint in the register? If a complaint is satisfactorily resolved within 3 business days does it still have to be entered in the register? Can a complaint be removed once resolved?</li> <li>2. It is not clear what level of detail should be included in the register. Is it necessary to include updates on the progress of the complaint, and how the complaint was resolved?</li> <li>3. How long should a complaint be maintained in the</li> </ol>	<p>resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners. Further, in view that the register would not be made public, it should be sufficient to require complaints to be recorded within a reasonable time. The SFC will likely consult the industry on other details should it decide to incorporate the requirement to maintain such a non-public complaints register in the Code of Conduct.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>register?</p> <p>4. There is no definition of “complaint”. This is a subjective concept, as what one person may regard as a complaint another may not. Also there is no materiality test. For example it is common practice for institutional clients to challenge the execution price for orders. In general, this would not be regarded as a “complaint”.</p> <p>5. Except in relation to registered institutions, there is no indication that the requirement only relates to complaints received in the course of carrying on regulated activities. What does “concerning the conduct of the intermediary etc” mean? Often complaints/disputes are of a commercial nature rather than relate to a breach of conduct of business rules or other specific rules and regulations. It seems unfair that commercial disputes should be required to be disclosed as complaints where there has been no regulatory misconduct.</p> <p>6. What is meant by “or communicated to”? It seems to us that it adds nothing to the word received.</p> <p>7. When does the duty to record the complaint arise? When is the intermediary taken to receive the complaint?</p>	
8.	Rule 4	Complaints Register	<p><b>The Institute of Securities Dealers Ltd</b></p> <p>Some of our members have expressed concern over the content of this section, fearing that the proposed register may be misused. We strongly believe that intermediaries</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

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			<p>should be encouraged to maintain complaints registers, but only on a <b>voluntary</b> basis.</p> <p>However, should the SFC insist on going ahead with the introduction, we shall be grateful if you will take into consideration of the following comments and recommendations in drafting the final version of the rules:-</p> <ol style="list-style-type: none"> <li data-bbox="667 576 1368 879">1. We believe that complaints which are resolved amicably between the intermediary and client through immediate settlement should not be required to be registered. Very often, intermediaries may choose to settle a disputed transaction even though the intermediary or its employees are not at fault. A quick out-of-pocket settlement is often seen by intermediaries as a preferred alternative to a protracted dispute although subsequent investigation will find to be in favour of the intermediary.</li> </ol> <p>Requirement to enter these complaints in the register would rob intermediaries the option of quick settlement while denying clients quick satisfaction.</p>	<p>delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by several respondents, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of “complaints” for the purposes of the register, we agree that they should be limited to written complaints not resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners.</p>
	Rules 4(1) & 4(2)	Keeping a register of complaints and duty to record complaints in the register	<ol style="list-style-type: none"> <li data-bbox="667 1038 1368 1158">2. Should only be applicable to formal written complaints to avoid any ambiguity and confusion over what constitute a complaint. A prescribed form may be introduced specifically for this purpose.</li> </ol>	
	Rule 4(5)	Inspection of complaints register by any	<ol style="list-style-type: none"> <li data-bbox="667 1287 1368 1374">3. We strongly object to the complaints register being made available to the public for inspection. We fear that this provision can be easily exploited by</li> </ol>	

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
		person	individuals to cause havoc and inconvenience to the daily operation of our members' firms and suspect that there may also be privacy issue at stake. We therefore believe that the register should only be made available to SFC when the firm is under specific investigation.	
9.	Rule 4	Complaints Register	<p><b>The Law Society of Hong Kong</b></p> <p>The committee has 2 material concerns with the proposals contained in section 4 of the draft rules being:</p> <ol style="list-style-type: none"> <li>1. the absence of a definition of "complaint"; and</li> <li>2. the proposal to make the register of complaints available for public inspection.</li> </ol> <p><b>What is a "complaint"?</b></p> <p>Neither the consultation paper nor the draft rules provide any definition or guidance on what constitutes a "complaint". While allegations of fraud, dishonesty or other improper conduct would (and should) constitute a complaint, the committee is of the view the following would not (or should not) constitute complaints (or if they are complaints, should not be regarded as being of sufficient seriousness to merit recording in a register):</p> <ol style="list-style-type: none"> <li>1. dissatisfaction with advice given, trade execution and other services provided not involving any allegation of fraud, dishonesty, breach of applicable laws or regulations;</li> <li>2. complaints relating to inadvertent errors or omissions</li> </ol>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by several respondents, the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of "complaints" for the purposes of the register, we take the view that a broad approach should be adopted and that any allegation that investor interests have been prejudiced, or that the fitness and properness of an intermediary is in doubt, should be considered a complaint. However, we agree with some respondents that they should be limited to written complaints not resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>not involving fraud, dishonesty or breach of applicable laws or regulations which are promptly investigated and, if required, rectified;</p> <p>3. complaints of a frivolous or vexatious nature.</p> <p>It is submitted that if the definition of “complaint” is to include the items referred to in (1)-(3) above, the register would provide not only a misleading impression of a licensed person’s business propriety but also be unduly burdensome to maintain.</p> <p>The committee has considered whether this issue could be clarified by stating that a “complaint” for the purposes of section 4 is a complaint made in writing so as to exclude minor oral complaints. This test would be unsatisfactory because:</p> <ol style="list-style-type: none"> <li>1. not all serious complaints are necessarily made in writing in the first instance; and</li> <li>2. the use of the internet and email as convenient and efficient delivery channels and means of communication would suggest that many complaints which fall within the items of concern described in (1) – (3) above could be conveyed by email (i.e. in writing) as easily as orally.</li> </ol> <p><b>A complaint register should not be open to inspection</b></p> <p>The committee submits that it is neither appropriate nor</p>	

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

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			<p>desirable for a complaint register to be made publicly available for the reason that disclosure of a client's identity and specifics regarding a complaint to public inspection would conflict with:</p> <ol style="list-style-type: none"> <li>1. the Personal Data (Privacy) Ordinance (where relevant);</li> <li>2. duties of confidentiality (where relevant); and</li> <li>3. in the context of complaints which are related to investigations made by regulatory authorities to which a requirement of secrecy is attached (including, but not limited to certain investigations made by the SFC under the Securities &amp; Futures Ordinance) disclosure would breach such statutory requirements.</li> </ol> <p>The Committee is also of the view that the knowledge that a complaint will be publicly disclosed will:</p> <ol style="list-style-type: none"> <li>1. act as a strong incentive to the licensed person to take an aggressive view on what does or does not constitute a "complaint";</li> <li>2. act as a strong incentive to licensed persons to deal with client complaints in a defensive and aggressive manner rather than a conciliatory manner. In this context, it should be noted that there is nothing in the draft rules to prevent the licensed corporation from including statements regarding its view on whether the complaint is justified and the way in which the complaint is resolved should it choose to do so. If the register is to be made publicly available, then this</li> </ol>	



## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>is, of course, entirely appropriate but, again, there will be a very strong incentive for licensed persons to reflect their own views on the merits of any complaint (where it is possible to do so). Put differently, a licensed person's willingness to admit wrong doing either by itself or its employees is likely to be eroded by public disclosure of complaints;</p> <p>3. act as a disincentive to some customers to make formal complaints because they may not wish to have their own identities and information about their business dealings (relating to the complaints) publicly disclosed; and</p> <p>4. act as an incentive for some customers to threaten to make complaints requiring public disclosure as a means of embarrassing a licensed person.</p> <p>The introduction of a broad definition of "complaint" would increase the committee's concerns raised in (2), (3) and (4).</p> <p>In summary, the committee is of the view that there are several very good reasons why a complaint register should not be made publicly available. The committee is unable to think of any reason in favour of public disclosure.</p>	
10.	Rule 4	Complaints Register	<p><b>Lloyds TSB Pacific Limited</b></p> <p>In our view it is wholly inappropriate to require intermediaries to keep a public register of complaints received. Our grounds for objection are:-</p> <p>1. The register will contain information on the client</p>	<p>We note the concerns, in particular, the data privacy and client confidentiality issues. Having considered all the submissions received, the SFC has decided to delete the requirements of Rule 4 from the draft Rules. Instead, as suggested by several respondents,</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>which should be treated as confidential. We would be breaching our duties of confidentiality by including such information in a register which was open to the public.</p> <ol style="list-style-type: none"> <li>2. Having a public register could cause breaches of the Personal (Data) Privacy Ordinance.</li> <li>3. The public register might contain confidential information about the intermediary's business.</li> <li>4. Complaints may involve or contemplate legal actions and it would be improper to have relevant information available to the public.</li> <li>5. Information on complaints could be exploited by competitors of the intermediary, for example by contacting complainants and offering them better service.</li> <li>6. Having to maintain a public complaints register will increase the costs of doing business. For Hong Kong to succeed in an increasingly competitive international environment, we need to find ways of reducing costs.</li> <li>7. It is not recognised international practice for complaint registers to be made public. It is right to insist that intermediaries have proper complaint handling procedures including the maintenance of proper records for the regulator to inspect where necessary. This, for example, is how the Hong Kong Monetary Authority regulates complaints and we suggest that you read their recently updated guidelines on this subject.</li> </ol>	<p>the SFC will consider placing the requirement to maintain a complaint register (and making it available for inspection by regulatory authorities but not members of the public) in the Code of Conduct.</p> <p>As to the definition of "complaints" for the purposes of the register, we agree with some respondents that they should be limited to written complaints not resolved with the complainant within two business days. This pragmatic approach would allay compliance concerns expressed by practitioners.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>8. You seek to justify having a public register on the grounds of investor protection and transparency. Investor protection is the SFC's responsibility and you would fulfil your obligations in connection with complaints by laying down complaints handling rules and having monitoring procedures in place. Transparency will also be covered through such rules which could include a requirement for intermediaries to notify all clients of their complaint handling procedures.</p>	
11.	Rule 7	Definition of "auditor" for s 179 SFO - generally	<p><b>Hong Kong Society of Accountants</b></p> <p>An "auditor" usually would be the engagement partner or engagement director of a corporate practice. This might cause problems as the documents sought to be produced under s 179 will not be the property of an engagement partner or director, their employees or consultants. Suggests using the definition of "practice unit" instead taken from s 2 of the Professional Accountants Ordinance (PAO). Notes that this definition is used in recent amendments to the Gambling Amendment Regulation 2002. Section 2 of the PAO defines a "practice unit" as:</p> <p>(a) a firm of-</p> <p>(i) certified public accountants; or</p> <p>(ii) public accountants; or</p> <p>(iii) certified public accountants and public accountants, practising accountancy pursuant to this Ordinance;</p> <p>(b) a certified public accountant or public accountant practising accountancy on his own account pursuant to this Ordinance; or</p> <p>(c) a corporate practice;"</p>	<p>Our goal in making the rules has been to further define "auditor" to ensure that we can have the correct person on an audit engagement team explain documents. An engagement partner/director will usually have delegated most of the work on an audit and will not be the best person to explain the document. Further, very few auditors in HK are corporations. So, we have sought to include everyone who might be useful to explain documents to be sought from an audit engagement team in the definition of auditor, including practice unit employees and consultants (eg valuers). We accept that documents sought may be the property of the practice unit, but that is not the key question. Section 179 would only require that they are in the possession (ie "custody, control or power") of the person from who we seek them we may demand them. Similarly, who professionally accepts responsibility for an audit opinion on listed companies accounts is not material to who is best placed to explain documents with a view to establishing the facts in an inquiry.</p>

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

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				Nevertheless, we understand that the HKSA and the auditing profession are of the view that it was not the intension of s 179 to go beyond an audit firm to its employees and consultants. We appreciate HKSA's concerns and agree to withdraw those parts of the rules which extend the definition to an auditor's junior employees and consultants. We will only further define auditor to cover professional accountants and practice units that provides, or provided, services. This would cover Hong Kong based auditors that hold practicing certificates, audit firms and corporate practices and foreign auditors (see below). The SFC will keep in view the need for future amendments in the light of operational experience of the Ordinance and the Rules.
	Rule 7(a)	Definition of "auditor" for s 179 SFO – consequential change	If the amendment proposed above to adopt "practice unit" is adopted, rule 7(a) should be amended to refer to "(a) a person who was formerly a practice unit (irrespective of whether the person is still so registered)"	See above.
	Rule 7(b)	Definition of "auditor" for s 179 SFO – overseas auditors	Doubts the power to exercise investigatory powers in relation to foreign registered auditors.	The ability to enforce any investigatory requirements will depend on the circumstances (eg are the person in question and the documents in Hong Kong or not, or in the possession of a Hong Kong located audit practice) and international law and comity. However, it is useful to have the jurisdiction particularly as many companies that operate in Hong Kong are foreign incorporated and may have foreign auditors.
	Rule 7(c)	Definition of auditor for s 179 – employees and consultants	Objects to the inclusion of engagement team employees and consultants in the definition of auditor: (i) believes it won't work as they say the documents sought are the property of the practice unit"; (ii) the practice unit is the	See the response to 7 above.

## Summary of comments on Draft Securities and Futures (Miscellaneous) Rules

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			appropriate entity to explain documents and s 179(2) operates to enable the SFC to question practice unit staff if “practice unit” is adopted as the definition of “auditor” for s 179; and (iii) feels the proposed rule is a change in policy in that it brings within s 179 people who weren’t intended to be covered.	
12.	Rule 7	Definition of auditor for s 179	<b>Hong Kong Institute of Company Secretaries</b>  Supports the provision.	Noted.
	Rule 7(b)	Definition of “auditor” for s 179 SFO – overseas auditors	Doubts the power to exercise investigatory powers in relation to foreign registered auditors.	See response to Rule 7(b) above.
13.	Rule 7	Definition of auditor for s 179 – employees and consultants	<b>Law Society of Hong Kong</b>  There is no need to amend the definition of “auditor” for the reasons set out in the Consultation Paper because the SFC can obtain these documents and explanations of them under s 179(1)(v) “any other person”, with fewer constraints.  The growing number of auditor definitions is confusing.	The policy is that in the case of auditors, s 179(1)(iv) should be invoked. S 179(1)(v) is primarily targeted to transaction counterparties of the corporation in the inquiry. It is therefore more appropriate to add to the definition of “auditor” than to rely on s 179(1)(v).  The proposed definition of “auditor” in the Rules merely clarifies the scope of s 179 in its application to auditors. The SFC will keep in view the need for futures amendments in the light of operational experience of the ordinance and the Rules.

## List of Respondents

Date received	Respondent
3 July 2002	CASH Financial Services Group Ltd
20 July 2002	The Hongkong & Shanghai Banking Corporation Group
22 July 2002	Lloyds TSB Pacific Ltd
26 July 2002	The Institute of Securities Dealers Ltd
26 July 2002	The Law Society of Hong Kong
26 July 2002	The HK Association of Online Brokers
26 July 2002	The Hong Kong Association of Banks
26 July 2002	The Hong Kong Institute of Company Secretaries
27 July 2002	Linklaters on behalf of 6 financial institutions
31 July 2002	Hong Kong Society of Accountants
2 August 2002	HSBC Broking Securities (Asia) Ltd



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

附件 6

## **Consultation Conclusions on the Draft Securities and Futures (Offences and Penalties) Regulations**

**《證券及期貨(罪行及罰則) 規例》草擬本  
諮詢文件總結**

Hong Kong  
September 2002

香港  
2002年9月

## 引言

1. 證券及期貨事務監察委員會(證監會)在 2002 年 7 月 26 日發表《證券及期貨(罪行及罰則)規例》草擬本(“《草擬規例》”)的諮詢文件，以諮詢各界的意見。
2. 《草擬規例》根據《證券及期貨條例》(2002 年第 5 號)(“該條例”)第 398(6) 條訂立。《草擬規例》規定，任何人沒有遵守《證券及期貨(雜項條文)規則》草擬本 (“《草擬雜項條文規則》”) 的指明條文，即屬犯罪(並同時載列有關罰則)。《草擬雜項條文規則》載列不適宜直接載入根據該條例訂立的其他附屬法例的條文。
3. 該諮詢期至 2002 年 8 月 16 日結束。
4. 本文件應與該《諮詢文件》一併閱讀。

## 公眾諮詢

5. 證監會在 2002 年 7 月 26 日發表有關該諮詢行動的新聞稿，並將《諮詢文件》及《草擬規例》登載於證監會網站之內及透過金融服務網絡(FinNet)這個通訊網絡發放予所有註冊人。
6. 證監會收到 1 份意見書。該意見書來自香港證券專業學會，當中收集了該會會員的意見。該意見書的內容已載於證監會網站之內(<http://www.hksfc.org.hk>)。

## 諮詢總結

7. 《草擬規例》建議，獲證監會發牌或註冊的人士如未有在《草擬雜項條文規則》第 5<sup>1</sup> 條訂明的情況下，將其牌照或註冊證書交回證監會，會處第 6 級罰款(100,000 元)。意見書認為建議罰款過高。回應者建議將罰款定於第 5 級(50,000 元)，以及如屬持續的罪行，則在罪行持續期間的每一日另處罰款 2,000 元。
8. 該條例已訂明，個人如沒有將其牌照交還證監會，可被判處第 6 級罰款(100,000 元)。鑑於該條例已訂明這個罰款水平，將罰款維持在《諮詢文件》中建議的第 6 級(100,000 元)是較為恰當的做法。因

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<sup>1</sup> 該條文在最新的《草擬雜項條文規則》中的條次由第 6 條改為第 5 條。



此，證監會決定在現階段毋需為持續罪行設立每日罰款。《草擬規例》並沒有因應該意見書而作出修改。

9. 證監會並沒有收到對《草擬規例》的其他條文的意見。
10. 《草擬規例》將會作出修訂，以反映《草擬雜項條文規則》的條次的改動。

## **結語**

11. 對於所有曾經就《諮詢文件》提出寶貴建議及意見的業界人士及對此感興趣的人士，證監會謹此致謝。

**證券及期貨事務監察委員會**  
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