

**Subcommittee on Draft Subsidiary Legislation under  
the Securities and Futures Ordinance**

**Securities and Futures (Licensed Persons and Registered Institutions)  
Rules**

This paper sets out the proposals of the Securities and Futures Commission (SFC) to ensure that the public and the SFC are provided with appropriate and up-to-date information regarding licensed persons and registered institutions.

**Proposal**

2. The SFC proposes to make the Securities and Futures (Licensed Persons and Registered Institutions) Rules, now in draft at Annex 1, under section 397(1) of the Securities and Futures Ordinance (SFO) (5 of 2002).

**Power to make the Rules**

3. Section 136(1) of the SFO requires the SFC to maintain a register of licensed persons and registered institutions in such form as it considers appropriate. Section 136(2)(e) provides that the register shall contain such particulars (in addition to those specified in section 136(2)(a) to (d)) as are prescribed by rules made under section 397<sup>1</sup> for the purposes of section 136. Clause 3 of the draft Rules sets out the additional particulars to be included in the register.

4. Section 397(1)(a) and (e) of the SFO empowers the SFC to make rules regarding matters incidental to the issue of licences and certificates and registration, and the correction of errors in the register it maintains. Clause 4 of the draft Rules requires the SFC to correct errors in licences, certificates of registration and the register as soon as practicable.

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<sup>1</sup> Section 397(1)(o) empowers the SFC to prescribe, specify or provide for any matter which this Ordinance provides is, or may be, prescribed, specified or provided for by rules made under this section.

5. Section 397(1)(b) of the SFO empowers the SFC to make rules regarding the display of licences and certificates of registration. Clause 5 of the draft Rules specifies the manner and places in which licences and certificates of registration must be exhibited.

6. Section 397(1)(b) of the SFO empowers the SFC to make rules to require the return of licences and certificates of registration for any specified purposes. Clause 6 of the draft Rules requires licensed persons and registered institutions to return their licences or certificates of registration to the SFC for cancellation, amendment or correction under prescribed circumstances.

7. Section 135(3) of the SFO provides that where a person has provided any information to the SFC under Part V and a change in such information occurs, then in such circumstances as are prescribed by rules made under section 397<sup>1</sup> for the purposes of section 135(3), the person shall give notice in writing of the change containing a full description of it within 7 business days of the change. Clause 7 of the draft Rules requires the notification to the SFC, or the SFC and the Monetary Authority (in accordance with section 135(4)) where there are changes in the information previously provided to the SFC under Part V.

8. In accordance with section 398(4) of the SFO, the SFC has consulted the Monetary Authority on the draft Rules. The Legal Services Division of the SFC and the Department of Justice have been consulted on the vires of the draft Rules. The advice is that the draft Rules would be *intra vires* if made as drafted.

### **Major features of the draft Rules**

9. The draft Rules at Annex 1 are to be made by the SFC under section 397(1). They -

- (a) prescribe particulars that are to be entered in the register of licensed persons and registered institutions, and provide for their update and correction;
- (b) require the SFC to correct errors in any licences or certificates of registration and prescribe the

circumstances when licences or certificates need to be returned to the SFC for cancellation or amendment;

- (c) require notification to the SFC, and where applicable, both the SFC and the Monetary Authority, of changes in the prescribed categories of information previously provided to the SFC under Part V of the SFO; and
- (d) require the display of licences or certificates of registration.

10. The SFC considers that the draft rules, by providing the public and the SFC with appropriate and up-to-date information regarding licensed persons and registered institutions, would be consistent with its objectives in sections 4(a) and (c) of the SFO -

- (a) “to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry”; and
- (c) “to provide protection for members of the public investing in or holding financial products”.

### **Public consultation**

11. The SFC released a consultation document and an exposure draft of the Rules on 16 November 2001 for comment by the public. A total of 7 submissions were received. The SFC has considered all the comments received and revised the draft Rules as appropriate. We attach the following documents for Members' reference -

- (a) Consultation Document on the draft Rules, at **Annex 2**, which sets out the underlying policy, together with the exposure draft of the Rules. Members would appreciate that certain proposals in the Consultation Document and the exposure draft of the Rules may have become outdated as the proposals and draft Rules are refined in the light of the comments received during the consultation period. The draft

Rules as revised are at Annex 1 for Members' consideration;  
and

- (b) Consultation Conclusions and Summary of Comments and SFC's Responses, at **Annex 3**, which set out the conclusions from the consultation and the SFC's responses, in the form of a table, to the comments received. A list of respondents is attached to the Consultation Conclusions.

### **Way forward**

12. Subject to Members' views, the SFC will proceed to make the Rules under the authority vested with it and publish the Rules so made in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that the Rules shall come into operation on the commencement of the SFO.

**Securities and Futures Commission**  
**Financial Services Bureau**  
**22 April 2002**

# DRAFT

Annex 1

## SECURITIES AND FUTURES (LICENSED PERSONS AND REGISTERED INSTITUTIONS) RULES

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## **SECURITIES AND FUTURES (LICENSED PERSONS AND REGISTERED INSTITUTIONS) RULES**

(Made by the Securities and Futures Commission under section 397(1)  
of the Securities and Futures Ordinance (5 of 2002))

### **1. Commencement**

These Rules shall come into operation on the day appointed for the commencement of Part V of the Securities and Futures Ordinance (5 of 2002).

### **2. Interpretation**

In these Rules, unless the context otherwise requires –

“CE number” (中央編號) means the central entity identification number assigned by the Commission to an intermediary, an associated entity of an intermediary or a licensed representative;

“complaints officer” (投訴主任) has the meaning assigned to it by section [ ] of the Annual Returns Rules (L.N. of 2002).

### **3. Particulars to be included in register of licensed persons and registered institutions**

(1) In addition to the information required under section 136(2) of the Ordinance, the particulars specified in subsections (2) to (5) must also be included in the register of licensed persons and registered institutions maintained under section 136 of the Ordinance.

(2) The following particulars in respect of a licensed person must be included in the register -

- (a) the licensed person's CE number;
- (b) the date of grant of the licence;
- (c) the effective date of such conditions (if any) of the licence as the Commission considers appropriate;
- (d) the regulated activity or regulated activities for which the person is licensed and the effective date of the approval for

the person to carry on the regulated activity or regulated activities;

- (e) whether or not the licence is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any conditions imposed, and the corresponding effective date;
- (g) a record of each disciplinary action (if any) taken by the Commission against him in Hong Kong under section 194 of the Ordinance (with the exception of a private reprimand under section 194(1)(iii) of the Ordinance), and each disciplinary action recorded is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect;
- (h) in the case of a corporation, its electronic mail address (if any) and web site address (if any); and
- (i) in the case of a corporation, the contact details of the assigned complaints officer of the licensed person (including his correspondence address, telephone and facsimile numbers and electronic mail address (if any)).

(3) The following particulars in respect of a registered institution must be included in the register –

- (a) the registered institution's CE number;
- (b) the date of grant of the certificate of registration under Part V of the Ordinance;
- (c) the effective date of such conditions (if any) of the certificate of registration as the Commission considers appropriate;
- (d) the regulated activity or regulated activities for which the institution is registered and the effective date of the

approval for the institution to carry on the regulated activity or regulated activities;

- (e) whether or not the certificate of registration is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any conditions imposed, and the corresponding effective date;
- (g) a record of each disciplinary action (if any) taken by the Commission against the registered institution in Hong Kong under section 196 of the Ordinance (with the exception of a private reprimand under section 196(1)(ii) of the Ordinance), and each disciplinary action recorded is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect;
- (h) its electronic mail address (if any) and web site address (if any); and
- (i) the contact details of the assigned complaints officer of the registered institution (including his correspondence address, telephone and facsimile numbers and electronic mail address (if any)).

(4) The following particulars in respect of a licensed corporation must be included in the register –

- (a) whether it holds a temporary licence granted under section 117 of the Ordinance; and
- (b) a list of its accredited representatives.

(5) The following particulars in respect of a licensed representative must be included in the register –

- (a) whether he holds a temporary licence granted under section 121 of the Ordinance;



- (b) whether he holds a provisional licence granted under section 120(2) of the Ordinance;
- (c) whether he is approved as a responsible officer and, if so, the regulated activity for which he is responsible; and
- (d) the date of accreditation to his principal.

(6) Where, pursuant to section 135 of the Ordinance and section 7, the Commission is notified of any change in the particulars relating to a licensed person or registered institution, it must make such amendments in the register as it considers necessary to record the change.

(7) Information in the register is to be updated at such intervals as the Commission considers appropriate.

#### **4. Correction of errors**

Where an error exists in the register of licensed persons and registered institutions maintained under section 136 of the Ordinance, or in a licence or certificate of registration, the Commission must correct the error as soon as practicable.

#### **5. Licence or certificate of registration to be exhibited**

An intermediary must exhibit its licence or certificate of registration (as the case may be) in a prominent place at its principal place of business, and if it has more than one place of business, a certified copy of such document must be exhibited in a prominent place at each of its other places of business.

#### **6. Return of licence or certificate of registration**

(1) If an intermediary or licensed representative ceases to carry on any or all regulated activities for which it or he is licensed or registered for any period longer than one month or such longer period as may be approved by the Commission on application by the intermediary or licensed representative, the

licence or certificate of registration of the intermediary or licensed representative (as the case may be) must be returned to the Commission forthwith for cancellation and in any event not later than 7 business days after such cessation.

(2) If the regulated activities for which an intermediary or licensed representative is licensed or registered are varied under section 127 of the Ordinance, the intermediary or licensed representative must produce the licence or certificate of registration (as the case may be) to the Commission for amendment.

(3) If it appears to the Commission that an error exists in a licence or certificate of registration, it may require any person whom it reasonably believes to be in possession of any such licence or certificate of registration (as the case may be) to produce it to the Commission for correction of the error.

#### **7. Changes to be notified by licensed persons and registered institutions**

(1) This section applies in relation to any information that has been provided to the Commission under any provision of Part V of the Ordinance and a change in the information occurs.

(2) Where there is a change in the information under subsection (1), a notice in writing of the change must be given to the Commission or both the Commission and the Monetary Authority (as may be applicable) under section 135(4) of the Ordinance within 7 business days together with a full description of the change.

(3) A licensed corporation must give a notice in writing under subsection (2) if a change occurs in relation to any of the following -

- (a) the licensed corporation's name;
- (b) the licenced corporation's contact details (including its correspondence address, telephone and facsimile numbers, electronic mail address (if any) and web site address (if any));

- (c) the contact details of the assigned complaints officer of the licensed corporation (including his correspondence address, telephone and facsimile numbers and electronic mail address (if any));
- (d) the name and contact details of each person assigned by the licensed corporation to be its main point of contact by the Commission in the event of market emergency or other urgent need (including his telephone and facsimile numbers and electronic mail addresses, during and outside normal office hours);
- (e) the status of the licensed corporation's authorization (however described) granted by an authority or regulatory organization outside Hong Kong for carrying on an activity in a place outside Hong Kong, which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
- (f) the status of the licensed corporation's membership (however described) of a stock exchange or futures exchange outside Hong Kong or participation in a recognized exchange company;
- (g) an individual ceasing to be the licensed corporation's responsible officer;
- (h) matters relating to the licensed corporation's fitness and properness to remain licensed –
  - (i) whether the licensed corporation or any of its directors or responsible officers has been charged with, or convicted of, any criminal offence (other than a road traffic offence not punishable by imprisonment on conviction, irrespective of whether it is so punishable in the case of a second

- and subsequent conviction of the offence), whether in Hong Kong or elsewhere;
- (ii) whether the licensed corporation or any of its directors or responsible officers has been the subject of any disciplinary proceedings (including any inquiries carried out prior to the commencement of disciplinary proceedings) conducted by an authority or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
  - (iii) whether the licensed corporation is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, which are material or relevant to the licensed corporation's fitness and properness to remain licensed;
  - (iv) the licensed corporation's solvency or the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; and
  - (v) any other matters which might reasonably be considered relevant to the fitness and properness of the licensed corporation to remain licensed;
- (i) the licensed corporation's capital and shareholding structure;
  - (j) the licensed corporation's bank accounts relating to the conduct of regulated activities;

- (k) significant changes to the conduct of business in any regulated activity for which the licensed corporation is licensed; and
- (l) the following details in relation to each of its associated entities –
  - (i) in the case where the associated entity is an intermediary or authorized financial institution -
    - (A) the associated entity's name;
    - (B) the associated entity's CE number;
    - (C) whether the associated entity holds any client assets as nominee for any intermediary, other than the licensed corporation, or for the clients of that other intermediary;
    - (D) the date of its becoming an associated entity; and
    - (E) the date of its ceasing to be an associated entity; and
  - (ii) in any other case -
    - (A) the associated entity's name;
    - (B) the associated entity's business address;
    - (C) the name of each executive officer of the associated entity;
    - (D) whether the associated entity holds any client assets as nominee for any intermediary, other than the licensed corporation, or for the clients of that other intermediary;
    - (E) the date of its becoming an associated entity;

- (F) circumstances under which it became an associated entity;
- (G) the date of its ceasing to be associated entity; and
- (H) in the case of its ceasing to be an associated entity, circumstances under which it ceases to be an associated entity and confirmation that all client assets held by it prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of.

(4) A registered institution must give a notice in writing under subsection (2) if a change occurs in relation to any of the following -

- (a) the registered institution's name;
- (b) the contact details of the registered institution (including its correspondence address, telephone and facsimile numbers, electronic mail address (if any) and web site address (if any));
- (c) the contact details of the assigned complaints officer of the registered institution (including his correspondence address, telephone and facsimile numbers and electronic mail address (if any));
- (d) the name and contact details of each person assigned by the registered institution to be its main point of contact by the Commission in the event of market emergency or other urgent need (including its contact telephone numbers, electronic mail addresses and facsimile numbers, during and outside normal office hours);
- (e) the status of the registered institution's membership (however described) of a stock exchange or futures

- exchange outside Hong Kong or participation in a recognized exchange company;
- (f) an individual ceasing to be an executive officer of the registered institution;
  - (g) the date of appointment of any executive officer of the registered institution and for which regulated activity the officer is responsible;
  - (h) the name and residential address of any individual who has been appointed as an executive officer of the registered institution;
  - (i) matters relating to the registered institution's fitness and propriety to remain registered –
    - (i) whether the registered institution or any of its directors or executive officers has been charged with, or convicted of, any criminal offence (other than a road traffic offence not punishable by imprisonment on conviction, irrespective of whether it is so punishable in the case of a second and subsequent conviction of the offence), whether in Hong Kong or elsewhere;
    - (ii) whether the registered institution or any of its directors or executive officers has been the subject of any disciplinary proceedings (including any inquiries carried out prior to the commencement of disciplinary proceedings) conducted by an authority or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;

- (iii) whether the registered institution is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere which are material or relevant to the registered institution's fitness and properness to remain registered; and
- (iv) any other matters which might reasonably be considered relevant to the registered institution's fitness and properness to remain registered;
- (j) significant changes to the conduct of business in any regulated activity for which the institution is registered; and
- (k) the following details in relation to each of its associated entities –
  - (i) in the case where the associated entity is an intermediary or authorized financial institution -
    - (A) the associated entity's name;
    - (B) the associated entity's CE number;
    - (C) whether the associated entity holds any client assets as nominee for any intermediary, other than the registered institution, or for the clients of that other intermediary;
    - (D) the date of its becoming an associated entity; and
    - (E) the date of its ceasing to be an associated entity; and
  - (ii) in any other case -
    - (A) the associated entity's name;
    - (B) the associated entity's business address;



- (C) the name of each executive officer of the associated entity;
- (D) whether the associated entity holds any client assets as nominee for any intermediary, other than the registered institution, or for the clients of that other intermediary;
- (E) the date of its becoming an associated entity;
- (F) circumstances under which it became an associated entity;
- (G) the date of its ceasing to be an associated entity; and
- (H) in the case of its ceasing to be an associated entity, circumstances under which it ceases to be an associated entity and confirmation that all client assets held by it prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of.

(5) A licensed representative must give a notice in writing under subsection (2) if a change occurs in relation to any of the following –

- (a) his name;
- (b) the status of his authorization (however described) granted by an authority or regulatory organization outside Hong Kong for carrying on an activity in a place outside Hong Kong, which, if carried on in Hong Kong, would constitute carrying on a regulated activity;

- (c) the status of his membership (however described) of a stock exchange or futures exchange outside Hong Kong or participantship in a recognized exchange company; and
- (d) matters relating to his fitness and properness to remain licensed—
  - (i) whether he has been charged with, or convicted of, any criminal offence (other than a road traffic offence not punishable by imprisonment on conviction, irrespective of whether it is so punishable in the case of a second and subsequent conviction of the offence), whether in Hong Kong or elsewhere;
  - (ii) whether he has been the subject of any disciplinary proceedings (including any inquiries carried out prior to the commencement of disciplinary proceedings) conducted by an authority or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
  - (iii) whether he is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, which are material or relevant to his fitness and properness to remain licensed;
  - (iv) whether any person has petitioned for a bankruptcy order against him, or he has petitioned for a bankruptcy order against himself; and

(v) any other matters which might reasonably be considered relevant to his fitness and properness to remain licensed.

- (6) Subsections (3), (4) and (5) also apply to –
- (a) a corporation that has applied for a licence;
  - (b) a person who has applied for registration as a registered institution; and
  - (c) a person who has applied for a licence of a licensed representative,

with the modifications made under subsections (7), (8) and (9).

- (7) In subsections (3), (4) and (5), the references to –
- (a) a licensed corporation;
  - (b) a registered institution; and
  - (c) a licensed representative,

are to be construed (as the case may be) as including the references to –

- (d) the intended licensed corporation in respect of which a licence is being applied for;
- (e) the intended registered institution in respect of which registration is being applied for; and
- (f) the intended licensed representative in respect of whom a licence is being applied for.

(8) In subsections (3)(h) and (5)(d), the reference to "to remain licensed" is to be construed as including the reference to "to become licensed".

(9) In subsection (4)(i), the reference to "to remain registered" is to be construed as including the reference to "to become registered".

Chairman,  
Securities and Futures Commission

20022

### **Explanatory Note**

These Rules are made by the Securities and Futures Commission ("the Commission") under section 397(1) of the Securities and Futures Ordinance (5 of 2002). They prescribe the particulars that are to be included in the register of licensed persons and registered institutions, the circumstances when licences or certificates of registration need to be returned to the Commission for cancellation or amendment, and the matters and changes that are required to be notified by licensed persons and registered institutions to the Commission. Further, the Rules require the display of licences or certificates of registration and provide for the correction of errors in the register of licensed persons and registered institutions maintained by the Commission.

**Consultation Document**  
**The Draft Securities and Futures (Licensed Persons And Registered Institutions) Rules (the “draft Rules”)**

**Introduction**

1. The Securities and Futures Bill gives the Commission the necessary rule-making power under clause 384 to prescribe requirements in the subsidiary legislation. The basis for this approach is that, consistent with modern securities legislation such as the UK Financial Services and Markets Act, effective regulation depends upon the regulator having the flexibility to quickly address changing market practices and global conditions, by amending the rules rather than the primary legislation.
2. There are controls already built into the legislative system whereby any rules made by the Commission must be subject to negative vetting by the Legislative Council. In addition, the Commission now releases the draft Rules for public consultation.
3. The SFC has used the FinNet communication network to send copies of this consultation document to registered dealers that have lodged their Financial Resources Rules returns electronically with the SFC via FinNet. Copies of the consultation document are available free of charge at the SFC’s office and may also be found on the SFC’s Internet website at <http://www.hksfc.org.hk>.
4. The public is invited to submit comments before close of business on **17 December 2001**. Written comments may be sent:

By mail to:                   SFC (Licensed Persons and Registered Institutions) Rules  
                                  12/F Edinburgh Tower  
                                  The Landmark  
                                  15 Queen’s Road Central  
                                  Hong Kong

By fax to:                    2501-0375

By on-line submission: <http://www.hksfc.org.hk>

By e-mail to:                [licensed\\_persons\\_rules@hksfc.org.hk](mailto:licensed_persons_rules@hksfc.org.hk)

**Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.**

**You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.**

5. It should be stressed that the draft Rules must be read in conjunction with the Securities and Futures Bill itself (“the Bill”). For example, the public register will contain more information than what are given in section 5 of the draft Rules, such as the name, address or conditions in relation to a licence are provided under section 133(2) of the Bill.

## **Background**

6. A copy of the draft Rules is attached. In short, the draft Rules prescribe requirements of the following:
  - Lodging of documents with the SFC;
  - Particulars to be entered into the public register maintained by the SFC and correction of errors in the public register;
  - Licence or certificate of registration to be exhibited;
  - Return of licence or certificate of registration; and
  - Changes to be notified by licensed persons and registered institutions.
7. The draft Rules is derived from, and will replace, the current Securities (Dealers, Investment Advisers, Partnerships and Representatives) Rules, the Securities (Miscellaneous) Rules, and the Commodities (Dealers, Commodity Trading Advisers and Representatives) Rules with certain significant changes.
8. We have prepared the draft Rules with the aim to:
  - improve the openness and transparency to the market participants and investors;
  - reduce the chance of misleading investors of a person’s licensing status by using an invalid licence; and
  - be kept informed of significant changes to licensed persons and registered institutions.

## **New Terminologies**

9. A couple of the terminologies used in the Bill have recently been changed and are reflected in the draft Rules, these include:
  - from “exempt person” to “registered institution”; and
  - from “exemption” to “certificate of registration”.

## **New Policy Initiatives**

10. Several policy changes have been incorporated into the draft Rules:
- (a) To disclose in the public register the following additional information:
    - history of enforcement/disciplinary actions taken against licensed persons and registered institutions to enable investors to get access to relevant information relating to industry participants including their past conduct; and
    - Name or title of an assigned complaints officer of a licensed corporation to provide a channel for aggrieved investors to lodge complaints against the company or any of its representatives.
  - (b) To ensure prompt reporting from intermediaries and licensed individuals regarding material information which were not previously provided for, such as the assigned complaints officer and contact person in the event of market emergency or other urgent need.

## **Highlights of significant changes of the draft Rules**

11. The Public Register
- (a) The draft Rules provide for additional particulars to be entered in the public register such as:
    - Certain information on waiver or modification granted;
    - Suspension status and disciplinary record in Hong Kong including disciplinary history for a period of five years;
    - The temporary licence status in respect of a corporation;
    - List of licensed representatives accredited to a licensed corporation;
    - Name or title of any assigned complaints officer in respect of a licensed corporation;
    - The provisional or temporary licence status in respect of a representative; and
    - The approval as a Responsible Officer.
  - (b) The SFC would like to particularly draw the attention of interested persons on two of the items mentioned above, namely the disclosure of disciplinary record and contact details of the assigned complaints officer.
  - (c) To provide more information for the public to decide on the intermediaries whom they wish to deal with and in line with the regulatory philosophy adopted by our overseas counterparts, such as the National Association of Securities Dealers Regulation, Inc in the USA

and the Australian Securities and Investments Commission, where enforcement/disciplinary actions taken against firms and individuals are disclosed to the public, the SFC is proposing to add this information to the public register. The period of disclosure is set at five years from the date when the action is effected, and comments on this are welcome.

- (d) With a view to providing an aggrieved investor with more information and awareness of his right to lodge complaints against an intermediary, the SFC considers that it is necessary for a licensed firm to assign a person to be a complaints officer that is made known to the public. As a result, the SFC proposes to add the name or title of this person into the public register.

12. Return of Licence or Certificate of Registration

The Bill provides for a licensed representative to return his licence to the SFC upon cessation of accreditation. To extend the scope, the draft Rules require a licensed corporation or registered institution to return its licence or certificate of registration after it has ceased to engage in any regulated activity.

13. Licensed Persons and Registered Institutions to notify changes

In order to ensure information in the public register and SFC's records are kept up-to-date, the draft Rules require persons who are licensed or registered, or applying to be licensed or registered to notify SFC of relevant changes, including but not limiting to the following:

- Contact details;
- Name or title and contact details of any assigned complaints officer in respect of the corporation;
- Name and contact details of each person assigned to be its main point of contact by the Commission in the event of market emergency or other urgent need;
- When a person ceases to be a responsible officer;
- Issues affecting the person's fitness and properness;
- Significant changes in business activities; and
- Details relating to their associated entities.

- End -



## **Personal Information Collection Statement**

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>1</sup> will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (“PDPO”).

### **Purpose of Collection**

2. The Personal Data provided in your submission to the SFC in response to the Consultation Document on the Draft Securities and Futures (Licensed Persons And Registered Institutions) Rules (“the Consultation Document”) may be used by the SFC for one or more of the following purposes:
  - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
  - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
  - for research and statistical purposes
  - other purposes permitted by law

### **Transfer of Personal Data**

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Document. The names of persons who submit comments on the Consultation Document together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

### **Access to Data**

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

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<sup>1</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

## **Enquiries**

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Document, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer  
The Securities and Futures Commission  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road  
Central  
Hong Kong

**A copy of the Privacy Policy Statement adopted by the SFC is available upon request.**

**SECURITIES AND FUTURES (LICENSED PERSONS AND  
REGISTERED INSTITUTIONS) RULES**

(Made by the Securities and Futures Commission under section 384 of the Securities and Futures Ordinance (Cap. XXX))

**1 Commencement**

These Rules shall come into operation on [ ] 2002.

**2. Citation**

These Rules may be cited as the Securities and Futures (Licensed Persons and Registered Institutions) Rules.

**3. Interpretation**

In these Rules, "CE number" ( ) means the unique identifier assigned by the Commission.

**4. General requirements for documents lodged with the Commission**

(1) Where any document (however described) is required under any of the relevant provisions to be submitted, filed or lodged with the Commission it shall –

(a) in the case of a document other than in electronic form, be –

(i) delivered by hand;

- (ii) sent by post; or
- (iii) with the agreement of the Commission, sent by facsimile transmission; or

(b) in the case of a document in electronic form, be –

- (i) submitted by means of a Commission electronic submission facility; or
- (ii) sent by electronic mail,

to the offices of the Commission.

(2) Except as otherwise provided in the Ordinance, where any document (however described) is required under any of the relevant provisions to be submitted, filed or lodged with the Commission –

(a) in the case of a document (however described) in respect of which a form has been specified under section 388 of the Ordinance, it shall be signed in such manner as may be specified in the directions and instructions;

(b) in any other case, it shall be signed.

(3) Where the Commission is satisfied that an applicant has substantial practical difficulties in submitting, filing or lodging any document (however described) within the time provided under any of the relevant provisions, it may in its discretion by notice in writing extend the time of submission to such extent as it considers necessary.

## **5. Particulars to be entered in the register of licensed persons and registered institutions**

(1) In addition to the information prescribed under section 133(2) of the Ordinance, the particulars specified in subsections (2) to (4) shall also be included in the register.

(2) For a licensed person or a registered institution, the –

- (a) CE number;
- (b) date of granting the licence or the certificate of registration;
- (c) effective date of such conditions of the licence or the certificate of registration (if any) as the Commission considers appropriate;
- (d) regulated activities for which the person is licensed or registered and their respective effective dates;
- (e) status of suspension of the licence or the certificate of registration, if applicable;
- (f) waiver or modification (if any) granted and the corresponding effective date; and
- (g) disciplinary record in Hong Kong (including whether the licence or certificate of registration is currently suspended and disciplinary history for a period of 5 years from the date when the disciplinary order took effect), if applicable.

(3) Additional information in the case of a licensed corporation –

- (a) whether it holds a temporary licence;
- (b) a list of its accredited representatives; and
- (c) name or title of any assigned complaints officer.

(4) Additional information in the case of a licensed representative –

- (a) whether he holds a temporary licence;
- (b) whether he holds a provisional licence;

(c) whether he is approved as a responsible officer and, if so, for which regulated activity; and

(d) the date of accreditation to his principal.

(5) Where, pursuant to section 132 of the Ordinance and section 9, the Commission is notified of any change in the particulars relating to a licensed person or registered institution, it shall make such amendments in the register as it considers necessary to record the change.

(6) Information in the register is to be updated at such intervals as the Commission considers appropriate.

## **6. Correction of errors**

Where an error exists in the register kept under section 133 of the Ordinance, or in a licence or certificate of registration, the Commission may correct the error.

## **7. Licence or certificate of registration to be exhibited**

Every intermediary shall exhibit its licence or certificate of registration, as the case may be, in a prominent place at its place of business, or if it has more than one place of business, at its principal place of business.

## **8. Return of licence or certificate of registration**

(1) If an intermediary ceases to engage in regulated activities, it shall return its licence or certificate of registration to the Commission within 7 days after such cessation.

(2) If the regulated activities for which an intermediary is licensed or registered are varied under section 127 of the Ordinance, it shall produce its licence or certificate of registration (as the case may be) to the Commission for amendment.

(3) If it appears to the Commission that an error exists in a licence or certificate of registration, it may require any person whom it reasonable believes to be in possession of any such licence or certificate of registration (as the case may be) to produce it to the Commission for correction of the error.

## **9. Changes to be notified by licensed persons and registered institutions**

(1) Pursuant to section 132(3) of the Ordinance, changes concerning the matters specified in subsections (2) to (4) shall be notified in writing within 7 days of the change.

(2) To the Commission by a corporation which is licensed or has applied for a licence-

- (a) name of the corporation;
- (b) contact details, including correspondence address, telephone and facsimile numbers and electronic mail address of the corporation;
- (c) name or title and contact details, including correspondence address, telephone and facsimile numbers and electronic mail address, of any assigned complaints officer;
- (d) name and contact details, including daytime and night time telephone (both land line and mobile) and facsimile numbers and daytime and night time electronic mail address, of each person assigned by the corporation to be its main point of contact by the Commission in the event of market emergency or other urgent need;
- (e) status of any authorization (however described) by an authority or regulatory organization outside Hong Kong for the carrying on in a place

outside Hong Kong of an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;

- (f) status of membership (however described) of a stock exchange or futures exchange outside Hong Kong or participation in a recognized exchange company;
- (g) when an individual ceases to be a responsible officer;
- (h) issues relating to its fitness and properness, including –
  - (i) whether it or any of its directors or responsible officers has been charged with, or convicted of, any criminal offence, whether in Hong Kong or elsewhere;
  - (ii) whether it or any of its directors or responsible officers has been involved in any disciplinary proceedings conducted by an organization or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
  - (iii) whether it is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere;
  - (iv) its solvency or the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; and
  - (v) any other matter which might reasonably be considered relevant to the fitness and properness of the corporation to remain, or to become, licensed.



- (i) its capital and shareholding structure;
- (j) the corporation's bank accounts relating to the conduct of regulated activities;
- (k) changes in business activities which might reasonably be expected to have a significant impact on the carrying on of business in any regulated activity for which it is licensed; and
- (l) the following details in relation to each of its associated entities –
  - (i) in the case where the associated entity is an intermediary or authorized financial institution-
    - (A) name;
    - (B) CE number;
    - (C) whether the associated entity holds client assets as nominee for the licensed corporation or its clients;
    - (D) date of its becoming as associated entity; and
    - (E) date of its ceasing to be associated entity.
  - (ii) In any other case-
    - (A) name;
    - (B) business address;
    - (C) name of each executive officer;
    - (D) whether the associated entity holds client assets as nominee for the licensed corporation or its clients;
    - (E) date of its becoming an associated entity;
    - (F) circumstances under which it became an associated entity;

- (G) date of its ceasing to be associated entity; and
  - (H) in the case of a ceasing associated entity, circumstances under which it ceased to be an associated entity and confirmation that all client assets held by the associated entity prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of.
- (3) To the Commission and the Monetary Authority by a registered institution -
  - (a) name of the registered institution;
  - (b) contact details, including correspondence address, telephone and facsimile numbers, and electronic mail address of the registered institution;
  - (c) name and contact details, including daytime and night time telephone (both land line and mobile) and facsimile numbers and daytime and night time electronic mail address, of each person assigned by the institution to be its main point of contact by the Commission in the event of market emergency or other urgent need;
  - (d) name and residential address of any individual who has been appointed as an executive officer;
  - (e) date of appointment of any executive officer and for which regulated activity;
  - (f) date when an individual ceased to be an executive officer; and
  - (g) the following details in relation to each of its associated entities –
    - (i) in the case where the associated entity is an intermediary or authorized financial institution -

- (A) name;
  - (B) CE number;
  - (C) whether the associated entity holds client assets as nominee for the registered institution or its clients for whom the registered institution provides a service that constitutes a regulated activity;
  - (D) date of its becoming as associated entity; and
  - (E) date of its ceasing to be associated entity.
- (ii) In any other case-
- (A) name;
  - (B) business address;
  - (C) name of each executive officer;
  - (D) whether the associated entity holds client assets as nominee for the registered institution or its clients for whom the registered institution provides a service that constitutes a regulated activity;
  - (E) date of its becoming an associated entity;
  - (F) circumstances under which it became an associated entity;
  - (G) date of its ceasing to be associated entity; and
  - (H) in the case of a ceasing associated entity, circumstances under which it ceased to be an associated entity and confirmation that all client assets held by the associated entity prior to its

ceasing to be an associated entity have been fully accounted for and properly disposed of.

- (4) To the Commission by an individual who is licensed or who has applied for a licence-
- (a) his name;
  - (b) status of any authorization (however described) by an authority or regulatory organization outside Hong Kong for the carrying on in a place outside Hong Kong of an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
  - (c) status of membership (however described) of a stock exchange or futures exchange outside Hong Kong or participation in a recognized exchange company; and
  - (d) issues relating to his fitness and properness, including –
    - (i) whether he has been charged with, or convicted of, any criminal offence, whether in Hong Kong or elsewhere;
    - (ii) whether he has been involved in any disciplinary proceedings conducted by an organization or regulatory organization outside Hong Kong by which it is authorized (however described) for carrying on an activity which, if carried on in Hong Kong, would constitute carrying on a regulated activity;
    - (iii) whether he is engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere;

- (iv) whether any person has petitioned for a bankruptcy order against him, or he has petitioned for a bankruptcy order against himself; and
- (v) any other matter which might reasonably be considered relevant to his fitness and properness to remain, or to become, licensed.

**Consultation Conclusions on  
The Draft Securities and Futures  
(Licensed Persons And Registered Institutions) Rules**

**Securities and Futures Commission  
April 2002**

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## **Introduction**

1. A draft Securities and Futures (Licensed Persons And Registered Institutions) Rules (“the Rules”) was published by the Securities and Futures Commission for public consultation on 16 November 2001. This document summarizes the responses received and the Commission’s conclusions.
2. The consultation period ended on 17 December 2001. A total of 7 submissions were received from market participants and other organizations (listed in Annex). These submissions have been published in the Commission’s website at <http://www.hksfc.org.hk>.
3. In addition to comments and suggestions, certain respondents sought clarification on a number of issues. Clarifications will be incorporated into the Rules wherever appropriate.

## **Consultation Responses and Conclusions**

4. This section sets out a summary of the main consultation responses and should be read in conjunction with the Rules. References are made to the specific paragraphs as they appear in the Rules.

### ***Rule 4 – General requirements for documents lodged with the Commission***

#### *Comments on Rule 4(2) - signatures*

5. One respondent commented that the Rule had not clarified as to who might sign a document on behalf of a licensed corporation/registered institution. The respondent further queried whether the Commission would allow other persons approved by the firms as having signing authority.
6. Two respondents observed that the requirement for electronic submissions to be accompanied by digital signatures was not specified.
7. One respondent commented that supplementary information provided to the Commission by e-mail should not require signatures, or such to be followed by hard copies. The current practice does not so require.

#### *The Commission’s response*

8. The Commission takes the view that the documents or forms, apart from the responsible/executive officers, can also be signed by a person authorized by the firm’s board of directors. This will be indicated in the relevant forms.



9. In line with the current requirement, digital signatures should be required in respect of submissions made via electronic means. The Commission will propose an amendment to this effect. However, as regards supplementary information provided via email, we will adopt a pragmatic approach, as has always been the case. Each case will be considered on its own merits.

*Comments on Rule 4(3) – the term “substantial practical difficulties”*

10. One respondent commented that the Rule should define more clearly the circumstances that would amount to “substantial practical difficulties” in submitting the required document within the relevant time. It considered prompt reporting from intermediaries to be in the interest of investors.

*The Commission’s response*

11. The Commission will adopt a pragmatic approach in interpreting the term (as has been its general practice) and will consider each case on its own merits.
12. Further, as Rule 4 applies to all documents lodged with the Commission and not only those lodged by licensed persons and registered institutions, the Commission will move the provisions of Rule 4 to the Securities and Futures (Miscellaneous) Rules.

***Rule 5 – Particulars to be entered in the register of licensed persons and registered institutions***

*General Comments*

13. One respondent observed that it seemed strange that the Commission, and not the Hong Kong Monetary Authority (“HKMA”), would undertake the task of receiving and administering information on registered institutions when supervisory jurisdiction of such institutions was vested in the HKMA. The respondent suggested for the HKMA to maintain such register, and for the setting up of an information cross-referencing mechanism (such as a hyperlink) between the two regulators.
14. The respondent further suggested that intermediaries’ website addresses (where available) should be included in the register, as investors might find this information useful.

*The Commission’s response*

15. The Commission is required to maintain a register which captures pertinent information relating to market intermediaries. We welcome the suggestion regarding the information cross-referencing mechanism and have been working with the HKMA to take this matter further.

16. We also think that the inclusion of web-site and email addresses (where available) in the register desirable. We will propose an amendment to this effect.

*Comments on Rule 5(2)(g) - disciplinary record*

17. Three respondents commented on this area. All supported the disclosure of disciplinary actions taken against intermediaries. One respondent advocated for the retention of such information indefinitely (as practised by the National Association of Securities Dealers of the United States), while another respondent believed that the disclosure period should not be longer than five years and further questioned the propriety of adopting a blanket period of disclosure of all types of disciplinary actions.
18. One respondent commented that the Rule was unclear as to what was being meant by the term “disciplinary history” mentioned in the consultation document.
19. One respondent noted that under the provisions of the Rehabilitation of Offenders Ordinance, certain offences became spent after only a three-year period. If the five-year limit were to be introduced, the respondent would expect this to be reflected in the licensing application process by which disciplinary actions over five years old would become “spent” and not need to be disclosed.

*The Commission’s response*

20. Balancing the different views and practices in this regard, the Commission thinks that the disclosure of 5 years’ disciplinary record is appropriate. A standardised approach will be easily understood by all stakeholders. It is not the Commission’s intention to go beyond what would normally be available from its press releases on disciplinary actions. In any event, minor breaches that do not warrant public disciplinary action will not be disclosed. We will clarify in the Rule that the term “disciplinary record” is confined to public disciplinary actions taken by the Commission.
21. As regards “spent” disciplinary records, the Commission has always taken the view that each and every application should be considered on its own merits. As the proposed disclosure seeks to enhance the openness and transparency of the market, it should not fetter the licensing application process. We may also add that the Fit and Proper Criteria published by the Commission states that a general recency test of seven years may be adopted.

*Comments on Rule 5(3)(c) - complaints officer*

22. One respondent was not persuaded that it would be helpful to include the name of the complaints officer on the register. It suggested that it would be preferable to require each corporation to set up a specific function responsible for dealing with complaints under an employee holding the title of “Complaints Officer”. This would allow complainants to write to the assigned officer without needing to know the individual’s name. It would give firms the flexibility to change the identity of the appointee without having a duty to make a formal notification. The respondent was also concerned in having to expose such an employee to the resulting level of publicity.

23. Another respondent commented that having the names of the responsible officer and complaint officer appearing on the register might mean unnecessary administrative burden on the officers. It might also lead to the abuse of such information. The alternatives of a complaints hotline, and the provision of the names of such officers to the Commission only, might be considered.
24. One other respondent echoed the above sentiments.

25. However, two respondents supported the proposal. One suggested that the Commission should require licensed corporations to set up extensive internal complaint handling procedures, while the other suggested that such officer should ideally be independent of the business functions.

*The Commission's response*

26. Having carefully re-examined the issue, we came to the view that the Rule may be amended to require the disclosure of only the contact details of the assigned complaints officer in the register. We believe that this approach would facilitate the provision of investment services by intermediaries without compromising protection of investors. With respect to the firms' complaint handling procedures, these are covered in the Commission's Code of Conduct (section 12.3) and the Management, Supervision and Internal Control Guidelines (paragraph 5 of Section V), which will also be updated in the light of the Bill (enacted as the Securities and Futures Ordinance on 13 March 2002) and relevant subsidiary legislation.

*Comments on Rule 5(6) - particulars to be entered in the register*

27. Two respondents suggested that the Commission should be required to update the register regularly, with one commenting that failure on the Commission's part to do so would negate the value of the register.

*The Commission's response*

28. The Commission has always taken its functions seriously and endeavored to promptly process relevant data received from licensees. As a matter of practice, the current register is updated automatically (via a computer system) on a daily basis. We will continue to ensure the integrity of the register.

**Rule 6 – Correction of errors**

*Comments*

29. One respondent commented that the use of the word "may" in this paragraph did not place an obligation on the Commission to correct errors on the Public Register. It recommended that the word should be replaced with "will" or "shall".

*The Commission's response*

30. The proposed wording is in accordance with the existing Rules. However, we will change it to "will", "shall" or "must".

## ***Rule 7 – Licence or certificate of registration to be exhibited***

### *Comments*

31. One respondent believed that it was not necessary for intermediaries to exhibit their certificates as the licensing details would be found in the register accessible via the Internet. Another respondent commented that it was not necessary to so exhibit provided that the certificates could be made available for inspection. It added that the requirement did not assist where an intermediary had offices in different locations or where the licence was put on display in a non-prominent place.

### *The Commission's response*

32. The Commission notes that not all members of the public have ready access to the Internet to obtain relevant information from the Commission's website. Furthermore, displaying the certificates would facilitate transparency. The Commission will propose amending this Rule requiring each firm to exhibit its certificate in a prominent place at its principal place of business, and a certified copy at each of its other places of business.

## ***Rule 8 – Return of licence or certificate of registration***

### *Comments on Rule 8(1) - cessation of regulated activities*

33. One respondent commented that the current language was ambiguous as to the extent of "cessation" that would trigger the return of the licence. It further questioned whether the cessation needed to be permanent to trigger such requirement.
34. Another respondent commented that an intermediary might cease to engage in regulatory activities for a short period of time. He should not, under such circumstances, be required to return the certificate. The phrase "ceases to engage in regulated activities" might be replaced by "intends to cease to carry on any regulated activity".
35. One other respondent supported the proposal and suggested that the certificates should be returned immediately upon cessation of regulated activities.

### *The Commission's response*

36. The Commission does not expect an intermediary to return his certificate in respect of a temporary cessation of regulated activities for reasonably a short period. The Rule will be amended to reflect this expectation. In the interest of investor protection, we

further agree with the suggestion for the immediate return of certificates upon cessation of regulated activities, and in any event, not later than seven days.

37. Further, cessation cases may include ceasing to carry out one of a number of regulated activities, ceasing to act for one of a number of principals (usually within the same group of companies), or ceasing to carry out business altogether. The immediate return of certificates in such cases is also appropriate.

### ***Rule 9 – Changes to be notified by licensed persons and registered institutions***

#### *General Comments*

38. One respondent suggested that the application forms should be consistent with the matters set out in this Rule. It further assumed that the Commission would issue a revised Licensing Information Booklet to outline the various notification requirements under clause 132 of the Bill and the Rules.

#### *The Commission's response*

39. The Commission will ensure that the relevant forms are consistent with this Rule. We will also revise the Licensing Information Booklet as assumed.

#### *Comments on Rule 9(1) – notification in writing within 7 days*

40. One respondent commented that given the size and geographical spread of an international group, it might be difficult to notify the Commission of reportable changes in associated companies within such a short period of time. It suggested for the changes in associated companies that operate in Hong Kong to be reported within 7 days, and changes in associated companies operating overseas to be provided quarterly.
41. One respondent suggested that, in the context of the information required, the time limit should be 7 days from the date of knowledge of the change, rather than of the change itself. A corporation might not become aware that a director had been charged with a criminal offence but the time limit for disclosure would commence from the date the director was charged. The respondent appreciated that this would require an amendment of section 132(3) of the Bill, but believed that this was particularly important given that the failure to comply was an offence punishable by a fine.

#### *The Commission's response*

42. The Commission considers prompt notification to be important and is required on investor protection grounds. Licensees that fail to comply will be considered on a case by case basis, including consideration of any reasonable excuse.

*General comments on Rule 9(2) & Rule 9(3) – notification of changes*

43. One respondent invited the Commission to reconsider the differences in treatment between registered institutions and licensed persons in terms of the information required to be notified, bearing in mind the rationale of leveling the playing field between the two categories.
44. One respondent commented that the drafting of these Rules should be tightened in the interests of clarity. Rule 9(2) was intended to be a list of matters, changes to which had to be notified to the Commission. However, when combined with Rule 9(1), Rule 9(2)(h) placed an obligation on a licensed corporation to disclose changes in “issues relating to its fitness and properness”, which was unclear. Likewise, Rule 9(2)(k) pertaining to changes in “business activities” was also not clear.

*The Commission’s response*

45. The Commission notes the level playing field issue and will amend the Rules ensuring similar treatment wherever feasible. Rule 9(3) will be amended to also require registered institutions to notify changes in contact details of any assigned complaints officer, status of membership of a stock or futures exchange, issues relating to fitness and properness, and material changes in regulated business activities.
46. We will also amend these Rules where appropriate to specify the information required. In Rule 9(2)(h), the word “including” will be deleted.

*Comments on Rule 9(2)(b) – contact details*

47. A respondent observed that it was not common in firms having an electronic mail address. It further assumed that it was not mandatory to provide one.

*The Commission’s response*

48. An electronic mail address is not a mandatory requirement. However, firms are required to provide such information if they have one.

*Comments on Rule 9(2)(d) - emergency contacts*

49. One respondent questioned the usefulness of having a night time electronic mail address for the persons who were to be the Commission’s point of contact in the event

of a market emergency or other urgent needs. Another respondent suggested that the contact person be principally based in Hong Kong.

*The Commission's response*

50. The requirement aims to provide an alternative means of communication for emergency situations after office hours. The Commission expects the contact person to be either principally based in Hong Kong and/or that person should be well versed with the firm's operation.

*Comments on Rule 9(2)(h) - issues relating to fitness and propriety*

51. One respondent commented that the requirement on a licensed corporation to notify issues affecting its fitness and propriety might be perceived by market participants as being too onerous in a number of respects.
52. One respondent commented that the disclosure requirements in relation to fitness and propriety should be consistent with the notification requirements imposed by the Code of Conduct. The respondent asked what interaction between the Code of Conduct and this Rule had been proposed upon its coming into force.

*The Commission's response*

53. The Commission thinks that the notification requirement should not be too onerous, as such occurrences should be uncommon. In addition, corporations that fail to notify promptly will be considered on a case by case basis, including consideration of any reasonable excuse.
54. The Commission notes the comment and will update the Code of Conduct to ensure consistency.

*Comments on Rule 9(2)(h)(i) - criminal offence of directors*

55. One respondent queried whether a firm would be in breach of the Rule if its failure to disclose resulted from a director failing to internally notify the firm of a matter set out in the Rule. It also commented that the Rule would require each licensed corporation to set in place an internal compliance reporting structure which might be both difficult and expensive to administer. Such a requirement would be tantamount to an internal and external "whistle-blowing" obligation that arguably went beyond the original regulatory rationale.
56. One respondent commented that it seemed unduly broad to require notification when any director or responsible officer has been charged with a criminal offence.



Currently, notification was not required in respect of traffic offences, and that should be retained.

*The Commission's response*

57. The Commission expects licensed corporations to implement an appropriate internal compliance reporting structure to ensure prompt reporting of relevant information. This is in the interests of protecting investors, the integrity of the market, and the firms' operations. Again, any breach will be considered on a case by case basis, including consideration of any reasonable excuse and all the facts and factors underlying the contravention. In the case of a licensed corporation or registered institution failing to notify changes in information pertaining to its directors or connected persons, the Commission would consider, amongst others, whether such information had been reported to the corporation or institution.
58. It is not the Commission's intention to require the disclosure of minor traffic offences. However, serious ones should be reported. The Commission will propose an amendment to this effect.

*Comments on Rule 9(2)(h)(ii) – disciplinary proceedings*

59. One respondent commented that it was unclear at what point a director or responsible officer would be required to disclose an "involvement" in disciplinary proceedings, and when the 7-day notice period ran. It suggested that notification should be required only when the disciplinary proceedings had been concluded and the outcome of the proceedings made public.
60. One respondent commented that it was unclear whether "disciplinary proceedings" extended to cover inquiries carried out by regulatory organizations before disciplinary action was recommended. It was preferable for the Commission to receive details of material on-going inquiries rather than solely disciplinary proceedings.
61. Another respondent recommended the replacement of the words "involved in" with "the subject of" to avoid the reporting requirement in cases where the person acted as a witness.

*The Commission's response*

62. The Commission takes the view that "disciplinary proceedings" should cover inquiries carried out by regulatory organizations prior to disciplinary action being recommended. To wait until the proceedings had been concluded would very much undermine the Commission's functions. An amendment will be made to clarify this matter. The words "involved in" will also be replaced by "the subject of".

*Comments on Rule 9(2)(h)(iii) - judicial or other proceedings*

63. One respondent requested confirmation that disclosure was only required where the judicial proceedings were material or relevant to a person's continuing fitness and propriety.
64. One respondent commented that the requirement for notification when a person was engaged in "any judicial or other proceedings, whether in Hong Kong or elsewhere" was too wide and vague. It suggested for the inclusion of some de minimis provisions so that, for example, it was not necessary to make a notification whenever proceedings were commenced for small amounts owing to the licensed corporation. Another respondent also commented on the broad scope of the requirement. It believed that some attempt could be made to qualify the scope of this Rule so as to limit it to relevant matters.

*The Commission's response*

65. The Commission notes the comments. It has always been our practice to only require the disclosure of relevant and material details. The Rule will be amended to this effect.

*Comments on Rule 9(2)(h)(iv)- solvency*

66. One respondent noted the overlap with the notification requirement in paragraph 12.5(b) of the Code of Conduct, which provided greater clarity.

*The Commission's response*

67. The Code of Conduct and other guidelines were issued to help clarify the requirements under the various statutory provisions.

*Comments on Rule 9(2)(h)(v) – any other matter*

68. One respondent commented that the requirement was broader than that found in the current legislation and was not specific. It recommended that details of matters in relation to fitness and propriety should be specified.

*Comments on Rule 9(2)(h)(iv) & Rule 9(2)(h)(v)*

69. One respondent commented the "catch-all" provision was very broad-ranging. In addition to imposing a heavy ongoing burden on intermediaries, the judgmental element made it very difficult to ascertain the extent of the reporting obligations. It recommended confining the required information to those matters which could be objectively identified.

*The Commission's response*

70. Although the preceding paragraphs of this Rule have listed out the specific information required, it may not be possible to cover all circumstances. Therefore, these two items are required, and they aim to encourage licensees to make disclosure. As has always been the case, the Commission will adopt a pragmatic stance in administering this Rule.

*Comments on Rule 9(2)(j) – the corporation’s bank accounts*

71. One respondent commented that it was unclear as to the meaning of changes to the “corporation’s bank accounts”.

*The Commission’s response*

72. The Commission requires certain pertinent information relating to all active bank accounts of corporate licensees. The required information will be specified in the licence application form.

*Comments on Rule (9)(2)(k) – changes in business activities*

73. One respondent commented that the drafting of this Rule was somewhat obscure. It would be more straightforward to refer to significant changes to the conduct of business in any regulated activity for which the corporation was licensed.

*The Commission’s response*

74. The Commission accepts the recommendation and will amend this Rule accordingly.

*Comments on Rule (9)(2)(l) & Rule 9(3)(g) - details in relation to associated entities*

75. One respondent observed that there was no reason for the requirement to notify the circumstances under which an entity became an associated entity.
76. Another commented that with respect to the term “associated entities”, a 20% control threshold was too low and the inclusion of 20% commonly-controlled sister companies might be casting the net too wide, particularly where the 20% sister company was engaged in an unrelated business and/or operated outside Hong Kong. The definitions of “associated entities” and “controlling entity” in the Bill were very broad. The respondent questioned the propriety of using these terms in this context. It was also not clear why the Commission and the HKMA required such information. In addition, to impose such a disclosure obligation on intermediaries might be unrealistic, as it might be practically difficult for intermediaries to obtain the required information from upstream or sister associated entities given the 20% control threshold. The respondent suggested an annual or periodic disclosure requirement to reduce the administrative burden on intermediaries.

*The Commission's response*

77. The requirement on the circumstances under which an entity became an associated entity reflected the requirement under section 161(1)(a) of the Bill.
78. Owing to the role of associated entities in safeguarding intermediaries' client assets, the Commission thinks that the on-going reporting requirement is a reasonable one. It also should not place an onerous burden on the intermediaries as associated entities should not change too often.

*Comments on Rule 9(4)(b) - status of any authorization outside Hong Kong*

79. One respondent suggested that the information requested in this Rule should be provided in the annual return rather than within 7 days.

*The Commission's response*

80. Prompt notification of an individual's authorization status in other jurisdictions enables us to carry out supervisory functions more effectively.

*Comments on Rule 9(4)(d)(i) – criminal offence*

81. One respondent requested the Commission to confirm whether the criminal offences referred to only covered those that went to an individual's fitness and propriety. It might not be appropriate to require an individual to disclose a traffic offence. The current position did not so require.

*The Commission's response*

82. Individuals are not expected to disclose details of minor traffic offences. The Commission will propose an amendment to this Rule.

*Comments on Rules 9(4)(d)(ii) & (iii) – disciplinary and judicial proceedings*

83. One respondent commented that the requirement upon a licensed person to disclose any judicial or other proceedings in which he was engaged without reference to the materiality or relevance to the person's fitness and propriety was inappropriate.

*The Commission's response*

84. The Commission agrees with the comment and will amend Rule 9(4)(d)(ii) and Rule 9(4)(d)(iii), and to ensure their consistency with Rule 9(2)(h)(ii) & Rule 9(2)(h)(iii).

### ***Other comments on the Rules - sanctions for breaches***

85. One respondent commented that it was not clear as to the sanctions that would result from a breach of the Rules, while another respondent suggested that the sanctions for non-compliance should be clearly stated.

#### *The Commission's response*

86. The Commission takes the view that any breach of the Rules by licensed persons and registered institutions may constitute misconduct under Part IX of the Bill. However, the Commission would, as in the past, take into account whether the breach is due to substantial practical difficulties experienced by the person concerned. In the case of a licensed corporation or registered institution failing to notify changes in information pertaining to its directors or connected persons, the Commission would consider, amongst others, whether such information had been reported to the corporation or institution. Section 132 of the Bill provides that a contravention of Rule 9 (on changes to be notified by licensed persons and registered institutions), without reasonable excuse, may constitute an offence. However, all the facts and factors underlying the contravention in each case have to be taken into account, and that an offence is committed only if the contravention is without reasonable excuse.

### **Other Issues**

87. One respondent commented that certain issues such as the deposit of security, and rules on stock borrowing and lending arrangements, were not dealt with in the Rules. It assumed that the Commission would make separate rules to deal with those issues.

#### *The Commission's response*

88. Those issues will be addressed either in separate rules or codes to be issued by the Commission.
89. Finally, the Commission would like to thank the respondents who have made valuable suggestions and comments.

**Securities and Futures Commission**  
**April 2002**

## **Annex**

The list of respondents in alphabetical order :

1. Baker & McKenzie
2. Consumer Council
3. Freshfields Bruckhaus Deringer
4. JF Asset Management Limited
5. Linklaters (on behalf of 5 firms)
6. Lloyds TSB Pacific Limited
7. A licensee

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no.  | Clause no.     | Respondent       | Respondent's comments  | SFC's response   |
|---|----------------|------------------|--|--|
| 1.  | General        | Baker & McKenzie | Certain issues such as the deposit of security, and stock borrowing and lending arrangements, are not dealt with in the Draft Rules. It assumes that the SFC will make separate rules to deal with those issues.   | Those issues will be addressed either in separate rules or codes to be issued by the SFC.  |
| <p><b>General requirements for documents lodged with the Commission</b> Please note that as this clause (clause 4 of the draft Rules annexed to the Consultation Paper) applies to all documents lodged with the SFC and not only those lodged by licensed persons and registered institutions, we will move the provisions to the Securities and Futures (Miscellaneous) Rules. The comments made on this clause by respondents will be addressed in the context of the draft Securities and Futures (Miscellaneous) Rules to be issued for public consultation in the next couple of weeks.</p> |                |                  |  |  |
| <p><b>The Public Register</b></p>   |                |                  |  |  |
| 2.  | 3 <sup>1</sup> | Baker & McKenzie | It seems strange that the SFC (and not the HKMA) would undertake the task of receiving and administering information on registered institutions when supervisory jurisdiction of such institutions is vested in the HKMA. Suggestion: A more logical approach perhaps would be for the HKMA to maintain the register in respect of registered institutions and for there to be easy cross-referencing between SFC-maintained and HKMA-maintained information, i.e. use of hyperlink. | The SFC is required to maintain a register which captures pertinent information related to market intermediaries and registered institutions. We welcome the suggestion regarding the information cross-referencing mechanism and have been working with the HKMA to take this matter further. |
| 3.  | 3              | Baker & McKenzie | Suggest to include the address of the intermediary's website (if any) in the public register. Investors may find this information useful.  | We also think that the inclusion of web-site and e-mail addresses (where available) in the register is desirable, and have accordingly amended the clause.   |
| <p><b>Disciplinary Records</b></p>  |                |                  |  |  |
| 4.  | 3(2)(g) &      | Baker & McKenzie | We share the SFC's view that the benefits of   | Noted.   |

<sup>1</sup> All clause numbers in this Summary of Comments have been revised so that they correspond to the clause numbers of the draft Rules now being placed before the Subcommittee

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Summary of comments received and SFC' s response**

| Item no. | Clause no.       | Respondent                     | Respondent's comments   | SFC's response   |
|----------|------------------|--------------------------------|---|--|
|          | (3)(g)           |                                | disclosure (principally, openness and transparency of the market) outweigh the sensitivity involving disclosure. We note in particular that disciplinary actions taken against licensed persons are already posted on the SFC' s website and hence are publicly available.  |  |
| 5.       | 3(2)(g) & (3)(g) | Consumer Council               | <p>The Council supports the policy initiative to require licensed persons and registered institutions to disclose the history of enforcement/disciplinary actions in the public register.</p> <p>The Council notes that the US National Association of Securities Dealers apparently does not specify a period of disclosure regarding regulatory actions on dealers. The Council also sees no reason why such disclosure period should be set. Therefore, the Council suggests that the SFC should allow for the retention of information indefinitely, so as to allow for more information to be provided to investors in order for investors to more clearly decide with whom they wish to deal.</p> | <p>Noted.</p> <p>Balancing the different views and practices in this regard, the SFC thinks that disclosure of 5 years' disciplinary records is appropriate.</p> |
| 6.       | 3(2)(g) & (3)(g) | Freshfields Bruckhaus Deringer | The drafting of this paragraph of the draft Rules suggests that "disciplinary history" will be disclosed for a period of five years from the date that the order takes effect. We are unclear as to what is meant by "disciplinary history" in this context. Will the fact that disciplinary action has been taken trigger disclosure on the Register of  | We have clarified in the Clause that the term "disciplinary history" is confined to public disciplinary actions taken by the SFC.                                |



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Summary of comments received and SFC's response**

| Item no. | Clause no.       | Respondent                     | Respondent's comments   | SFC's response   |
|----------|------------------|--------------------------------|---|--|
|          |                  |                                | <p>more extensive information (for example, in relation to regulatory enquiries, private reprimands, investor complaints) than simply the public action taken? Suggest that the drafting of this paragraph be clarified.</p>  |  |
| 7.       | 3(2)(g) & (3)(g) | Freshfields Bruckhaus Deringer | <p>We support the disclosure of information on the Register relating to public disciplinary action taken, particularly as this information is currently disclosed on the SFC website. Such information will in practice otherwise be available in the public domain for a period greater than five years through media archives. It may be the case that a five year period is appropriate for a disciplinary order regarding a more serious breach but inappropriate in respect of an order regarding breach of a reporting requirement. Therefore the issue is whether the adoption of a blanket period for disclosure ideal. In any event we believe that disclosure should not be for a period of more than five years.</p> | <p>Balancing the different views and practices in this regard, the SFC thinks that disclosure of 5 years' disciplinary records is appropriate.</p> <p>A standardised approach will be easily understood by all stakeholders. It is not the SFC's intention to go beyond what would normally be available from its press releases on disciplinary actions. In any event, minor breaches that do not warrant public disciplinary action will not be disclosed.</p> |
| 8.       | 3(2)(g) & (3)(g) | Freshfields Bruckhaus Deringer | <p>We note in this regard that under the provisions of the Rehabilitation of Offenders Ordinance certain offences become spent after only a three-year period. If the five-year limit were to be introduced, we would expect this to be reflected in the licensing application process by which disciplinary actions over five years old become "spent" and not required to be disclosed.</p>   | <p>The SFC has always taken the view that each and every application should be considered on its own merits. As the proposed disclosure seeks to enhance the openness and transparency of the market, it should not fetter the licensing application process. We may also add that the Fit and Proper Criteria published by the SFC states that a general recency test of seven years may be adopted.</p>  |

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no.                  | Clause no.        | Respondent                     | Respondent's comments  | SFC's response  |
|---------------------------|-------------------|--------------------------------|--|---|
| <b>Complaints Officer</b> |                   |                                |  |   |
| 9.                        | 3(2)(i) & (3)(ii) | Baker & McKenzie               | <p>Agree with the inclusion in the public register of contact details of an assigned complaints officer.</p> <p>Suggest that the complaints officer should ideally be independent of the operational and business functions of the intermediary, and should report directly to senior management. This will ensure that complaints are received and handled by staff who are not directly involved in the subject matter of the complaint.</p>   | <p>Noted.</p> <p>The firms' complaint handling procedures are covered in the SFC Code of Conduct (section 12.3) and the Management, Supervision and Internal Control Guidelines (paragraph 5 of Section V), which will also be updated in the light of the Securities and Futures Ordinance (SFO) provisions and relevant subsidiary legislation.</p>           |
| 10.                       | 3(2)(i) & (3)(i)  | Freshfields Bruckhaus Deringer | <p>We are not persuaded that it would be helpful to include the name of the complaints officer on the Register. In our view it would be preferable to require each registered corporation to set up a specific function responsible for dealing with complaints under an employee who held the title of "Complaints Officer". This could be done by amending the requirement in the Registered Persons Code (12.3) and the Code on Management, Supervision and Internal Control Guidelines for Registered Persons (V.5). This would allow complainants to write to the "Complaints Officer" at the registered corporation without needing to know the individual's name. It would also give the firm flexibility to change the identity of the appointee without being under a duty to make a formal notification.</p> | <p>Having carefully re-examined the issue, we came to the view that the Clause may be amended to require the disclosure of only the contact details of the assigned complaints officer in the register. We believe that this approach would facilitate the provision of investment services by intermediaries without compromising protection of investors.</p> |
| 11.                       | 3(2)(i) & (3)(i)  | Freshfields Bruckhaus Deringer | <p>We have concerns about the inclusion of the name of an employee who may not be a senior</p>   | <p>As above.</p>  |

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no. | Clause no.       | Respondent                    | Respondent's comments  | SFC's response  |
|----------|------------------|-------------------------------|--|---|
|          |                  |                               | management employee on the Register: it would not be appropriate to expose such an employee to the high level of publicity that would result.  |   |
| 12.      | 3(2)(i) & (3)(i) | Consumer Council              | <p>The Council supports the proposal relating to the provision of name or title of a complaints officer.</p> <p>Suggest that the SFC should require licensed corporations to set up internal complaint handling procedures, including information on:</p> <ul style="list-style-type: none"> <li>■ details of the assigned complaints officer, e.g. name, title and contacts;</li> <li>■ how the complaint will be handled;</li> <li>■ acknowledgment of complaint and response to complainant;</li> <li>■ what can the complainant do if he is still not satisfied; and</li> <li>■ how to access the SFC's public register.</li> </ul> <p>The complaints handling procedures should be outlined in the form of pamphlets to be made available to clients and a notice making reference to the procedures should be displayed in the public area of each branch of the licensed person or institution. This is to ensure that in cases where pamphlets are not available, or are not directly visible, clients are made aware of the complaints handling procedures.</p> | <p>Noted.</p> <p>The firms' complaint handling procedures are covered in the SFC Code of Conduct (section 12.3) and the Management, Supervision and Internal Control Guidelines (paragraph 5 of Section V), which will also be updated in the light of the Bill provisions and relevant subsidiary legislation.</p> |
| 13.      | 3(2)(i) & (3)(i) | Other respondent <sup>2</sup> | Having the names of the responsible officer and complaint officer to appear on the public register   | Having carefully re-examined the issue, we came to the view that the Clause may be  |

<sup>2</sup> The respondent has not given consent to disclose its identity.

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no.   | Clause no.       | Respondent  | Respondent's comments  | SFC's response  |
|--|------------------|---|--|---|
|  |                  |   | <p>may mean unnecessary administrative burden on these officers.</p> <p>Since we can never stop insensible or abusive use of such information, public access to these information is undesirable.</p> <p>Suggestion: a hotline should be made available to investors; and to provide the names and titles of responsible officers and designated complaint officers to the SFC only.</p> | <p>amended to require the disclosure of only the contact details of the assigned complaints officer in the register. We believe that this approach would facilitate the provision of investment services by intermediaries without compromising protection of investors.</p>                                |
| 14.  | 3(2)(i) & (3)(i) | Lloyds TSB Pacific Limited                                      | <p>We do not consider it appropriate for a specific person to be named as the Complaints Officer and be known to the public. The public can be informed that complaints should be addressed to the Complaints Officer at the registered firm. The name of the Complaints Officer can be notified to SFC.</p>   | As above.   |
| <b>Particulars to be entered in the register</b> |                  |   |  |   |
| 15.  | 3(7)             | Linklaters (on behalf of Submitting Group Members) <sup>3</sup> | <p>SFC should be required to update the register regularly and without delay.</p>  | <p>The SFC has always taken its functions seriously and endeavors to promptly process relevant data received from licensees. As a matter of practice, the current register is updated automatically (via a computer system) on a daily basis. We will continue to ensure the integrity of the register.</p> |

<sup>3</sup> Submitting Group Members include Credit Suisse First Boston (Hong Kong) Limited, Goldman Sachs (Asia) L.L.C., J.P. Morgan, Morgan Stanley Dean Witter Asia Limited, Salomon Smith Barney (Hong Kong) Limited and UBS Warburg.

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Summary of comments received and SFC's response**

| Item no.   | Clause no. | Respondent                     | Respondent's comments  | SFC's response  |
|--|------------|--------------------------------|--|---|
| 16.  | 3(7)       | Freshfields Bruckhaus Deringer | We do not understand why there is not a requirement on the SFC to update the Register at regular intervals when the SFC has placed a requirement on a registered firm or person to disclose to the SFC changes to certain public information within 7 days. We recommend the introduction of a requirement to update the Register on a regular basis; failure to do so will otherwise negate the value of a public register and the required regular disclosure. | As above.   |
| <b>Correction of Errors</b>                                  |            |                                |  |   |
| 17.  | 4          | Freshfields Bruckhaus Deringer | Use of the word "may" in this paragraph does not place an obligation on the SFC to correct errors on the Register; we recommend that "may" be replaced with "will" or "shall".   | The proposed wording is in accordance with the existing Rules. However, we have changed it to "must".   |
| <b>Licence / certificate of registration to be exhibited</b> |            |                                |  |   |
| 18.  | 5          | JF Asset Management Ltd.       | As registration details of all intermediaries are contained in the public register which can be accessed easily by existing and potential clients, we consider that there is little value in displaying the certificate in the place of business.  | The SFC notes that not all members of the public have ready access to the Internet to obtain relevant information from our website. Furthermore, displaying the certificates would facilitate transparency. We will propose amending this Clause to require each firm to exhibit its certificate in a prominent place at its principal place of business, and a certified copy at each of its other places of business. |
| 19.  | 5          | Freshfields Bruckhaus Deringer | We do not believe that it is necessary for an intermediary to exhibit its licence provided that it is available for inspection during business hours at  | The SFC notes that not all members of the public have ready access to the Internet to obtain relevant information from its website.   |

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no.  | Clause no. | Respondent                     | Respondent's comments  | SFC's response  |
|---|------------|--------------------------------|--|---|
|   |            |                                | the intermediary's principal place of business. The requirement for an intermediary to exhibit its licence does not assist where an intermediary has offices in different locations or where the licence is put on display in a place that is not suitably prominent.  | Furthermore, displaying the certificates would enhance transparency. We have amended the Clause to require each firm to exhibit its certificate in a prominent place at its principal place of business, and a certified copy at each of its other places of business.  |
| <b>Return of Licence or Certificate of Registration</b> |            |                                |  |   |
| 20.   | 6(1)       | Baker & McKenzie               | The current language is ambiguous as to the extent of "cessation" that will trigger the return of the licence or the certificate of registration. For example, must the cessation be permanent?  | The SFC does not expect an intermediary to return his certificate in respect of a temporary cessation of regulated activities for a reasonably short period. We have amended the Clause to reflect this expectation.<br><br>Cessation cases may include ceasing to carry out one of a number of regulated activities, ceasing to act for one of a number of principals (usually within the same group of companies), or ceasing to carry out business altogether. |
| 21.   | 6(1)       | Freshfields Bruckhaus Deringer | An intermediary may cease to engage in regulatory activities for a short period but may intend to resume carrying out regulated activities again within the period of the licence. In these circumstances the intermediary should not be under an obligation to return the licence. We suggest that "ceases to engage in regulated activities" is replaced by "intends to cease to carry on any regulated activity". | As above.   |

**Draft Securities and Futures (Licensed Persons and Registered Institution) Rules  
Summary of comments received and SFC's response**

| Item no.                         | Clause no. | Respondent   | Respondent's comments  | SFC's response  |
|----------------------------------|------------|--|--|---|
| 22.                              | 6(1)       | Consumer Council                                   | The Council supports the proposal to require notification of the SFC of changes.<br><br>Suggestion: It could be amended to say immediately and no longer than seven days.  | Noted.<br><br>Agreed. The Clause has been accordingly amended.  |
| <b>Notification Requirements</b> |            |  |  |   |
| 23.                              | 7          | Linklaters (on behalf of Submitting Group Members) | Suggest application forms to be consistent with the matters set out in Clause 7 of the draft Rules   | The SFC will ensure that the relevant forms are consistent with this Clause.  |
| 24.                              | 7          | Linklaters (on behalf of Submitting Group Members) | We assume that the SFC will issue a revised version of its Licensing Information Booklet, setting out in one place the requirements relating to applications for a licence/registration and the on-going notification requirements under clause 135 of the SFO and the draft Rules.  | We will revise the Licensing Information Booklet as assumed.  |
| 25.                              | 7 (l)      | JF Asset Management Ltd.                           | Given the size and geographical spread of an international Group, it may be difficult to notify the SFC of reportable changes in associated companies within such a short period of time. Suggest to report the changes in associated companies that operate in HK within 7 days and details of associated companies operating overseas could be provided quarterly.                                   | The SFC considers prompt notification to be important and is required on investor protection grounds. Licensees that fail to comply will be considered on a case by case basis, including consideration of any reasonable excuse. |
| 26.                              | 7          | Freshfields Bruckhaus Deringer                     | The drafting of this paragraph should be tightened for clarification. Para. 7(3) is intended to be a list of matters, changes to which must be notified to the SFC (and which must therefore reflect the matters that will be disclosed to the SFC on an application for a licence). However, when combined with para. 7(1), para 7(3)(h) places an obligation on a registered corporation to disclose | Noted. We have amended these Clauses where appropriate to specify the information required. In Clause 7(3)(h), the word "including" has been deleted.   |

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Summary of comments received and SFC's response**

| Item no. | Clause no.        | Respondent   | Respondent's comments  | SFC's response  |
|----------|-------------------|--|--|---|
|          |                   |  | changes in "issues relating to its fitness and propriety"(h), which we feel is unclear, and changes in "changes in business activities" (k). We suggest that clause 7 be redrafted to ensure that the information to be disclosed is properly defined.   |   |
| 27.      | 7(1)              | Freshfields Bruckhaus Deringer                     | We suggest (in the context of the information required) that the time limit should be 7 days from the date of knowledge of the change, rather than of the change itself. For example, a corporation may not become aware that a director has been charged with a criminal offence but the time limit for disclosure would commence from the date that the director was charged. We appreciate however that this would require amendment of s135(3) of the SFO but this is particularly important given the failure to comply is an offence punishable by a fine. | The SFC considers prompt notification to be important and is required on investor protection grounds. Licensees that fail to comply will be considered on a case by case basis, including consideration of any reasonable excuse. |
| 28.      | 7(3)(b)           | Linklaters (on behalf of Submitting Group Members) | It is not common for the corporation itself to have an electronic mail address and we assume it is not mandatory to provide one.   | An electronic mail address is not a mandatory requirement. However, firms are required to provide such information if they have one.  |
| 29.      | 7(3)(d)           | Linklaters (on behalf of Submitting Group Members) | We question the usefulness of having a night time electronic mail address for the persons who are to be the SFC's point of contact in the event of market emergency or other urgent need.  | The requirement aims to provide an alternative means of communication for emergency situations after office hours.  |
| 30.      | 7(3)(d) + 7(4)(c) | Baker & McKenzie                                   | Suggest requiring the contact person to be principally based in HK.  | The SFC expects the contact person to be either principally based in HK and/or that person should be well versed with the firm's operation.   |



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Summary of comments received and SFC's response**

| Item no. | Clause no. | Respondent                     | Respondent's comments   | SFC's response  |
|----------|------------|--------------------------------|---|---|
| 31.      | 7(3)(h)    | Baker & McKenzie               | Requirement on a licensed corporation to notify the SFC of issues affecting its fitness and properness may be perceived by market participants as being too onerous in a number of respects.  | The SFC thinks that the notification requirement should not be too onerous, as such occurrences should be uncommon. In addition, corporations that fail to notify promptly will be considered on a case by case basis, including consideration of any reasonable excuse.  |
| 32.      | 7(3)(h)(i) | Baker & McKenzie               | <p>Under Clause 7(3)(h)(i), a licensed corporation is required to disclose not only matters relating to the licensed corporation itself but also those relating to its directors or responsible officers. If a director fails internally to notify the licensed corporation of a matter set out in this clause, and accordingly the licensed corporation does not report the matter, will the licensed corporation be in breach of the Clause?</p> <p>Further, if an employee discovers such a matter, should that employee be obliged to report the matter to the licensed corporation? Logically this must follow if the licensed corporation itself has an absolute obligation to report the matter. If this is indeed the case, the SFC is in effect requiring each licensed corporation to set in place an internal compliance reporting structure which may be both difficult and expensive to administer. Such a requirement will be tantamount to any internal and external "whistle-blowing" obligation that arguably goes beyond the original regulatory rationale.</p> | The SFC expects licensed corporations to implement an appropriate internal compliance reporting structure to ensure prompt reporting of relevant information. This is in the interests of protecting investors, the integrity of the market, and the firms' operations. Again, any breach will be considered on a case by case basis, including consideration of any reasonable excuse and all the facts and factors underlying the contravention. In the case of a licensed corporation or registered institution failing to notify changes in information pertaining to its directors or connected persons, the SFC would consider, amongst others, whether such information had been reported to the corporation or institution. |
| 33.      | 7(2)(h)    | Freshfields Bruckhaus Deringer | It is important that any requirement to disclose matters in relation to fitness and propriety should be consistent with the notification requirements   | The SFC notes the comment and will update the Code of Conduct to ensure consistency.  |

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Summary of comments received and SFC' s response**

| Item no. | Clause no.  | Respondent   | Respondent's comments  | SFC's response   |
|----------|-------------|--|--|--|
|          |             |  | imposed upon a firm by the Code of Conduct for Registered Persons. What interaction is proposed between the Code of Conduct and these Rules when they are brought into force?  |  |
| 34.      | 7(3)(h)(i)  | Linklaters (on behalf of Submitting Group Members) | It seems unduly broad to require notification when any director or responsible officer has been charged with any criminal offence. The current position is that notification is not required in respect of traffic offences, and we suggest that the current position is retained.   | It is not the intention to require disclosure of minor traffic offences. However, serious ones should be reported. We have introduced an amendment to this effect.   |
| 35.      | 7(3)(h)(ii) | Linklaters (on behalf of Submitting Group Members) | It is unclear at what point a director or responsible officer would be required to disclose an "involvement" in disciplinary proceedings, and therefore when the 7 day notice period runs from. We suggest that notification should be required only when the disciplinary proceedings are concluded and (if applicable) the outcome of the proceedings is made public.  | The SFC takes the view that "disciplinary proceedings" should cover inquiries carried out by regulatory organizations prior to disciplinary action being recommended. To wait until the proceedings had been concluded would very much undermine the SFC functions. An amendment will be made to clarify this matter. The words "involved in" have also been replaced by "the subject of". |
| 36.      | 7(3)(h)(ii) | Freshfields Bruckhaus Deringer                     | It is not clear whether "disciplinary proceedings" extends to cover inquiries carried out by regulatory organization before disciplinary action is recommended. We suggest that it would be preferable for the SFC to receive details of material ongoing enquiries rather than solely disciplinary proceedings. In the UK context, under the powers set out in the Financial Services and Markets Act 2000, investigators will be appointed before the issue of a warning notice, which would fall within the meaning of "disciplinary proceedings". As the position stands, the UK | As above.  |

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|----------|--------------|--|--|--|
|          |              |  | enquiry would not fall to be disclosed to the SFC under the Draft Rules.   |  |
| 37.      | 9(3)(h)(ii)  | Freshfields Bruckhaus Deringer                     | We recommend the replacement of the word "involved" in the context of disciplinary proceedings with "the subject of": this would assist to clarify that involvement when acting as a witness of fact or an expert witness (which would not go to fitness or propriety unless the individual was the subject of the enquiry) will not be caught.  | As above.  |
| 38.      | 7(3)(h)(iii) | Freshfields Bruckhaus Deringer                     | Please confirm that this paragraph is only intended to require the disclosure of judicial proceedings insofar as they are material or relevant to a registered person's continuing fitness and propriety.  | It has always been our practice to only require the disclosure of relevant and material details. The Clause has been amended to this effect. |
| 39.      | 7(3)(h)(iii) | Linklaters (on behalf of Submitting Group Members) | A requirement for notification when a person is engaged in "any judicial or other proceedings, whether in HK or elsewhere" is very wide and vague. We suggest that, at least, there should be some de minimis provision so that, for example, it is not necessary to make a notification whenever proceedings are commenced against customers or counterparties for small amounts owing to the licensed corporation. | As above.  |
| 40.      | 7(3)(h)(iii) | Baker & McKenzie                                   | The scope of required disclosure appears to be extremely broad. For example, in relation to the requirement imposed on a licensed corporation to notify the SFC of its involvement in any judicial other proceedings in Hong Kong or elsewhere, no distinction is made between proceedings where the licensed corporation is the plaintiff and those   | As above.  |

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|          |                          |                                | <p>where it is the defendant, nor is there any need for the proceedings to be related to the regulated activities carried on by the licensed corporation. We believe some attempt could be made to qualify the scope of Clause 7(3)(h)(iii) so as to limit it to matters which are relevant to the licensed corporation's regulated activities, or which involve allegations of fraud or similar improper conduct, and that proceedings by the licensed corporation in the ordinary course of business as plaintiff should be excluded.</p>   |   |
| 41.      | 7(3)(h)(iv)              | Freshfields Bruckhaus Deringer | <p>Note the overlap with the notification requirement in paragraph 12.5(b) of the Code of Conduct, which provides greater clarity as to the information required to be disclosed.</p>   | <p>The Code of Conduct and other guidelines are issued to help clarify the requirements under the various statutory provisions.</p>   |
| 42.      | 7(3)(h)(v)               | Freshfields Bruckhaus Deringer | <p>This requirement is broader than that found in the current legislation under s63(1)(b) of the SO and the Securities (Miscellaneous) Rules. We do not believe that it is helpful to include general and subjective requirements of this nature without any specific further guidance. It is important for the disclosure obligations of registered persons to be clear. We recommend that matters in relation to fitness and propriety in respect of which the SFC requires ongoing disclosure should be specified, as indeed they are currently, or linked to information provided on application.</p> | <p>Although the preceding paragraphs of this Clause have listed out the specific information required, it may not be possible to cover all circumstances. Therefore, these two items are required, and they aim to encourage licensees to make disclosure. As has always been the case, the SFC will adopt a pragmatic stance in administering this Clause.</p> |
| 43.      | 7(3)(h)(iv) & 7(3)(h)(v) | Baker & McKenzie               | <p>The "catch-all" provision is very broad-ranging and effectively requires a licensed person to make a subjective assessment as to whether any particular matter would be relevant to its fitness and properness. In addition to imposing a heavy</p>  | <p>As above.</p>  |

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|          |                              |  | ongoing burden on intermediaries, the judgmental element makes it very difficult for intermediaries to ascertain the extent of their reporting obligations. To ensure consistency of disclosure, we believe it would be preferable for the information which is subject to ongoing disclosure to be confined to those matters or events which can be objectively identified, and for any subjective assessment as to the relevance to fitness and properness to be made by the SFC itself based on such information. |   |
| 44.      | 7(3)(j)                      | Freshfields Bruckhaus Deringer                     | It is unclear what is meant by changes to the "corporation's bank accounts". Presumably the SFC is looking for information as to changes in the identity of the bank accounts but this provision should be clarified.  | The SFC requires certain pertinent information relating to all active bank accounts of corporate licensees. The required information will be specified in the licence application form.                           |
| 45.      | 7(3)(k)                      | Linklaters (on behalf of Submitting Group Members) | We find the drafting of clause 7(3)(k) somewhat obscure. It would be more straightforward to refer to significant changes to the conduct of business in any regulated activity for which the corporation is licensed.  | The SFC accepts the recommendation and has amended this Clause accordingly.   |
| 46.      | 7(3)(l)(ii)(F) + 7(4) + 7(5) | Linklaters (on behalf of Submitting Group Members) | We see no reason for the requirement to notify the circumstances under which an entity became an associated entity. It is not clear what information the SFC is seeking.   | The requirement on the circumstances under which an entity became an associated entity reflects the requirement under section 165(1)(a) of the SFO.   |
| 47.      | 7(3)(l) + 7(4)(g)            | Baker & McKenzie                                   | With respect to the term "associated entities" as used in the context of the draft Rules, we are of the view that 20% control threshold is too low and the inclusion of 20% commonly-controlled sister companies may be casting the net too widely,  | Owing to the role of associated entities in safeguarding intermediaries' client assets, the SFC thinks that the on-going reporting requirement is a reasonable one. It also should not place an onerous burden on |

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|          |             |                  | <p>particularly where the 20% sister company is engaged in an unrelated business and/or operates outside Hong Kong. Indeed, the definitions of “associated entities” and “controlling entity” contained in the Bill are very broad, and we wonder whether the usage of the term “associated entities” in this context is appropriate. It is also not clear to us how obtaining such extensive information would be meaningful to the SFC and the HKMA.</p> <p>In addition, to impose such a disclosure obligation on intermediaries may be unrealistic, as it may be practically difficult for intermediaries to obtain the required information from upstream or sister associated entities given the 20% control threshold.</p> <p>Instead of an ongoing requirement, the SFC could consider making this requirement an annual or periodic (e.g. quarterly) disclosure requirement, to reduce the administrative burden on intermediaries.</p> | <p>intermediaries as associated entities should not change too often.</p>  |
| 48.      | 7(3) + 7(4) | Baker & McKenzie | <p>Suggest to reconsider the differences in treatment between registered persons and licensed persons in terms of the information that is required to be notified, e.g. Clause 7(3)(c), (h) and (k) bearing in mind the rationale of leveling the playing field between registered institutions and licensed persons.</p>  | <p>The SFC notes the level playing field issue and has amended the Draft Rules ensuring similar treatment wherever feasible. Clause 7(4) has been amended to also require registered institutions to notify changes in contact details of any assigned complaints officer, status of membership of a stock or futures exchange, issues relating to fitness and propriety, and material changes in regulated business activities.</p> |

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| 49.                                      | 7(5)(b)               | Linklaters (on behalf of Submitting Group Members) | Suggest that information requested in Clause 7(5)(b) be provided in the annual return to the SFC, rather than within 7 days.  | Prompt notification of an individual's authorization status in other jurisdictions enables us to carry out supervisory functions effectively.  |
| 50.                                      | 7(5)(d)(i)            | Freshfields Bruckhaus Deringer                     | Please confirm that this clause is intended only to cover criminal offences that go to an individual's fitness and propriety. It would not be appropriate for an individual to be required to disclose a traffic offence, in accordance with the current position under the Securities (Miscellaneous) Rules. | Individuals are not expected to disclose details of minor traffic offences. The SFC has introduced an amendment to this effect.  |
| 51.                                      | 7(5)(d)(ii) and (iii) | Freshfields Bruckhaus Deringer                     | Please see our comments in respect of paragraph 7(2)(h). In particular, a requirement upon a registered person to disclose any judicial or other proceedings in which he is engaged without reference to materiality or the relevance to the person's fitness and propriety is inappropriate.                 | As above.  |
| <b>Sanctions for Breach of the Rules</b> |                       |  |   |  |
| 52.                                      | N/a                   | Baker & McKenzie                                   | It is not clear from the draft Rules what the sanctions are for a breach of the Rules.  | The SFC takes the view that any breach of the Rules by licensed persons and registered institutions may constitute misconduct under Part IX of the Bill. However, the SFC would, as in the past, take into account whether the breach is due to substantial practical difficulties experienced by the person concerned. In the case of a licensed corporation or registered institution failing to notify changes in information pertaining to its directors or connected persons, the SFC |

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|          |            |                  |  | would consider, amongst others, whether such information had been reported to the corporation or institution. Section 135 of the SFO provides that a contravention of Clause 7 (on changes to be notified by licensed persons and registered institutions), without reasonable excuse, may constitute an offence. However, all the facts and factors underlying the contravention in each case have to be taken into account, and that an offence is committed only if the contravention is without reasonable excuse. |
| 53.      | N/a        | Consumer Council | Suggests that the SFC should state clearly in the draft Rules the sanction for non-compliance, if any. | As above.  |



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**Details of Submissions Referred to in the Comments Table**

| Date received    | Respondent   |
|------------------|--|
| 17 December 2001 | Baker & McKenzie Solicitors and Notaries   |
| 18 December 2001 | Consumer Council   |
| 17 December 2001 | Freshfields Bruckhaus Deringer   |
| 17 December 2001 | Lloyds TSB Pacific Limitd  |
| 18 December 2001 | Linklaters & Alliance representing <ul style="list-style-type: none"> <li>- Credit Suisse First Boston (Hong Kong) Limited</li> <li>- Goldman Sachs (Asia) L.L.C.</li> <li>- JP Morgan</li> <li>- Morgan Stanley Dean Witter Asia Limited</li> <li>- Salomon Smith Barney Hong Kong Limited</li> <li>- UBS Warburg</li> </ul> (“Group of nine investment bankers”) |
| 17 November 2001 | Jardine Fleming Asset Management Limited   |

*[Of the 7 submissions received, 1 of the respondents has not given consent to have its identity disclosed. Its submission was dated 17 December 2001.]*

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