

2002年9月16日  
討論文件

第 24/02 號文件

**《證券及期貨條例》附屬法例擬稿  
小組委員會  
《證券及期貨(保險)規則》**

本文件載述證券及期貨事務監察委員會(證監會)有關根據《證券及期貨條例》(第 571 章)(條例)第 116(5)條訂立規則，以訂明指明持牌法團須就指明風險投購、並將之保持有效的保險保障內容，並就其他相關事宜作出規定的建議。

### 建議

2. 證監會建議根據條例第 116(5)條，訂立《證券及期貨(保險)規則》，有關規則的擬稿現載於附件 1。

### 訂立規則的權力

3. 條例第 116(3)(c)(ii)條規定，除非申請人令證監會信納其已按照根據第 116(5)條訂立的規則投購保險，否則證監會須拒絕根據第 116(1)條批給進行某類受規管活動的牌照。條例第 116(5)條賦權證監會可為施行第 116(3)(c)(ii)條而訂立規則，就以下各項作出規定：持牌法團須就指明風險投購、並將之保持有效的指明款額的保險保障、須按哪些條款投購該等保險並將之保持有效，以及關乎該等保險的任何其他事宜。

4. 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

5. 載於附件 1 的規則擬稿 –

- (a) 規定除符合就非交易所參與者的持牌法團訂出的若干例外情況，獲發牌進行證券交易、期貨合約交易或提供證券保證金融資的持牌法團須投購保險並將之保持有效（第 3 條）；
- (b) 指明持牌法團須就有關風險而投購的保險保障款額（第 4 條及附表 2 和 3）；
- (c) 訂明證監會可安排保險計劃，而持牌法團須根據該保險計劃，投購所需的保險並將之保持有效（第 5 及 6 條）；
- (d) 訂明證監會在安排保險計劃時的權力，包括聘用任何人以提供協助的權力（第 7 條）；
- (e) 規定持牌法團須向證監會呈交該會為安排保險計劃的目的而需要的資料，並讓該會為安排保險計劃而向其他人披露該等資料（第 9 條）；及
- (f) 訂明持牌法團可向其投購保險及可為有關保險保持有效的承保人，所須具備的最低信貸評級（第 3 及 6 條及附表 4）。

6. 藉著規定指明持牌法團投購指明的保險及將之保持有效，證監會認為規則擬稿與《證券及期貨條例》第 4(c)及(e) 條所載的證監會目標一致，即“向投資於或持有金融產品的公眾提供保障”及“減低在證券期貨業內的系統風險”。

## 諮詢公眾

7. 證監會於 2002 年 6 月 26 日發表諮詢文件及有關規則的諮詢擬稿，以諮詢公眾意見。證監會共接獲 9 份意見書。證監會已考慮所有接獲的意見及就規則擬稿作出適當的修改。現附上下列文件供委員參考 –

- (a) 規則擬稿的諮詢文件（附件 2），當中載有相關的政策，以及有關規則的諮詢擬稿。經修訂的規則擬稿載於附件 1，供委員審閱；及

- (b) 諮詢總結、公眾意見的摘要及證監會的回應(附件 3)，當中載有諮詢所得的總結及證監會就接獲的意見作出的回應(以列表方式載述)。載列意見摘要及證監會回應的文件附有提交意見人士的名單。

## 未來工作

8. 視乎委員的意見，證監會將會根據其獲賦予的權力訂立有關規則，並在憲報刊登，然後循正常程序呈交立法會省覽。按現時計劃，有關規則將於《證券及期貨條例》生效的數個月後生效，以配合現時香港聯合交易所為其參與者安排的經紀忠誠保險計劃的屆滿日期。

證券及期貨事務監察委員會  
財經事務及庫務局  
2002 年 9 月 11 日

# 擬 稿

附件 1

[ 參考：《證券及期貨條例》第 116 條 ]

## 《證券及期貨(保險)規則》

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## 《證券及期貨(保險)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 116(5)條訂立)

### 1. 生效日期

本規則自 2003 年 4 月 1 日起實施。

### 2. 釋義

在本規則中，除文意另有所指外 —

“承保人”(underwriter)指一個或多於一個的保險人，而證監會與該人就某段計劃期間安排保險計劃；

“保險人”(insurer)指 —

- (a) 根據《保險公司條例》(第 41 章)第 6(1)條在香港或從香港經營保險業務的人；或
- (b) 根據香港以外地方的法律在香港以外地方或從香港以外地方經營保險業務的人；

“保險計劃”(scheme of insurance)指第 6 條提述的由證監會就某段計劃期間而安排的保險計劃；

“保險費”(premium)指指明持牌法團就某段計劃期間須向承保人繳付的保險費；

“指明信貸評級”(specified credit rating)指任何一個在附表 4 指明的信貸評級；

“指明持牌法團” (specified licensed corporation)指根據第 3(1)條須遵從本規則的法團；

“指明風險” (specified risks)指附表 2 指明的風險；

“指明款額” (specified amount)指附表 3 指明的每段計劃期間所投購保險的款額；

“計劃期間” (scheme period)指計劃集成保險單提述的保險期間；

“計劃集成保險單” (scheme master policy)指保險計劃的承保人就某段計劃期間發出的，並據以向指明持牌法團提供第 4 條提述的保險的保險單；

“期貨合約交易” (dealing in future contracts)具有本條例附表 5 第 2 部給予該詞的涵義；

“證券交易” (dealing in securities)具有本條例附表 5 第 2 部給予該詞的涵義。

(2) 在本規則中，凡根據保險單，保險人只須為指明持牌法團提出的超逾某款額的損失或申索部分負有法律責任，則就該保險單而言，凡提述可扣除款額，即提述該款額。

### **3. 適用範圍**

(1) 除第(3)款另有規定外，根據本條例第 116(1)條就進行附表 1 指明的受規管活動獲批給牌照的法團須遵從本規則。

(2) 不論第(1)款有任何規定，本規則在作出必要的變通後，適用於根據本條例第 116(1)條要求就進行附表 1 指明的受規管活動批給牌照的申請人。

(3) 如第(1)款提述的法團並非交易所參與者而且符合以下說明，則該法團無須遵從第 4 條 —

(a) 該法團獲批給該款提述的牌照，而該牌照須受以下條件規限：該法團不得持有客戶資產；

(b) 該法團 —

(i) 已就指明風險向一個或多於一個保險人投購款額不少於指明款額的保險，而該保險人 —

(A) 並非該法團的有連繫法團；及

(B) 在第(ii)節或(c)段或第(5)款提述的確認書提交證監會時已有指明信貸評級；及

(ii) 在計劃期間開始前的 60 日或之前，已提交證監會一份由該法團的負責人員及法律顧問作出的述明該法團在計劃期間開始時已根據保險單如此投購保險的確認書；或

(c) (凡該法團沒有根據(b)(i)段如此投購保險)該法團在計劃期間開始前的 60 日或之前，已提交證監會一份由該法團的負責人員及法律顧問作出的述明該法團將會在計劃期間開始時根據保險單如此投購保險的確認書。

(4) 為施行第(3)(b)(i)款 —

(a) 附表 2 第 1 條須解釋為不受該附表第 2 條規限；及

(b) 有關保險可指明款額不超逾\$3,000,000的可扣除款額。

(5) 凡第(3)(b)(ii)或(c)款提述的保險單在該款提述的計劃期間完結前屆滿，而有關法團投購新的保險單，根據該保險單，該法團是在緊接該屆滿後按照第(3)(b)(i)款投購保險，則該法團須在該屆滿後7個營業日內提交證監會一份由該法團的負責人員及法律顧問作出的述明該法團現時是及已經自該屆滿時起如此投購保險的確認書。

(6) 第(3)(b)(ii)或(c)或(5)款提述的確認書須述明該法團是或將會根據第(3)(b)(i)款如此投購保險的有關保險單的生效日期及屆滿日期。

(7) 凡 —

(a) 任何法團(“首述法團”)是交易所參與者，並 —

(i) 根據本條例第116(1)條獲發牌進行證券交易或期貨合約交易或兩者；及

(ii) 是另一法團(“次述法團”)的有連繫法團，而該次述法團 —

(A) 根據本條例第116(1)條獲發牌進行證券交易或期貨合約交易或兩者；

(B) 並非交易所參與者；及

(C) 是首述法團的客戶；及

(b) 首述法團以執行經紀身分為次述法團進行次述法團獲發牌為其客戶或代其客戶進行(a)(ii)(A)段的受規管活動，而次述法團就首述法團以次述法團的執行經紀身分行事的作為向其客戶負責，

則 —

(c) 首述法團須根據本規則投購保險並將之保持有效，該保險須涵蓋關於首述法團及次述法團兩者進行的受規管活動(而該活動是首述法團以執行經紀身分為次述法團行事)的指明風險；



- (d) (c)段所指的保險的指明款額須予釐定，方法猶如指明持牌法團純粹是首述法團一樣；及
- (e) 次述法團無須就(c)段所指的已投購保險的指明風險，另外投購保險並將之保持有效。

#### **4. 就指明風險投購指明款額的保險的責任**

(1) 除第 3(3)及(7)(e)條另有規定外，指明持牌法團須就指明風險投購款額不少於指明款額的保險並將之保持有效。

(2) 有關保險可指明款額不超逾\$3,000,000的可扣除款額。

#### **5. 根據保險計劃投購保險並將之保持有效的責任**

指明持牌法團須透過 —

- (a) 支付保險費；及
- (b) 遵從計劃集成保險單的條款及條件，

就指明持牌法團根據本條例第 116(1)條獲發牌的每段計劃期間，根據保險計劃投購第 4 條提述的保險並將之保持有效。

#### **6. 證監會須安排保險計劃**

(1) 為施行第 5 條並在第(2)款的規限下，證監會可與一個或多於一個保險人安排保險計劃，而根據該保險計劃，指明持牌法團須就某段計劃期間投購第 4 條提述的保險並將之保持有效。

(2) 除非某承保人在計劃期間開始當日已有指明信貸評級，否則證監會不得與該承保人就某段計劃期間安排保險計劃。

## **7. 證監會在安排保險計劃時的權力**

(1) 在不局限第 6 條的一般性的原則下，證監會根據該條就安排保險計劃時的權力包括以下的權力 —

- (a) 釐定計劃集成保險單的條款及條件；
- (b) 以證監會書面指明的方式向每個指明持牌法團收取保險費，並將該等已收取的保險費轉付予承保人；
- (c) 分發由承保人發出的保險證書予有關指明持牌法團；
- (d) 收取來自指明持牌法團根據計劃集成保險單提出的申索的通知，或收取來自指明持牌法團就相當可能會導致根據計劃集成保險單提出申索的情況的通知，並將該等通知轉交予承保人。

(2) 證監會可聘用任何人提供證監會認為有需要或可取的服務，以協助其行使在安排保險計劃方面的任何部分的權力。

## **8. 保險費不獲退還**

指明持牌法團按照本規則繳付的保險費不獲退還。

## **9. 同意證監會為安排保險的目的而披露資料**

(1) 指明持牌法團須向證監會(或任何根據第 7(2)條協助證監會的人)呈交該會為安排保險計劃的目的而需要的關於該法團及其業務的資料。

(2) 如關於某指明持牌法團的資料是證監會(或任何根據第 7(2)條協助證監會的人)從該法團取得的，則該法團須視為已同意證監會(或任何根據第 7(2)條協助證監會的人)為安排保險計劃的目的而向 —

(a) 承保人；或

(b) 保險人，

披露該等資料。

## 10. 證監會可修訂信貸評級

證監會可藉憲報公告修訂附表 4。

附表 1 [第 3 條及附表 2 及 3]

### 需投購保險的受規管活動

1. 證券交易。
2. 期貨合約交易。
3. 證券保證金融資。

附表 2 [第 2 及 3 條]

### 需投購保險的風險

1. 除第 2 條另有規定外，指明持牌法團須就以下風險投購保險並將之保持有效 —

(a) 指明持牌法團所收取或持有的客戶資產（包括由該法團的有聯繫實體所收取或持有的客戶資產）可歸因於以下事項造成損失而引致的損失風險 —

(i) 指明持牌法團（或其有聯繫實體或服務部門）的僱員作出的欺詐或不誠實作為；

- (ii) 在客戶資產由指明持牌法團(或其有聯繫實體)保管的情況下所發生的搶劫或盜竊事件；
  - (iii) 偽造支票或其他可流轉票據，或對支票或其他可流轉票據進行欺詐性竄改；
  - (iv) 使用資訊系統作欺詐用途；
  - (v) 偽造涉及客戶資產的指示或作出涉及客戶資產的欺詐性指示；
- (b) 可歸因於以下事項的損失風險 —
- (i) 指明持牌法團真誠地收到偽鈔；
  - (ii) 在與根據本條例進行的調查有關連的情況下所招致的費用及開支，或在其他方面涉及該法團所進行的業務並構成附表 1 指明的受規管活動的費用及開支；
  - (iii) 指明持牌法團在與釐定其已投購保險的某項損失的款額或關乎該等損失的申索款額有關連的情況下，招致的合理費用及開支；
- (c) 可歸因於指明持牌法團或其僱員(或其有聯繫實體或該有聯繫實體的僱員，或其服務部門或該服務部門的僱員)疏忽地作出的作為的損失風險。

2. 第 1 條指明的風險不包括並非是指明持牌法團在香港進行附表 1 指明的受規管活動的情況下所引致的損失。

3. 就本附表而言 —

“僱員” (employee)就某指明持牌法團而言，包括現時或曾經是該法團的僱員、高級人員或持牌代表的個人，或現時或曾經(不論是根據服務合約或以其他方式)獲該法團聘用的個人；

“服務部門” (service bureau)，就某指明持牌法團而言，指獲該法團轉授該法團在進行附表 1 指明的受規管活動時須附帶執行若干職能的責任的人。

### 附表 3

[第 2 條]

#### 投保款額

1. 凡任何指明持牌法團根據本條例第 116(1)條就進行附表 1 指明的一類受規管活動獲發牌，則就所有指明風險的每段計劃期間的投保款額是 \$15,000,000。
2. 凡任何指明持牌法團根據本條例第 116(1)條就進行附表 1 指明的多於一類的受規管活動獲發牌，則就所有指明風險的每段計劃期間的投保款額是 \$25,000,000。

### 附表 4

[第 2 及 10 條]

#### 信貸評級

1. 穆迪的長期保險財務實力評級為“A”級或以上。
2. 標準普爾的保險公司財政實力評級為“A”級或以上。
3. 惠譽的“Insurer Financial Strength Rating”為“A”級或以上。

證券及期貨事務監察委員會  
主席

2002 年      月      日

**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)第 116(5)條訂立，規定牌照申請人及根據本條例第 116(1)條獲證監會批給牌照進行若干受規管活動的法團，須根據證監會安排的保險計劃，就指明風險投購指明款額的保險，並將之保持有效。本規則亦訂明就該保險而言，該等申請人及持牌法團須遵從的規定。



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

附件 2

## A Consultation Document on the Securities and Futures (Insurance) Rules

《證券及期貨(保險)規則》諮詢文件

Hong Kong  
June 2002

香港  
2002年6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”)建議根據《證券及期貨條例》(“該條例”)(2002年第5號)第116(5)條訂立的《證券及期貨(保險)規則》的草擬本(“《草擬規則》”),發表意見。

證監會認為該規則應該易於應用,及其草擬方式應利便各有關方面遵守和執行。本會歡迎業內人士就《草擬規則》的任何特定範疇提出意見,以便使有關規則更易於應用和遵守。

### 引言

1. 該條例第116(3)(c)條規定,除非申請人令證監會信納其:
  - (i) 已按照證監會訂立的規則向證監會交存保證,並將保證保持有效;或
  - (ii) 已按照證監會訂立的規則投購保險,否則證監會須拒絕批給進行某類受規管活動的牌照。
2. 就發牌而言,證監會可透過訂立其認為適當的規則來規定申請人須遵守任何有關保證或保險的規定。
3. 為了向持牌人及投資者就持牌人(包括其僱員)違反忠誠、行事錯失或不作為等事件提供更廣泛的保障,證監會傾向於建議就投購保險(而非交存保證)而訂立規則。在作出有關建議時,證監會已考慮到多項因素,包括賠償水平、行政費用、有關方案在維持金融體系整體穩定性方面的有效程度,以及該條例下的新投資者賠償安排。
4. 該條例第116(5)條賦權證監會訂立規則,就以下各項作出規定:
  - (a) 持牌法團須就指明風險投購並將之保持有效的指明款額的保險保障內容;
  - (b) 須按甚麼條款投購該等保險並將之保持有效;
  - (c) 關乎該等保險的任何其他事宜。



5. 載於附件 1 的《草擬規則》已就發牌目的列明有關的保險規定。基本上，證監會建議推行一項強制性忠誠保險計劃(“建議計劃”)，以及規定持牌法團若要進行《草擬規則》內所指明的若干受規管活動時，均須參與該項建議計劃，作為其維持證監會所批給的牌照而須遵守的其中一項持續責任。
6. 證監會已利用金融服務網絡的通訊網絡將本文件傳送給各註冊人。此外，各界人士亦可於證監會辦事處免費索取本文件的文本及在證監會網站(<http://www.hksfc.org.hk>) 下載。
7. 本會誠邀公眾人士在 2002 年 7 月 25 辦公時間結束前提交意見。

## 背景

8. 證券業檢討委員會(即由戴維森擔任主席的檢討委員會)在 1988 年 5 月首次提出本港需要就市場從業員設立強制性忠誠保險制度。該委員會是在 1987 年 10 月股災之後成立的，旨在檢討香港證券業的運作及監管情況。該委員會提出多項建議，其中一項是就控制客戶資產的中介人推出強制性忠誠保險計劃，以加強市場的穩健性和提高對投資者的保障。
9. 香港聯合交易所有限公司(“聯交所”)採納了這項建議。聯交所自 1992 年起，便強制其參與者必須參加經紀忠誠保險計劃。這項保險計劃為參與者提供保險保障，避免其因僱員所干犯的欺詐、盜竊、錯失及不作為等事件而招致損失。
10. 在 1996 年 4 月，證監會進一步建議制訂政策措施，向非交易所參與者實施忠誠保險規定<sup>1</sup>。業界對這項措施普遍表示歡迎。
11. 證監會在上述背景下，現建議規定若持牌法團業務需承受較高的忠誠風險，必須投購及維持一份劃一的保險單(其條款類似目前的經紀忠誠保險計劃下的保險單)。有關這方面，本會認為上述的保險規定，對於那些在經營證券及 或期貨交易業務的過程中，很可能會收取或持有客戶資產的持牌人來說，尤其重要。

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<sup>1</sup> 有關建議載於證監會在 1996 年 4 月發表以供諮詢公眾意見的《證券及期貨綜合條例草案草擬稿諮詢文件》內。

## 建議計劃

12. 在訂立《草擬規則》時，證監會擬制訂一項適用於所有有關的持牌法團的強制性和共通的保險計劃。因此，建議計劃在推出後，將會取代目前只適用於聯交所參與者的經紀忠誠保險計劃。
13. 下文載列建議計劃的基本特點及保障範疇。

### 有關的持牌法團

14. 持牌法團若從事以下業務，將會被強制參加根據《草擬規則》所實施的建議計劃：
  - (a) 證券交易；
  - (b) 期貨合約交易；或
  - (c) 提供證券保證金融資。
15. 換句話說，《草擬規則》適用於就該條例附表 5 所界定的第 1、2 或 8 類受規管活動而獲發牌的持牌法團。
16. 然而，為了避免對持牌人構成過份的監管壓力，獲發牌從事有關的受規管活動的持牌法團，或申領牌照以從事有關的受規管活動的人士，在以下情況下可以獲得豁免：
  - (a) 有關公司並非交易所參與者；及
  - (b) 該公司已根據某份保險單就指明款額及風險獲得保障（不論該保險單只是保障該公司還是保障包括該公司在內的集團公司）；或
  - (c) 該公司是交易所參與者的有關連公司，並且：
    - (i) 已經與這名交易所參與者（作為該公司的執行經紀）訂立客戶合約；及
    - (ii) 已經就該交易所參與者的服務或活動訂立第三者客戶合約或就該交易所參與者的服務或活動承擔責任；或

(d) 該公司不會處理客戶資產。

### *指明風險*

17. 本會建議有關的保險保障應只適用於持牌法團在香港的業務。因此，持牌法團在海外的分公司將不會就其海外業務而可能招致的損失獲得任何賠償保障。

18. 廣義來說，持牌法團因其僱員或其他人士的欺詐作為、錯失及不作為等而承受的風險大同小異。因此，擬推行的建議計劃將會為所有已投保的持牌人就劃一系列的風險提供賠償保障。基本上，《草擬規則》附表 2 所指明的風險都會得到賠償保障。主要風險類別(類似目前受到經紀忠誠保險計劃所保障的風險項目)撮錄於下文：

A. 有關的持牌法團可歸因於以下事件而損失客戶資產(包括由其有聯繫實體所收取或持有的客戶資產)的風險：

- (a) 法團或其有聯繫實體的僱員所干犯的欺詐性或不誠實的作為；
- (b) 在客戶資產由該法團或其有聯繫實體保管的情況下所發生的搶劫或盜竊事件；
- (c) 偽造支票或其他可轉讓票據，或對支票或其他可轉讓票據進行欺詐性竄改；
- (d) 使用資訊系統作欺詐用途；
- (e) 涉及客戶資產的偽造或欺詐性指示。

B. 可歸因於有關持牌法團或其僱員(或其有聯繫實體或其有聯繫實體的僱員)作出的疏忽作為或不作出的作為的損失風險。

### *賠償限額*

19. 根據建議計劃，每名已投保的持牌人就保險單內所有部分(彙總

計算)的每年合計保險保障是 1,500 萬港元。對於保險市場及根據經紀忠誠保險計劃投保的交易所參與者來說，這個賠償水平已證明是可行的。

20. 如某法團同時就超過一類有關的受規管活動，(例如證券交易(第 1 類)及期貨合約交易(第 2 類))而獲發牌，該法團就保險範圍內的所有受規管活動的合計賠償限額，將會增加至 2,500 萬港元(按照保險單內的所有部分彙總計算)。
21. 就計算賠償限額而言，雖然無法按照因進行多項受規管活動所增加的風險而準確地計算出賠償限額，但一般認為基於同一持牌人所維持的共同後勤辦公室及所執行的其他職能，將可推論持牌人所承擔的合計風險將會增加少於一倍。鑑於上述論據及證監會顧問的建議，每名從事多項受規管活動的持牌人的賠償限額，將會增加至 2,500 萬港元，而非 3,000 萬港元。

#### *自行承保款額(免賠額)*

22. 每個持牌法團均須負責每項根據建議計劃而提出的申索的首 300 萬港元的損失或賠償款額。這項免賠額的水平與目前適用於大部分交易商的最低速動資金規定是一致的。

#### *保險費的分攤*

23. 證監會明白到市場人士對於保險費的分攤有很多不同的意見，而基本的原則是要在持牌人之間以公平及貫徹一致的方式進行分攤。證監會已就此徵詢有關方面的意見，並審視過目前的經紀忠誠保險計劃的有關處理方式。
24. 根據經紀忠誠保險計劃，每名聯交所參與者須繳付最低保險費 16,000 港元，而在計算每名參與者須繳付的保險費餘額時，會使用其上年度的成交額作為調整因素。根據目前的政策，每名參與者的保險費平均約為 43,000 港元。
25. 一如目前的經紀忠誠保險計劃，保險人在投標時會就整項計劃報出全年保險費總額，即一個涵蓋所有持牌人的整筆數額或保險費總額。保險人將會在面對來自其他投標保險人的競爭的情況下，根據一般的商業承保風險，及按照在香港的損失歷史，以及該別的預期持續改善程度而評估須收取多少保險費。

26. 經紀忠誠保險計劃涉及的是共同活動，因此有關的風險性質比較相近。然而，建議計劃則有所不同，因為其涉及 5 組不同的活動，而每組活動的風險程度不一。
27. 在投標過程中，保險人需將保險費總額劃分成為 5 筆款項，每筆款項都代表了它們對該組活動的整體風險評估的看法。
28. 根據建議，各類持牌人的最低保險費金額，將會如目前的經紀忠誠保險計劃一樣，維持在大約 16,000 港元的水平(即基本保險費)。每個組別的個別持牌人所需承擔的保險費包括基本保險費(該組別的每個持牌人的基本保險費都是一樣)，以及由以下兩項準則來決定的可調整因素：

a. 受保活動的成交額

這是保險人就這類風險所使用的標準參考基準，用以評估整體的業務活動，作為顯示整體風險的有效指標。然而，在評估第 8 類受規管活動的持牌人(即證券保證金融資)的整體業務活動時，則會採用其年率化每月貸款餘額作為基準。在決定每名持牌人需繳交的保險費餘額時(即從該組別的分攤額扣除來自該組別的各持牌人的基本保險費後所得數額)，會將該商號在該組別的總成交額之中所佔百分比，乘以該組別的總保險費餘額。

b. 個別申索所佔的比重

持牌人若在過去 3 年曾經就申索而獲支付賠償，將需要繳付少量額外附加保險費。然而，這項規定只適用於建議計劃生效之後所出現的申索。

29. 附件 2 載列用以說明保險費分攤方法的例子。
30. 在保險單有效期內加入的新持牌人，將需要按比例繳付基本保險費，而任何持牌人若在保險單有效期內退出，將不會獲得退回任何保險費。
31. 為了考慮及決定保險費的分攤事宜，證監會建議根據該條例第 8(1)(a)條成立一個常務委員會。該常務委員會將會由每類受規管

活動的業內代表及證監會人員組成。

### *持牌法團的信息披露責任*

32. 雖然證監會將會為有關的持牌人就建議計劃作出安排，但本會不會成為保險人與持牌人所訂立的保險單的其中一個合約方。就該建議計劃而言，個別持牌人須自行負責向保險人作出披露。根據保險業慣例，保險人很可能會要求審核所有有關的持牌人的狀況，包括要求有關方面就過往的申索 損失(不論有否投購保險)作出聲明。證監會將會負責進行統籌，及在有需要時，為收集持牌人所需提交的確認資料提供方便。
33. 除了提供所需的基本資料，以便保險人評估有關的風險之外，有關的持牌人亦需確保它們承擔有關披露所有重大資料的法律責任。尤其是，它們必需使其本身信納所提供的任何資料都是準確及完整的。應注意的是，如沒有提供全部所需的資料，保險人有權阻止合約生效，因而可能導致申索得不到賠償。
34. 建議計劃一旦實施之後，每名已投保的持牌人將有責任就申索及可能提出的申索，向保險人及證監會提交報告。有關方面會在接近計劃的生效日期時，就有關的責任及行政細節另函通知持牌人。

### **實施建議計劃的好處**

#### *加強對持牌法團及投資者的保障*

35. 建議計劃旨在以合理成本，就指明風險為持牌法團提供賠償保障。如果已投保的持牌法團因為指明風險而蒙受財政損失，建議計劃將會賠償有關的持牌人，從而減輕有關事件對其財政狀況造成的不良影響，及減低該法團在遇上更嚴重的損失時被迫清盤的可能性。很明顯，此舉有助維持整體金融市場的穩定性，以及提高投資者對香港市場的信心。
36. 對於投資者來說，建議計劃將增加投資者就有關欺詐性作為、錯失或不作為等所招致的損失而獲得持牌法團賠償的機會及金額。

## 實施綜合計劃的好處

37. 為了確保有足夠及貫徹一致的保險保障，證監會認為最有效及最符合成本效益的做法，便是為整個行業內的所有有關持牌人實施一項綜合計劃。因為第一，綜合計劃可減省持牌人在物色、評估及與不同的保險公司(其各自的經驗、財政狀況或履行償付申索責任的能力都不盡相同)進行談判時的行政負擔。同時，亦可以減輕在查核保險規定是否獲得遵守時的行政負擔。
38. 第二，當有更多已投保的商號參加同一項單一計劃時，保險人的整體風險將會更為分散，因而可降低個別持牌人所需支付的平均保險費。
39. 第三，綜合計劃可減輕營運規模較小的持牌法團在物色可接受的保險人投購保險單時所遇到的困難，或避免該等持牌法團就同樣的保險保障而要支付在沒有綜合計劃的情況下可能需要承擔的不合理保險費。
40. 根據證監會的顧問所提供的資料顯示，聯交所參與者如不參加目前的集體計劃而自行物色本身的忠誠保險保障提供者，每名參與者所需支付的保險費額，將遠高於目前的水平。此外，若干商號在物色任何具實質意義的保險保障的過程中，將會遇到不少困難。

## 國際慣例

41. 在專業保險顧問的協助下，證監會檢討過多個海外司法管轄區對交易商所施加的保險及資本規定。
42. 一般來說，根據我們觀察所得，同時執行資本及保險規定可互補長短，維持中介人的財政狀況在適當水平。雖然每個司法管轄區的保險及資本規定各異，但例如美國、澳洲及馬來西亞等多個司法管轄區，都強制規定交易商必須就忠誠、民事法律責任及或專業補償的風險投購保險。

## 招標程序

43. 證監會將自行或透過本會的顧問在香港及國際保險市場就建議計劃進行全面的招標活動。
44. 根據建議，證監會將會在徵詢本會的諮詢委員會的意見和顧及到以下的主要準則後，決定挑選合適的單一或多個保險人：
  - (a) 保險費是否具競爭力；
  - (b) 所提出的條款是否符合所要求的計劃結構及保險單的保障範圍；
  - (c) 保險人的信譽及財政穩健程度(包括信貸評級)；
  - (d) 評估採用單一保險人還是聯席保險人架構的利弊。為了建議計劃的長遠利益著想，預計較理想的安排是由幾個主要保險人來攤分風險；
  - (e) 能否在處理申索方面為投保的持牌法團提供高效率的服務(包括保險人是否在香港設有業務)；及
  - (f) 保險人在承保類似風險方面的經驗，及其在香港市場經營的年期。

## 建議計劃的管理

45. 當建議計劃安排妥當後，便會向需要投購保險的每個持牌法團發出說明通函及繳款通知。
46. 就建議計劃的持續管理工作(例如收集保險費及處理申索)而言，證監會在適當時可能會將有關工作外判予專業服務供應商處理。
47. 一如上述，有關的持牌法團將需要參加建議計劃及支付本身的保險費。它們會在繳付有關保險費之後，收到其保險證明書。



48. 已投保的持牌人需要根據保險證明書及保險單上所列明的規定及程序，就申索 損失或相當可能會導致出現申索 損失的情況通知保險人。在處理申索時，一個由律師行代表所組成的委員會可能會被委任負責就有關的發展，向保險人及證監會提交評估報告，以及確保申索在可行的情況下迅速地得到解決。

## 其他事項

49. 書面意見可以下列形式送交：

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

圖文傳真： 2293 5755

網上呈交： <http://www.hksfc.org.hk>

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

50. 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附件 3的個人資料收集聲明。
51. 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。

證券及期貨事務監察委員會  
2002 年 6 月

**《證券及期貨(保險)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 116(5)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 V 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 —

“期貨合約交易” (dealing in futures contracts) 具有本條例附表 5 第 2 部給予該詞的涵義；

“證券交易” (dealing in securities) 具有本條例附表 5 第 2 部給予該詞的涵義；

“保險人” (insurer) 指 —

(a) 《保險公司條例》(第 41 章)第 6(1)條指明的人；或

(b) 根據香港以外地方的法律經營保險業務並受到規管的人；

“需要保險的人” (person requiring insurance) 指第 3(1)條提述的人；

“保險費” (premium) 指需要保險的人就某段計劃期間須向承保人繳付的保險費；

“保險計劃” (scheme of insurance) 指第 6 條提述的由證監會就某段計劃期間而  
安排的保險計劃；

“計劃集成保險單” (scheme master policy) 指保險計劃的承保人就某段計劃期間  
發出的，並據以向需要保險的人提供第 4 條提述的保險的保險單；

“計劃期間” (scheme period) 指計劃集成保險單提述的保險期間；

“承保人” (underwriter) 指證監會與其就某段計劃期間訂立保險計劃的一個或多於  
一個的保險人。

### 3. 適用

(1) 除第 (2) 及 (3) 款另有規定外，本規則適用於 –

- (a) 根據本條例第 116(1) 條申請發牌進行附表 1 指明的任何受規管活動  
的人；及
- (b) 根據本條例第 116(1) 條獲批給牌照進行附表 1 指明的任何受規管活  
動的持牌法團。

- (2) 本規則不適用於第(1)款提述的並非交易所參與者的人，而該人 –
- (a) 已就附表 2 指明的風險投購不少於附表 3 指明的數額的保險，並已給予證監會 –
- (i) 有關的保險單的副本；及
- (ii) 某負責人員及該人的法律顧問指該人已根據該保險單就該等風險投購該數額的保險的書面確認；或
- (b) 不會處理客戶資產。
- (3) 凡第(1)款提述的人(“A”)是 –
- (a) 根據本條例第 116(1)條獲發牌或尋求發牌進行證券交易或期貨合約交易的交易所參與者；及
- (b) 另一個需要保險的人(“B”) 的有關連法團，而 –
- (i) B 根據本條例第 116(1)條獲發牌或尋求發牌進行證券交易或期貨合約交易；
- (ii) B 並非交易所參與者；
- (iii) B 是 A 的客戶；及
- (iv) A 為 B 就 B 或代 B 的客戶所進行的證券或期貨合約交易以執行經紀的身分行事，而 B 就 A 的作為向其客戶負責；

則 -

- (c) A 須按照第 5 條投購保險並將之保持有效，而 A 及 B 將根據該保險就附表 2 指明的風險得到適用於 A 的附表 3 指明的款額的保險；
- (d) B 無需根據本規則另外投購保險並將之保持有效；及
- (e) 就附表 2 及 3 而言，需要保險的人須視為包括 A 及 B。

#### **4. 就指明風險投購指明款額的保險的責任**

在不抵觸第 5 條的情況下，需要保險的人須就附表 2 指明的風險投購附表 3 指明的款額的保險。

#### **5. 根據保險計劃投購保險並將之保持有效的責任**

需要保險的人須透過 -

- (a) 支付保險費；及
- (b) 遵守計劃集成保險單的條款及條件，

就需要保險的人根據本條例第 116(1) 條獲發牌或將獲發牌的每段計劃期間，根據保險計劃投購第 4 條提述的保險並將之保持有效。

## 6. 證監會須安排保險計劃

為施行第 5 條，證監會須與一個或多於一個保險人安排保險計劃，而根據該保險計劃，需要保險的人在符合以下規定的情況下，有權就某段計劃期間投購第 4 條提述的保險及將之保持有效 –

- (a) 支付保險費；及
- (b) 遵守計劃集成保險單的條款及條件。

## 7. 證監會在安排保險計劃時的角色

(1) 在不局限第 6 條的一般性的原則下，證監會在安排保險計劃時的角色可包括以下任何事宜 –

- (a) 釐定計劃集成保險單的條款及條件；
- (b) 以證監會書面指明的方式向每個需要保險的人收取保險費，並將該等已收取的保險費轉交予承保人；
- (c) 分發承保人所發出的保險證明書予已繳交保險費的需要保險的人；
- (d) 收取來自需要保險的人根據計劃集成保險單提出的申索的通知書，或有關相當可能會導致根據計劃集成保險單提出申索的情況的通知書，並將該等通知書轉交予承保人。

(2) 證監會可聘用具有適當資格的人士的服務，以協助其履行在安排保險計劃方面的任何部分角色。

## 8. 保險費不會獲得退還

需要保險的人按照本規則已繳付的保險費不會獲得退還。

## 9. 同意證監會為安排保險的目的而披露資料

(1) 需要保險的人須向證監會(或根據第 7(2)條協助證監會的任何人)呈交該會為安排保險計劃而可能要求的有關該名需要保險的人或其業務的該等資料。

(2) 凡有關需要保險的人的資料是證監會從該名需要保險的人而取得的，則該名需要保險的人須視為已同意證監會(或根據第 7(2)條協助證監會的任何人)為安排保險計劃而向 -

- (a) 根據第 7(2)條協助證監會的任何人；
- (b) 承保人；或
- (c) 保險人，

披露該等資料。

附表 1

[第 3(1)條]

需投購的保險所關乎的受規管活動

1. 證券交易。
2. 期貨合約交易。
3. 證券保證金融資。



附表 2

需投購的保險所關乎的風險

需要保險的人須就以下風險投購保險及將之保持有效 –

1. 除第 4 段另有規定外，需要保險的人可歸因於以下事項的客戶資產(包括由需要保險的人的有聯繫實體所收取或持有的客戶資產)損失而導致的損失風險 –
  - (a) 需要保險的人(或其有聯繫實體或服務部門)的僱員作出的欺詐或不誠實的作為;
  - (b) 在客戶資產由需要保險的人(或其有聯繫實體)保管的情況下所發生的搶劫或盜竊事件;
  - (c) 偽造支票或其他可轉讓票據，或對支票或其他可轉讓票據進行欺詐性竄改;
  - (d) 使用資訊系統作欺詐用途;
  - (e) 涉及客戶資產的偽造或欺詐性指示。
  
2. 除第 4 段另有規定外，可歸因於以下事項的風險 –
  - (a) 需要保險的人真誠地收到偽鈔;

- (b) 在與根據本條例進行的調查有關連的情況下所招致的，或在其他方面涉及該名需要保險的人所進行的並構成附表 1 指明的受規管活動的費用及開支；
  - (c) 需要保險的人在與釐定其已投購保險的某項損失的款額或關乎該等損失的申索款額有關連的情況下，合理地招致的收費及開支。
3. 除第 4 段另有規定外，可歸因於需要保險的人或其僱員(或其有聯繫實體或該有聯繫實體的僱員，或其服務部門或該服務部門的僱員)作出的疏忽作為或不作出的作為的風險。
4. 第 1、2 及 3 段指明的風險不包括以下各項 –
- (a) 可歸因於需要保險的人在香港以外維持的分支辦事處的損失；
  - (b) 在非關乎需要保險的人進行附表 1 指明的受規管活動的情況下所產生的損失。
5. 就本附表而言 –

“僱員” (employee) 就某人而言，包括現時或曾經是該人的僱員、高級人員或持牌代表的個人，或目前或曾經(不論是根據服務合約或以其他方式)獲該人聘用的個人；

“服務部門” (service bureau), 就某需要保險的人(“A”)而言, 指獲 A 分包 A 在進行附表 1 指明的任何受規管活動時須附帶履行若干職能的責任的人。

附表 3  
投保款額

1. 除第 3 段另有規定外，凡任何需要保險的人根據本條例第 116(1)條獲發牌或尋求發牌進行附表 1 指明的一類受規管活動，則就附表 2 指明的所有風險的每段計劃期間的投保款額是\$15,000,000。
2. 除第 3 段另有規定外，凡任何需要保險的人根據本條例第 116(1)條獲證監會發牌或尋求證監會發牌進行附表 1 指明的多於一類的受規管活動，則就附表 2 指明的所有風險的每段計劃期間的投保款額是\$25,000,000。
3. 就某段計劃期間而言，凡承保人根據計劃集成保險單只須就某需要保險的人超過若干款額的該部分損失或申索負責，則該筆款額不得超逾 \$3,000,000。

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 116(5)條訂立，規定根據本條例第 116(1)條申領牌照的人及獲證監會批給牌照進行若干受規管活動的持牌法團，須根據證監會安排的保險計劃，就指明風險投購指明款額的保險，並將之保持有效。本規則亦訂明就該保險而言，該等申請人及持牌法團須遵守的規定。

(020694)

## 保險費分攤的範例

本範例旨在說明建議的保險費分攤機制在計劃實施後首年的運作方式。由第 2 年開始，在計算個別持牌人的保險費時，可能會考慮到其過往的申索記錄。

假設保險費總額是 3,500 萬元<sup>1</sup>，而保險人已將這筆款項分攤予下列 5 個組別：

a. 身為聯交所參與者的證券交易商

交易商數目：500

組別獲分攤的保險費：2,300 萬元

基本保險費總額： $(500 \times 16,000 \text{ 元}) = 8,000,000 \text{ 元}$

根據成交額而獲分攤的餘額：15,000,000 元

可變數額：上年度交易金額

如商號 A 在過去一個財政年度的成交額是此組別的總成交額的 0.2%，那麼它便須繳付保險費 46,000 元 (16,000 元 + 1,500 萬元  $\times$  0.2%)。

b. 並非身為聯交所參與者的證券交易商

交易商數目：200

組別獲分攤的保險費：650 萬元

基本保險費總額： $(200 \times 16,000 \text{ 元}) = 3,200,000 \text{ 元}$

根據成交額而獲分攤的餘額：3,300,000 元

可變數額：上年度交易金額

c. 身為香港期貨交易所有限公司參與者的商品(期貨合約)交易商

交易商數目：130

組別獲分攤的保險費：450 萬元

基本保險費總額： $(130 \times 16,000 \text{ 元}) = 2,080,000 \text{ 元}$

根據成交額而獲分攤的餘額：2,420,000 元

可變數額：去年買賣的合約張數

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<sup>1</sup> 此為只供說明之用的假設性數額。

d. 並非身為香港期貨交易所有限公司參與者的商品(期貨合約)交易商

交易商數目：20

組別獲分攤的保險費：700,000 元

基本保險費總額： $(20 \times 16,000 \text{ 元}) = 320,000 \text{ 元}$

根據成交額而獲分攤的餘額：380,000 元

可變數額：去年買賣的合約張數

e. 證券保證金融資人

融資人數目：8

組別獲分攤的保險費：300,000 元

基本保險費總額： $(8 \times 16,000 \text{ 元}) = 128,000 \text{ 元}$

根據貸款餘額而獲分攤的餘額：172,000 元

可變數額：去年平均每月貸款額

任何法團如就超過一項有關的受規管活動而獲發牌，並就其所有活動享有 2,500 萬元的賠償上限，那麼它需繳付的總額等於一份基本保險費加可變數額總和。在計算該可變數額時，將會考慮到其去年證券交易金額及去年買賣的期貨合約張數。

## 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《證券及期貨(費用)規則 下的建議牌照費用的諮詢文件》(“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。

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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。



## **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。**



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

附件 3

Consultation Conclusions on the draft  
Securities and Futures (Insurance) Rules  
《證券及期貨(保險)規則》草擬本的諮詢總結

Hong Kong  
September 2002

香港  
2002年9月

## 引言

1. 在 2002 年 6 月 26 日，證券及期貨事務監察委員會（“證監會”）發表諮詢文件，邀請公眾人士就《證券及期貨(保險)規則》的草擬本（“《草擬規則》”）發表意見。
2. 諮詢期於 2002 年 7 月 25 日結束。
3. 本文件旨在概述證監會於諮詢期內接獲的主要意見及本會的回應。
4. 本文件應連同該諮詢文件一併閱讀。

## 諮詢公眾意見

5. 證監會除發出公布以徵詢公眾意見外，亦透過金融服務網絡 (FinNet) 的通訊網絡向所有註冊中介人發放該諮詢文件，並將該文件登載於證監會網站內。
6. 證監會共接獲 9 份回應該諮詢文件的意見書，其中 1 份由 5 家國際經紀行<sup>1</sup>透過其律師集體提交；另外 3 份則分別由香港證券經紀業協會有限公司、證券商協會有限公司及香港律師會證券法例委員會提交。上述意見已登載於證監會網站內。其餘的意見書由 5 名要求本會將其姓名及意見內容保密的人士提交。

## 意見摘要及證監會的回應

7. 回應者一般對本會根據《草擬規則》建議推行的強制性忠誠保

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<sup>1</sup> 高盛(亞洲)有限責任公司、J.P. Morgan、Merrill Lynch (Asia Pacific) Limited、摩根士丹利添惠亞洲有限公司及所羅門美邦香港有限公司。

險計劃(“忠誠保險計劃”)表示支持，並就若干政策及管理事宜提出查詢和發表意見。他們的意見摘要及證監會的回應載於附件 1。

## 諮詢總結

8. 證監會仔細考慮過所收到的意見並經諮詢保險界的顧問後，對《草擬規則》作出若干修訂(經修訂的《草擬規則》載於附件 2)。《草擬規則》的主要修改概述如下：

### 第 1 條：生效日期

9. 為了配合香港聯合交易所有限公司目前為其參與者安排的經紀忠誠保險計劃的屆滿日期，證監會已將《草擬規則》的生效日期修訂為 2003 年 4 月 1 日，即於主體條例的預計實施日期之後生效。

### 第 3 條：適用範圍

#### *合資格的保險人*

10. 部分回應者認為就品質控制而言，《草擬規則》應就包銷忠誠保險計劃的保險人制定最低的規定或資格要求(例如信貸評級、資金限額等條件)。
11. 證監會同意上述意見，並已修改《草擬規則》，規定最低的標準為有關的保險人必須在計劃期間開始當日達到指明的信貸評級。此外，證監會認為將這項規定同時應用於集體或全球保險單的保險人是合適的做法，因持牌法團(並非交易所參與者)可藉著該等保險單申請豁免參與忠誠保險計劃(經修訂的《草擬規則》第 3(3)(b)(i)及 6(2)條與此相關)。

12. 上述指明的信貸評級已載列於經修訂的《草擬規則》附表 4 內。  
本會建議指明的信貸評級應為：
- (i) 穆迪的長期保險財務實力評級為“A”級或以上；
  - (ii) 標準普爾的保險公司財政實力評級為“A”級或以上；或
  - (iii) 惠譽的“Insurer Financial Strength Rating”為“A”級或以上。
13. 除了就保險人的指明信貸評級作出規定外，證監會現建議有關的集體或全球保險單的保險人不得是希望獲豁免參與忠誠保險計劃的持牌法團的有連繫法團(經修訂的《草擬規則》第 3(3)(b)(i)條與此相關)。此舉可避免出現同一集團的公司之間可能互相轉移風險的情況。

#### *提交書面確認以獲得豁免*

14. 至於根據經修訂的《草擬規則》第 3(3)條提交所需的書面確認以獲得豁免一事，證監會為了就此訂定更具體的時限，第 3(3)(c)條現訂明，所需的確認書必須在計劃期間開始的 60 日或之前向證監會提交。
15. 此外，根據經修訂的《草擬規則》第 3(5)條，凡第 3(3)條提述的保險單在計劃期間完結前屆滿，而有關的持牌法團是希望藉著前述計劃獲豁免參與忠誠保險計劃，則該法團須在前一份保險單屆滿後 7 個營業日內，提交證監會一份確認書，述明該法團目前是及自該屆滿時起已根據新的保險單如此投購保險。
16. 另外，為了利便管理，第 3(3)(c)及 3(6)條提述的確認書，須述明該法團是如此投購保險的有關保險單的生效日期及屆滿日

期。

### *不需要有關保險單的副本*

17. 就根據第 3(3)條獲得的豁免而言，原本規定法團須向證監會呈交有關的保險單的副本的草擬條文(第 3(3)(b)(i)(A)條)現已刪除。此舉有助減輕持牌法團或有關的牌照申請人在申請豁免時的行政負擔。

### 附表 2：指明風險

#### *關於在香港經營的業務的指明風險*

18. 若干回應者查詢忠誠保險計劃的風險保障範圍。證監會希望就此述明，忠誠保險計劃旨在就持牌法團在香港進行的相關受規管活動提供特定的保險保障。只要該項受規管活動是在香港進行並形成該持牌法團的部分營業額，且不論該持牌法團的損失是否歸因於其海外的營運，上述保險保障均適用。就此，《草擬規則》附表 2 第 2 條已作出修訂，以更準確地反映這個政策的意向。
19. 另一方面，部分回應者認為附表 2 第 4 條以下的條文(現為經修訂的《草擬規則》附表 2 第 2 條)似乎與保障持牌法團的集體或全球保險單(而有關的持牌法團是打算藉著該集體或全球保險單獲得豁免)無關。我們接納上述意見，並已修訂《草擬規則》，加入第 3(4)條以規定附表 2 第 2 條並不適用於涉及根據第 3(3)(b)條獲得豁免的集體或全球保險單。

## 管理事宜

### *常務委員會*

20. 正如在諮詢文件中建議，證監會將根據《證券及期貨條例》第8(1)(a)條成立一個常務委員會，負責考慮及決定保險費的分攤事宜。該常務委員會將會由每類有關的受規管活動的業內代表及證監會人員組成。
21. 本會從接獲的回應得悉，若干業內團體渴望可以派員參與該常務委員會。就此，證監會確保將於稍後邀請相關的業內團體派出代表加入該常務委員會。
22. 此外，證監會理解到業界普遍關注忠誠保險計劃的成本及其他管理事宜，例如揀選保險人、監管保險人的表現和處理受保人的申索及投訴等。就此，證監會決定相關的管理事宜將會定期提交該常務委員會以作討論。

### 結語

23. 證監會對所有曾就這次公開諮詢提供寶貴建議及意見的業界從業員及對此感興趣的人士致以深切謝意。
24. 為協助忠誠保險計劃的管理，證監會在這項計劃落實後，將向有關的持牌法團發表詳細的指引。

證券及期貨事務監察委員會

2002年9月

## Summary of comments received on the draft Securities and Futures (Insurance) Rules

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Application</i>				
1	s.3(1) and Schedule 1	The draft Rules apply to corporations which are licensed to carry out Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activity under s.116(1) of the Securities and Futures Ordinance ("SFO").	<p>[Name of respondent withheld as requested]</p> <p>We query as to the reason that the SFC has excluded corporations licensed for Type 3 (leveraged foreign exchange) activity from the Rules. Leveraged foreign exchange is under the same regulatory regime and its associated fidelity risks are the same as that of futures and securities.</p>	<p>A corporation licensed for Type 3 regulated activity (not being an introducing agent) is required to maintain an issued and paid-up capital of not less than HK\$30 million and a liquid capital of not less than HK\$15 million. These requirements are more stringent than those applicable to a corporation licensed for Type 1, Type 2 or Type 8 regulated activity where a minimum paid-up capital of HK\$5 million (HK\$10 million if engaged in securities margin financing) and a minimum liquid capital of HK\$3 million are required.</p> <p>In addition, leveraged foreign exchange traders are generally subject to more statutory restrictions on their business operations. For instance, the gross position of a leveraged foreign exchange trader shall not exceed 60 times its liquid capital.</p> <p>Coupled with our experience of minimal infidelity events occurred in relation to leveraged foreign exchange traders, the SFC decided not to require corporations licensed for Type 3 regulated activity to participate in the proposed Scheme at this stage.</p>



	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Exemptions</i>				
2	s.3(2) (now s.3(3))	These Rules do not apply to a corporation which is not an exchange participant upon satisfying certain criteria.	<p>[Linklaters]</p> <p>The exemptions only apply to a licensed corporation that is not an exchange participant. It is unclear why an exchange participant that could be covered by a group or global policy is required to participate in the Scheme. This does not seem to be consistent with the aim to have a single licensing regime in Hong Kong.</p> <p>[Name of respondent withheld as requested]</p> <p>The SFC should apply the same rationale with respect to exchange participants who have insurance equivalent to the Scheme proposed by the Rules. We see that there should be no difference in the risks borne by an exchange participant and a non-exchange participant where they are covered by the same master policy. Thus, there should be provisions in the Rules under which exchange participants can seek exemption.</p>	<p>With a view to maintaining stability of the Hong Kong market and providing licensees which trade Hong Kong securities and/or future contracts with a quality and standardized insurance coverage against the specified risks, the SFC proposed to require all licensed corporations which are participants of the Hong Kong exchanges to participate in the Scheme.</p> <p>In fact, existing securities dealers which are exchange participants are now required to take part in the Brokers' Fidelity Insurance ("BFI") Scheme arranged by the Stock Exchange of Hong Kong Limited regardless of whether or not they are covered by other insurance policies against the same risks.</p> <p>As noted in the Consultation Document (paragraph 12), upon implementation, the new Scheme would replace the BFI Scheme.</p>
3	s.3(2)(a) (now s.3(3))	These Rules do not apply to a corporation which is not an exchange participant if it is insured by another insurance policy against the specified risks for an insured amount not less than that specified in Schedule 3.	<p>[The Securities Law Committee of the Law Society of Hong Kong ("SLC")]</p> <p>It is submitted that if exemptions are to be given on the basis of existing group policies, companies which are part of larger groups which are adequately covered by group insurance policies should be exempt from the compulsory insurance regime without further qualification, save as to the amount of the coverage and undertakings to report and provide information to the SFC.</p>	<p>The Commission considers that only those non-exchange participants which are covered by group policies against the specified risks should be exempted from joining the Scheme for reasons stated in item 2 above.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
4	s.3(2)(a)(ii) (now s.3(3))	For the purpose of exemption, the corporation shall submitted a written confirmation from a responsible officer and its legal advisers that it is insured in relation to the specified risks and for that amount.	[Linklaters]  It is suggested that the exemption requirement should be to be insured in relation to risks “substantially similar” to those specified in Schedule 2, as it is unlikely that a group or global policy would contain exactly the same risks.	In principle, the group or global policy that a licensed corporation relies upon in order to be exempted from participating in the Scheme shall cover (without limitation) the risks as specified in Schedule 2. The SFC considers that the term “substantially similar” would create ambiguity to the market participants.
5	s.3(2)(a)(ii) (now s.3(3))	<i>Ditto</i>	[SLC]  The Committee draws the SFC's attention that any law firm providing such written confirmation will only be able to do so on a heavily qualified basis. In particular, the law firm will need to make assumptions as to matters of fact (e.g. due execution, payment of premium etc.) surrounding circumstances (e.g. nothing that would affect the doctrine of <i>uberrima fides</i> ), application of overseas law and the other assumptions typically associated with legal opinions.	The SFC trusts that as an independent legal practitioner, a law firm shall exercise professional judgment in forming its views for the purposes of the required written confirmation. This confirmation should be submitted to the SFC as a substantive document in the context of regulatory and compliance functions.
6	s.3(2)(b) (now s.3(3))	These Rules do not apply to a corporation which is not an exchange participant if it does not handle client assets.	[Linklaters]  The Submitting Group supports the proposal that the draft Rules should not apply to a licensed corporation that does not handle client assets but suggests this is amended to “hold” client assets.	Agreed. The term “hold” is defined in Schedule 1, Part 1 of the SFO.  Please refer to s.3(3)(a) of the revised draft Rules.

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
7	s.3(3)	A licensed corporation (which is not an exchange participant) may be exempted from the insurance requirements if it is a related company of an exchange participant and it has entered into a client contract with this exchange participant being the first mentioned corporation's executing broker in respect of dealings in securities or futures contracts conducted by the first mentioned corporation.	<p>[Name of respondent withheld as requested]</p> <p>We would like to obtain clarification on whether an intermediary has to deal exclusively with a designated exchange participant (which should be a related company) in order to enjoy the exemption. If so, there may be practical difficulties because:</p> <p>(a) while we generally deal through our related exchange participant for HK-listed products, we may occasionally deal with other unrelated exchange participants (e.g. in contingency situation or for some special transactions).</p> <p>(b) We deal with overseas brokers directly for overseas products.</p>	<p>In order to be exempted from participating in the Scheme, a licensed corporation (which is not an exchange participant) has to in the ordinary course of business deal with an exchange participant(s) which is a related company requiring to take out and maintain insurance (except for emergency situations where alternative arrangements may be made). In this regard, the scheme master policy taken out by the relevant exchange participant(s) will also cover related losses incurred by that licensed corporation.</p> <p>However, if a licensed corporation effects transactions on behalf of its clients with other brokers which are not its related companies (or overseas brokers) and the licensed corporation holds client assets, this licensed corporation would be required to comply with the insurance requirements even though it is not an exchange participant.</p>
<b>Specified risks</b>				
8	s.1 and s.2 of Schedule 2	A person requiring insurance shall take out and maintain insurance that covers the loss of client assets of that person (including client assets that are received or held by an associated entity of that person) attributable to fraudulent or dishonest acts committed by employees of that person (or its associated entity or service bureau), etc.	<p>[SLC]</p> <p>With respect to the risks covered, consideration should be given to include risks attributable to fraud, dishonesty etc. by relevant people relating to defective securities (for example, forged share certificates, CCASS eligible securities which are subject to freezing tracing or other equitable remedies which thereby result in the securities ceasing to be "eligible securities of the CCASS Rules, etc).</p>	<p>According to the SFC's adviser on this matter, the scheme master policy will be drafted as widely as the insurance market will permit. Moreover, there would be coverage under the proposed policy wording in respect of liabilities arising from the inability to complete transactions due to counterfeit or forged securities.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
9	s.1 and s.2 of Schedule 2	<i>ditto</i>	<p>[SLC]</p> <p>The risk of loss is not limited to loss resulting from fraudulent or dishonest acts by licensed corporations, associated entities or their respective employees. There may well be other ways in which fraudulent or dishonest acts can result in loss of client assets.</p>	<p>The risks as specified in Schedule 2 are set out as the minimum requirements in terms of insurance coverage. The SFC notes that in considering the insurance coverage as minimum requirement, one shall also bear in mind the overall cost incurred to the industry.</p>
10	s.1, s.2 and s.3 of Schedule 2  (Paragraphs 18A and 18B of the Consultation Document)	A person requiring insurance shall take out and maintain insurance that covers the risks arising out of the loss of client assets attributable to [paragraph 18A] fraudulent or dishonest acts committed by employees of the person requiring insurance (or its associated entity or service bureau)... and [paragraph 18B] negligent acts done or omitted to be done by the licensed corporation or its employees (or by its associated entity or employees of its associated entity).	<p>[SLC]</p> <p>A critical distinction between the specified risks in paragraphs 18A and 18B of the Consultation Document is that 18A is risk of loss of assets – which does not cover loss attributable to the diminution in the value of assets due to any of the attributable factors. In contrast, 18B is broader in that it covers loss attributable to negligent acts which, on its face, includes diminution in value.</p>	<p>According to the SFC's adviser on this matter, as an usual insurance market practice, paragraph 18A refers to first party claim and specific perils while paragraph 18B is to provide a broader coverage of legal liability or responsibility.</p>
11	s.4(a) (now s.2) of Schedule 2	The risks specified in Schedule 2 shall exclude losses attributable to branch offices maintained outside Hong Kong by the person requiring insurance.	<p>[SLC]</p> <p>While the proposal to limit insurance coverage to licensed corporations' business in Hong Kong is noted and supported, further clarification is needed.</p> <p>(i) If a licensed person takes a client's instruction in Hong Kong and relays it to an overseas broker for execution, is this business being done in Hong Kong in whole or in part?</p>	<p>By receiving a client's instruction in Hong Kong, the transaction concerned is regarded as a business conducted in Hong Kong. The intention is to cover this business against the specified risks.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
			(ii) At which point in the sequential chain of events commencing with a client placing an instruction and ending with the trade being settled and cleared does the transaction cease to be "business in Hong Kong"? This is particularly relevant in the context of licensed corporations which are part of wider groups which collectively take client instructions over the Internet or by email.	If the licensed corporation suffers a loss from a transaction which at some point is supported by or conducted as part of the licensed corporation's operation in Hong Kong and is booked as the turnover of the licensed corporation, the insurance coverage should apply.
12	s.4(a) (now s.2) of Schedule 2  (Paragraph 17 of the Consultation Document)	The risks specified in Schedule 2 shall exclude losses attributable to branch offices maintained outside Hong Kong by the person requiring insurance.	[SLC]  As a technical point, paragraph 17 of the Consultation Document states that the insurance coverage is specific to licensed corporations' businesses in Hong Kong. However, it is phrased differently in the relevant section (s.4(a) (now s.2) of Schedule 2) under the draft Rules, where it states that losses attributable to branch offices maintained overseas will not be covered. This would seem to mean that losses caused to businesses in Hong Kong by fraudulent acts of overseas employees are not covered by the proposed scheme which is different from the intention expressed in the Consultation Document.	Please refer to s.2 of Schedule 2 of the revised draft Rules.
13	s.4(a) (now s.2) of Schedule 2	<i>Ditto</i>	[Name of respondent withheld as requested]  Although the draft Rules require that the insurance coverage "would be specific to the licensed corporations' businesses in Hong Kong", the draft Rules do not specifically confine the coverage to securities and futures products listed on the Hong Kong Exchanges. Clarification is sought on whether the insurance should cover dealings in overseas products.	The insurance will cover dealings in both Hong Kong and overseas products provided that such dealings are businesses of the licensed corporations conducted in Hong Kong.

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
14	s.4 (now s.2) of Schedule 2	The risks specified shall exclude (a) losses attributable to branch offices maintained outside Hong Kong, and (b) losses arising otherwise than in respect of the licensed person's regulated activity concerned.	[Linklaters]  S.4 (now s.2) of Schedule 2 does not appear relevant in relation to a global or group policy.	Agreed. For the purpose of exemption, a group or global insurance policy that a licensed corporation relies upon is not subject to the exclusion provision under s.4 of Schedule 2 (now revised to as s.2 of Schedule 2).  Please refer to s.3(5) of the revised draft Rules.
<b><i>Insured amounts</i></b>				
15	s.1 and s.2 of Schedule 3	Where a licensed corporation undertakes 1 regulated activity requiring insurance, the insured amount is HK\$15 million. If a licensed corporation undertakes more than one regulated activity requiring insurance, the insured amount is HK\$25 million.	[Linklaters]  It is suggested that a reduction on the insured amount should be applied on a group basis where regulated activities are conducted through separate licensed corporations that share common back office and other functions.	Having consulted its adviser on this matter, the SFC recognizes that a reduction of the insured amount due to sharing of back office and other functions on a group basis would not be practicable for the proposed Scheme due to considerable variation in business models among different groups. In that regard, whilst some groups share common functions and management staff for all licensed entities, some maintain separate functional units and different management personnel in respect of each licensed entity. Hence, it would require significant administrative work (and costs) to assess and quantify the relevant impacts on each group causing the Scheme more costly to licensed persons.  Furthermore, the potential loss in relation to back-office staff is but only one of the areas that could give rise to losses under the scheme master policy.  We therefore do not intend to reduce the insured amount lower than the current level of HK\$15 million under the BFI Scheme.

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Level of deductible</i>				
16	s.3 of Schedule 3 (now s.4(2))	Where, in respect of a scheme period, the underwriter is liable under the scheme master policy for only the part of a loss or claim by a person requiring insurance that exceeds a certain amount, that amount shall not exceed HK\$3 million.	<p>[Name of respondent withheld as requested]</p> <p>S.3 of Schedule 3 (now s.4(2)) provides that the excess amount should not exceed HK\$3 million. While these limits may be practical in the case of smaller intermediaries, intermediaries which are part of a large financial group, are normally covered by a master insurance policy taken out by the financial group. Such master policy would normally have a deductible in excess of HK\$3 million due to their size and financial standing. We would therefore suggest that the SFC consider including an exception to s.3 (now s.4(2)) of the draft rules to exclude intermediaries where they are subsidiaries of authorized financial institutions ("AFI") which are already covered by the AFI's master insurance policy. This would enable such intermediaries who would have a large deductible amount in excess of HK\$3 million under their master group policy to continue to provide an effective service to the market, while being covered by their master policy.</p>	<p>In the interest of fairness to all licensed corporations, the SFC decided to follow the existing BFI practice of requiring a (self-insured) deductible amount of HK\$3 million. This deductible amount is consistent with the minimum liquid capital required for dealers.</p> <p>The SFC notes that this level of deductible has been increased over time under the BFI Scheme and is a compromise between the maximum loss the smaller licensees could bear without putting too great a financial burden upon them and also being high enough to enable cost-effective insurance coverage to be purchased in the market.</p> <p>Having consulted with its adviser on this matter, the SFC understands that this level of deductible amount is high for most of the (small) intermediaries and reasonable for the others.</p> <p>In maintaining a level playing field across the market, the SFC considers it inappropriate to provide the suggested exception to licensed corporations which are subsidiaries of AFI.</p>
17	s.3 of Schedule 3 (now s.4(2))	<i>ditto</i>	<p>[Name of respondent withheld as requested]</p> <p>The SFC should be flexible in determining the amount of deductible for the insured licensee. The deductible level should be varied according to the capital base of the insured licensee. As the insurance premium is influenced by the level of the deductible, where the deductible level is higher, the insurance premium should be lower.</p>	<p>In theory, different levels of deductible could be allowed for different licensees. However, practically speaking, this would create additional monitoring duties (and costs) and would cause significant complications in underwriting the Scheme, particularly when the capital base of a licensee changes over the scheme period.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Role of the SFC</i>				
18	s.7(1)	This Rule sets out the SFC's role in arranging the Scheme.	<p>[Linklaters]</p> <p>The Submitting Group assumes that the SFC will consider and provide for the interaction between the Scheme and any other insurance taken out by the insured. For example, in the event of a claim by an insured, there should be co-operation between the Scheme's insurers and the global insurers in the sharing of claims information and settlement of the claims.</p>	<p>On advice of its adviser on this matter, the SFC understands that the usual insurance market practice may allow for the said interaction between insurers.</p> <p>This matter will be included in the tender document and considered in the tender process when selecting the insurer to underwrite the Scheme.</p>
19	s.7(1)(d)	The SFC's role in arranging the Scheme may include receiving notifications of claims or circumstances likely to give rise to claims under the Scheme from persons requiring insurance and transmitting such notifications to the underwriter.	<p>[Linklaters]</p> <p>By receiving notifications of claims or circumstances likely to give rise to claims (under s.7(d) of the draft Rules), the SFC will receive information which may result in a potential conflict of interest between the SFC's role as arranger of the Scheme and its regulatory function. The Group assumes that the SFC has considered this and will ensure that steps are taken to keep the two roles separate. If there were no Chinese Walls or other protection, a licensed corporation may be discouraged from submitting a notice of potential claim under its errors and omissions policy if such information were likely to lead to the SFC taking action against the licensed corporation.</p>	<p>The SFC does not see that there is any conflict of interest arising from performing its regulatory role and its role in arranging the Scheme. As in the current BFI arrangement, the SFC has been notified by exchange participants of any claims or circumstances likely to give rise to claims. Upon receipt of such information, the SFC often assesses the implications of those incidents and determines the appropriate follow-up actions to be taken. The SFC considers that both roles are performed with the same view to maintaining stability of the financial market and protecting the investors.</p>



	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Disclosure of information</i>				
20	s.9(1)	A person requiring insurance shall submit to the SFC (or any person assisting the SFC under s.7(2)) such information about the person requiring insurance and its business as the SFC may require for the purposes of arranging the scheme of insurance.	[The Institute of Securities Dealers Ltd]  The requirement that licensed corporation has to fulfill the duties of disclosures may result in the inability of the licensed corporation to apply for claim. Therefore the required disclosures should be simple and straight forward and in a standard form such that the licensed corporations can comply easily.	It is intended that the required disclosure would be simple and straightforward (both in the setup of the Scheme and the on-going claim procedures) but only to the extent that this does not prejudice securing a cost effective scheme. Typically, if insurers do not receive the required information, they may simply either refuse to quote or price terms conservatively (i.e. higher).
21	s.9(2)(c) (now s.9(2)(b))	A person requiring insurance is to be taken as having consented to the disclosure by the SFC (or any person assisting the SFC under s.7(2)) for the purposes of arranging the scheme of insurance to an insurer, of information relating to the person requiring insurance where that information was obtained by the SFC from the person requiring insurance.	[Linklaters]  (i) It is suggested the reference to insurer in s.9(2)(c) (now s.9(2)(b)) should be deleted as distribution of the information should be limited to persons actually connected with the Scheme.  (ii) The Submitting Group would also expect there to be a confidentiality requirement on these persons.  (iii) Given the potential impact of such disclosure, we assume that a licensed corporation will be notified of or copied on information provided to the insurer – a licensed corporation would be concerned to ensure that the information presented is accurate and current.	Having consulted with its adviser on this matter, the SFC notes that “the insurer” as referred to in s.9(2)(c) (now s.9(2)(b)) is actually a party connected with the Scheme. Hence, it should not be deleted.  These persons would be required to sign relevant confidentiality undertaking.  The SFC considers that it would not be practical to notify (or copy) the licensed corporations of all information provided to the insurer. Indeed, this would not be necessary because by virtue of s.9 of the draft Rules, the Commission would only disclose to the relevant persons such information relating to a licensed corporation where that information was obtained by the Commission from that corporation.  Moreover, the SFC notes that a licensed corporation generally has a right to access information specific to the corporation as held by the insurer on request made to the insurer.

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
<i>Level of premium</i>				
22	-	General comments	<p>[Linklaters]</p> <p>The draft Rules do not apply to a licensed corporation that is a related corporation to an exchange participant where the exchange participant acts as its executing broker in respect of its dealings in securities or futures for or on behalf of its clients, where the licensed corporation is responsible to its clients in respect of the acts of the exchange participant; provided that the exchange participant takes out and maintains insurance under which both the exchange participant and the licensed corporation are insured. It is not clear whether this would result in increased insurance premium for the exchange participant.</p>	<p>This will not result in increased insurance premium for an exchange participant as only one limit is exposed and the premium is intended to be allocated based on the turnover of the exchange participant concerned. Therefore, the turnover would not be double counted.</p>
23	-	General comments	<p>[The Institute of Securities Dealers Ltd]</p> <p>(i) The Scheme should result in a general reduction of premium due to the spreading of risk over a wider spectrum. As our members are concerned about costs, we would like to suggest that the premium payable on the introduction of the Scheme should not be higher than that of the preceding year.</p> <p>(ii) In addition, we would like to see that the securities dealers sector be well represented in the Standing and Advisory Committee on account that it is the largest. The representatives should be given all relevant information concerning the determination of</p>	<p>Although greater economies of scale may be achieved due to increase in the number of participants in the pool (as compared with BFI), the exact premium level cannot be ascertained until completion of the tender process. Furthermore, it is noted that apart from the number of participants, there are other factors affecting the level of premium such as overall market conditions, claim history and trend as foreseen by the insurer.</p> <p>In arranging the Scheme, industry associations including the Institute of Securities Dealers Ltd and Hong Kong Stockbrokers Association Ltd have already joined the SFC's working group. It is also proposed that representatives of the relevant industry associations would become members of the Standing Committee.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
			premium by the insurer and the allocation to the various sectors. We would like to ensure that the allocation of premium is fair to our members.	<p>As regards the Advisory Committee, it should be noted that the composition of that Committee is stipulated by the legislation in that the majority members shall be appointed by the Chief Executive.</p> <p>However, in addressing the respondent's concern, it is now proposed that the selection of and the rationale behind choosing an insurer will also be tabled before the Standing Committee for comments prior to finalization.</p>
24	-	General comments	<p>[Name of respondent withheld as requested]</p> <p>To safeguard the insurance cost for exchange participants, the SFC should consider legislative measures to prevent any substantial increase of premium by the insurer due to extraordinary events that may have material impact on the market (e.g. September 11 event).</p>	The SFC reckons that it may not be appropriate to impose legislative measures in relation to the level of premium, which should be determined by commercial forces in the insurance market following the tender procedures.
<b><i>Allocation of premium</i></b>				
25	-	General comments	<p>[SLC]</p> <p>While it is noted that a single scheme may well have the benefit of lowering the average insurance premium borne by individual licensees for the reasons stated, it must also be pointed out that licensed corporations which are "good" insurance risks are effectively being required to subsidize those licensed corporations which may be viewed by the insurance provider as being of "higher risk".</p>	<p>After consulting its adviser on this matter, the SFC was given to understand that this situation is inevitable to a certain degree in the context of assessing the overall industry risk and is actually the principle of all insurance regardless of whether or not it is effected under a common scheme.</p> <p>However, all efforts would be made to mitigate this effect. For instance, as proposed in the Consultation Document (paragraph 28b), licensees which have claims paid in the past 3 years will have an additional loading applied on their premium.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
26	-	General comments	<p>[Hong Kong Stockbrokers Association Ltd]</p> <p>It is noted that the existing BFI Scheme deals singularly with securities and premium is calculated using annual turnover in dollar terms as a factor. However in the proposed Scheme, the securities dealings in BFI will be merged with futures contracts and the business of margin financing. It is obvious that the added activities are different products involving different risk factors in their nature as well as day-to-day operations. Moreover, margin financing is basically an on-going state of affairs and its nature cannot be readily assessed by using a single factor of turnover as in securities. Therefore, as the question of "fair" premium, we suggest that it should be equitably allocated.</p>	<p>A Standing Committee comprising representatives of the various sectors of the industry will be established to oversee the fair allocation of premium among participating firms.</p> <p>As illustrated in Appendix 2 of the Consultation Document, the insurer will be asked to break the global premium down into 5 amounts with each amount representing its views on the overall risk weighting attaching to that sector.</p>
27	-	General comments	<p>[Linklaters]</p> <p>(i) It is suggested that turnover may not be the best measure of business risk. Under the current proposal, the larger financial institutions will bear a larger portion of the global premium due to their high market share but this does not mean these institutions have a higher overall risk. In fact, many such institutions have their own insurance policies and internal control systems to mitigate risks. These factors should be considered when allocating the premium.</p>	<p>Turnover is a standard objective benchmark used by insurers of these risks to gauge overall business activity and thus is a good indicator of the overall risk.</p> <p>Moreover, the fact that all licensees concerned will be required to pay a minimum "floor" premium regardless of turnover will act as a counter-balance to this issue.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
			<p>(ii) In Appendix 2 of the Consultation Document, an example is given on how the premium will be allocated. For securities dealers the variable amount is described as "last annual transaction values". What business activities are meant to be covered by that term?</p> <p>(iii) The variable amount for securities margin financiers is described as "average monthly loan balance last year". How is this average to be calculated? Is it simply the average of each month end balance?</p>	<p>It means the turnover of all securities dealing transactions conducted in Hong Kong which represents the insured business under the Scheme.</p> <p>However, to avoid double-counting, in calculating insurance premium borne by a licensed corporation, certain part of its turnover, which are related to the transactions executed through an exchange participant being its related company, can be excluded. The turnover excluded would be taken into account in calculating the insurance premium paid by the exchange participant concerned.</p> <p>This amount comes from the total margin loan balance receivable after deducting any specific provision for bad or doubtful debts. It is currently reported by securities margin financiers in their monthly FRR returns (Table 1 in Form 3).</p>
28	-	General comments	<p>[Name of respondent withheld as requested]</p> <p>The premium should not be based on the turnover of the insured's activity as turnover is not indicative of the risks undertaken by the insured licensee. It also results in higher premium to be paid by larger brokers which have higher turnover. We suggest that the capital base, the clients' asset base, the deductible level and the risk control system of the insured as criteria in determining premium. These are material factors in evaluating the risk profile of the insured licensee.</p>	<p>Apart from turnover, claim history would also be taken into account in determining the premium paid by individual licensed corporations after commencement of the Scheme. It would provide an objective reflection of the risk control system of the insured.</p> <p>In addition, as noted in item 27(i), the minimum "floor" premium regardless of turnover will act as a counter-balance to this issue.</p> <p>Any changes in criteria or inclusion of qualitative factors in calculating the insurance premium would unnecessarily complicate the Scheme and increase the overall cost as a consequence.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
29	-	General comments	<p>[Linklaters]</p> <p>The Submitting Group would like further information on how the global premium is allocated between the five different sectors. Would the Standing Committee look at other factors, such as the risk management systems and policies of each entity?</p>	<p>The insurer will be asked to give their allocation having regard to the risks associated with each individual sector. The suggested allocation will then be tabled in a Standing Committee meeting for comments.</p> <p>The general risk profile of each sector (rather than individual entity), including the risk management infrastructure, will be factored in.</p>
30	-	General comments	<p>[Linklaters]</p> <p>(i) Whilst a Standing Committee, comprising members of the financial services industry and the SFC, will be established to consider and determine the allocation of premium, there is no indication in the Consultation Document that the terms and conditions of the Scheme's master policy will be the subject of public consultation, or who, if anyone, other than the SFC will have to approve those terms.</p> <p>(ii) Under s.6 (now s.7) of the draft Rules, the SFC has the ability to determine the terms and conditions of the Scheme's master policy. It is suggested this is also be brought in front of the Standing Committee.</p> <p>(iii) As the Standing Committee is comprised of members of the financial industry and will receive confidential information about other members of the financial industry, the Submitting Group assumes that steps will be taken to ensure that confidentiality is fully respected including subjecting each individual</p>	<p>Terms and conditions of the master policy will not be subject to public consultation. However, as proposed in the Consultation Document (paragraph 44), the SFC, or through its adviser, would arrange a tender of the proposed scheme in the Hong Kong and international insurance market. Selection of the successful insurer or a combination of insurers would be determined by the SFC on advice from its Advisory Committee.</p> <p>The SFC agrees that the selection process shall be run in a transparent manner and the selection of and rationale behind choosing an insurer will be tabled before the Standing Committee for comments prior to finalization.</p> <p>Each member of the Standing Committee will be required to sign a confidentiality undertaking.</p>

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
			member to a confidentiality undertaking.	
31	-	General comments	<p>[Hong Kong Stockbrokers Association Ltd]</p> <p>We believe we need to be represented in the new Standing Committee on the Scheme. Only by this arrangement that we can efficiently and at first hand communicate to the SFC views of our members and vice versa.</p>	In arranging the proposed insurance scheme, industry associations including the Institute of Securities Dealers Ltd and Hong Kong Stockbrokers Association Ltd have already joined the SFC's working group. It is also intended that representatives of the relevant industry associations would become members of the Standing Committee.
32	-	General comments	<p>[Name of respondent withheld as requested]</p> <p>(i) We suggest that the Standing Committee becomes involved in other administrative aspects of the Scheme such as monitoring the negotiation and implementation of the Scheme regarding pricing, performance of the insurer, complaints from the insured etc.</p> <p>(ii) To facilitate efficiency, the insured should be able to deal directly with the insurer.</p>	<p>As mentioned in item 30, the selection process will be run in a transparent manner and the Standing Committee will be consulted with before finalization. In addition, the Standing Committee will also be regularly informed in relation to claims and other administrative matters. Details will be provided in its terms of reference.</p> <p>According to the SFC's adviser on this matter, the insured will have to deal through the appointed insurance broker and it is not unusual for tri-partite meetings to be held.</p>
<b><i>Commencement</i></b>				
33	-	General comments	<p>[SLC]</p> <p>There are no provisions addressing persons who currently benefit from exempt status during the transitional period from the commencement of the SFO and ending on the date(s) on which they either obtain licensed status or terminate their current activities. Presumably this is intentional?</p>	All licensed corporations including existing exempt persons to be deemed as licensed corporations during the transitional period have to comply with the draft Rules on the proposed commencement date (i.e. 1 April 2003).

	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
34	-	General comments	<p>[Linklaters]</p> <p>There is no indication as to how this is going to work in practice during the transitional period of Part V of the SFO. The Group would appreciate some guidance as to how the transitional arrangements will work.</p>	<p>Detailed administrative procedures in relation to the Scheme will be issued to the relevant licensed corporations by the end of this year after completion of the tender process.</p>
<i>Standing of the insurers underwriting the Scheme</i>				
35	-	General comments	<p>[Linklaters]</p> <p>There are no provisions relating to the standing of the insurers who will underwrite the Scheme. The definition of "insurer" is wide in the draft Rules. In order to enhance market confidence, the insurers permitted to underwrite the Scheme should be required to satisfy certain criteria, such as meeting a specified credit rating and meeting a minimum capitalization threshold.</p>	<p>Agreed. The draft Rules have been amended to require that the insurer underwriting the Scheme as well as the insurers of the group or global policies covering the specified licensed corporations which intend to be exempted from participating in the Scheme shall have a credit rating specified by the SFC from time to time.</p> <p>In addition, the insurers of the group or global policies shall not be related corporations of the licensed corporations concerned.</p>
<i>Alternative to joining the Scheme</i>				
36	-	General comments	<p>[Linklaters]</p> <p>As an alternative to joining the Scheme, the SFC should permit entities to buy their own insurance based on minimum requirements specified by the SFC, such as self insured limit, risks to be covered, specified insurance companies that are acceptable to the SFC. This is the practice followed in the United States. This avoids sharing of confidential</p>	<p>At the initial stage of implementation, the SFC considers that it would be beneficial to the industry if the majority licensed corporations are to participate in the common Scheme for the sake of better quality control and economies of scale.</p> <p>Upon accumulation of experience for the industry as a whole, the SFC would review the proposed arrangement and consider</p>



	Section Reference	Details of the Rules	Respondent's Comments	SFC's Response
			information with competitors. In the United States, the regulators periodically inspect the policy.	the suggested alternative in due course.
<i>Negotiation of terms of the common policy</i>				
37	-	General comments	<p>[SLC]</p> <p>When negotiating the common policy, the SFC should ensure that it is a term of the policy that default by one licensee should not affect the coverage of other licensees (although the ultimately defaults by licensees will affect the premium payable by all in future years).</p> <p>[Linklaters]</p> <p>The Submitting Group assumes that notwithstanding that licensed corporations are participating in a single insurance policy, that acts of one insured will not affect the policy as it applies to other insured. For example, the failure by one licensed corporation to comply with the terms should not affect the policy vis-à-vis other participants in the Scheme.</p>	<p>Agreed. This issue will be factored into the negotiations with potential insurers and the intention will be to provide for severability for each licensed corporation insured under the scheme master policy.</p> <p>This matter will be included in the tender document for selection of the insurer of the Scheme.</p>

## List of Respondents

Date of submission	Respondent <Note>
24 July 2002	The Securities Law Committee of the Law Society of Hong Kong
25 July 2002	The Institute of Securities Dealers Limited
26 July 2002	Linklaters (on behalf of Goldman Sachs (Asia) L.L.C., J.P. Morgan, Merrill Lynch (Asia Pacific) Limited, Morgan Stanley Dean Witter Asia Limited, Salomon Smith Barney Hong Kong Limited)
29 July 2002	Hong Kong Stockbrokers Association Limited

<Note> Apart from the respondents mentioned above, the SFC also received submissions from another 5 respondents which requested the SFC not to publish their names in relation to this public consultation.