

For discussion on  
6 June 2002

Paper No. 5/02

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

**Securities and Futures  
(Registration of Commission Disciplinary Orders) Rules**

**Securities and Futures  
(Securities and Futures Appeals Tribunal – Registration of Orders) Rules**

**Securities and Futures  
(Market Misconduct Tribunal – Registration of Orders) Rules**

This paper sets out the proposals to prescribe by Rules the manner in which an application should be made or a notice should be given to register the following types of orders in the Court of First Instance under the Securities and Futures Ordinance (SFO) (5 of 2002) –

- (a) disciplinary orders made by the Securities and Futures Commission (SFC);
- (b) orders made by the Securities and Futures Appeals Tribunal (SFAT); and
- (c) orders made by the Market Misconduct Tribunal (MMT).

**Proposal**

2. The SFC proposes to make the Securities and Futures (Registration of Commission Disciplinary Orders) Rules, now in draft at **Annex 1**, under section 397(1)(o) of the SFO.

3. We also propose to recommend the Chief Justice (CJ) to make the Securities and Futures (Securities and Futures Appeals Tribunal – Registration of Orders) Rules, now in draft at **Annex 2**, and the Securities and Futures (Market Misconduct Tribunal – Registration of Orders) Rules, now in draft at **Annex 3**, under sections 233(b) and 269(b) of the SFO respectively.

## **Power to make the Rules**

### ***Registration of Commission Disciplinary Orders Rules***

4. Under section 194(2) and 196(2) of the SFO, the SFC may order a regulated person to pay a pecuniary penalty in certain circumstances provided that it has had regard to the fining guidelines published in the Gazette under section 199. Sections 194(5) and 196(5) provide that the Court of First Instance may, on an application of the SFC made in the manner prescribed by rules made under section 397, register such an order in the Court of First Instance. On registration, the order is regarded for all purposes as an order of the Court of First Instance for the payment of money. The draft Securities and Futures (Registration of Commission Disciplinary Orders) Rules, which prescribe the manner in which the SFC is to make the application to the Court of First Instance in respect of the order, are to be made under section 397(1)(o).

### ***Securities and Futures Appeals Tribunal – Registration of Orders Rules***

5. Under section 226 of the SFO, the Court of First Instance may, on notice in writing given by the SFAT in the manner prescribed by rules made by the CJ under section 233, register an order of the SFAT in the Court of First Instance. On registration, the SFAT order becomes for all purposes an order of the Court of First Instance. The draft Securities and Futures (Securities and Futures Appeals Tribunal – Registration of Orders) Rules, which prescribe the manner in which the SFAT is to give notice to the Court of First Instance in respect of the SFAT orders, are to be made under section 233(b).

### ***Market Misconduct Tribunal – Registration of Orders Rules***

6. Similarly, under section 264(1) of the SFO, the Court of First Instance may, on notice in writing given by the MMT in the manner prescribed by rules made by the CJ under section 269, register an order of the MMT in the Court of First Instance. On registration, the order becomes for all purposes an order of the Court of First Instance. The draft Securities and Futures (Market Misconduct Tribunal – Registration of Orders) Rules, which prescribe the manner in which the MMT is to give notice to the Court of First Instance in respect of the MMT orders, are to be made under section 269(b).

7. 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.

## Public consultation

8. The SFC released a consultation document and an exposure draft of the Securities and Futures (Registration of Commission Disciplinary Orders) Rules on 27 March 2002 for comment by the public. One submission was received. The Judiciary Administrator has been consulted on the draft Securities and Futures (Securities and Futures Appeals Tribunal – Registration of Orders) Rules and the draft Securities and Futures (Market Misconduct Tribunal – Registration of Orders) Rules, and is content with the drafts.

9. We attach the following documents for Members' reference –

- (a) Consultation Document on the draft Securities and Futures (Registration of Commission Disciplinary Orders) Rules, at **Annex 4**, which sets out the underlying policy, together with the exposure draft of the Rules. We have since refined the drafting of the exposure draft of the Rules, and the revised draft is at Annex 1 for Members' consideration; and
- (b) Consultation Conclusions at **Annex 5**, which set out the conclusions from the consultation. The respondent's comments and SFC's responses thereto are incorporated in the Consultation Conclusions.

10. In consulting the public on the draft Securities and Futures (Registration of Commission Disciplinary Orders) Rules, we have made it clear that essentially identical Rules will be submitted to CJ for approval to provide for registration of orders of the SFAT and the MMT in the Court of First Instance.

## Way forward

11. Subject to Members' views, the draft Rules will be submitted to the relevant authority for approval. If approved, they will be published 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  
24 May 2002

**DRAFT**

[ cf: sections 194(2), 194(5), 196(2), 196(5) and 397(1) of the Securities and Futures Ordinance ]

**SECURITIES AND FUTURES (REGISTRATION OF COMMISSION DISCIPLINARY ORDERS) 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 on which Part IX of the Securities and Futures Ordinance (5 of 2002) comes into operation.

**2. Interpretation**

In these Rules, "order" (命令) means an order of the Commission made under section 194(2) or 196(2) of the Ordinance.

**3. Registration of Commission disciplinary orders in Court of First Instance**

The Commission shall, for the purpose of making an application in respect of an order pursuant to section 194(5) or 196(5) of the Ordinance, produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.

Chairman,  
Securities and Futures Commission

2002

**Explanatory Note**

These Rules prescribe the manner in which the Securities and Futures Commission applies to register in the Court of First Instance an order made by the Commission under section 194(2) or 196(2) of the Securities and Futures Ordinance (5 of 2002).

**DRAFT**

[ cf: sections 226 and 233(b) of the Securities and Futures Ordinance ]

**SECURITIES AND FUTURES (SECURITIES AND FUTURES APPEALS  
TRIBUNAL - REGISTRATION OF ORDERS) RULES**

(Made under section 233(b) of the Securities and Futures Ordinance  
(5 of 2002))

**1. Commencement**

These Rules shall come into operation on the day on which Part XI of the Securities and Futures Ordinance (5 of 2002) comes into operation.

**2. Interpretation**

In these Rules -

"order" (命令) means an order of the Tribunal made under the Ordinance;

"Tribunal" (審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of the Ordinance.

**3. Registration of Tribunal orders in Court of First Instance**

The Tribunal shall, for the purpose of giving notice in respect of an order pursuant to section 226 of the Ordinance, produce to the Registrar of the High Court a notice in writing

requesting that the order be registered, together with the order and a copy of the order.

Chief Justice

2002

**Explanatory Note**

These Rules prescribe the manner in which the Securities and Futures Appeals Tribunal gives notice to the Court of First Instance in respect of the registration of an order made by the Tribunal under the Securities and Futures Ordinance (5 of 2002).

**DRAFT**

[ cf: sections 264(1) and 269(b) of the Securities and Futures Ordinance ]

**SECURITIES AND FUTURES (MARKET MISCONDUCT TRIBUNAL -  
REGISTRATION OF ORDERS) RULES**

(Made under section 269(b) of the Securities and Futures Ordinance (5 of 2002))

**1. Commencement**

These Rules shall come into operation on the day on which Part XIII of the Securities and Futures Ordinance (5 of 2002) comes into operation.

**2. Interpretation**

In these Rules -

"order" (命令) means an order of the Tribunal made under the Ordinance;

"Tribunal" (審裁處) means the Market Misconduct Tribunal established by section 251 of the Ordinance.

**3. Registration of Tribunal orders in Court of First Instance**

The Tribunal shall, for the purpose of giving notice in respect of an order pursuant to section 264(1) of the Ordinance, produce to the Registrar of the High Court a notice in writing



requesting that the order be registered, together with the order and a copy of the order.

Chief Justice

2002

**Explanatory Note**

These Rules prescribe the manner in which the Market Misconduct Tribunal gives notice to the Court of First Instance in respect of the registration of an order made by the Tribunal under the Securities and Futures Ordinance (5 of 2002).



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

**A Consultation Paper on the Securities and Futures  
(Registration of Commission Disciplinary Orders) Rules**

《證券及期貨(登記證監會的紀律處分命令)規則》諮詢文件

Hong Kong  
March 2002

香港  
2002年3月

## Consultation

This consultation document invites public comments on the draft **Securities and Futures (Registration of Commission Disciplinary Orders) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397 of the Securities and Futures Ordinance (No. 5 of 2002 ) (“the Ordinance”) when it commences.

### Introduction

1. The draft Rules provide for the manner in which applications may be made to register orders of the SFC in the Court of First Instance. It is proposed that essentially identical rules will be made by the Chief Justice to provide for registration of orders of the Securities and Futures Appeals Tribunal (“SFAT”) and the Market Misconduct Tribunal (“MMT”).

2. Part IX of the Ordinance is concerned with the SFC’s disciplinary functions. It sets out the sanctions that the SFC may impose, and the categories of persons on whom sanctions may be imposed. Sections 194(2) and 196(2) in particular empower the SFC to order a regulated person to pay a pecuniary penalty in certain circumstances provided that it has had regard to the fining guidelines to be published in accordance with section 199 of the Ordinance. Sections 194(5) and 196(5) permit the SFC to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First instance for payment of money. Sections 194(5) and 196(5) provide that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Commission under section 397.

3. Part XI of the Ordinance is concerned with the establishment of the SFAT which will have the jurisdiction to review a wide range of decisions by the SFC, the Hong Kong Monetary Authority and the Investor Compensation Company (to be recognized under section 79 of the Ordinance) and make orders concerning proceedings before the SFAT. Section 226 permits the SFAT to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First Instance. Section 226 provides that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Chief Justice under section 233.

4. One of the key matters covered by Part XIII of the Ordinance is the establishment of the MMT. The MMT will have the jurisdiction to hear market misconduct cases and to make a wide range of orders imposing sanctions on offenders and concerning proceedings before it. Section 264 permits the MMT to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First Instance. Section 264 provides that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Chief Justice under section 269.

5. There are controls built into the legislative system, whereby any rules made by the SFC or the Chief Justice must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398

of the Ordinance on rules to be made by the SFC. Therefore, the SFC now releases the draft Rules (see Attachment 1) for public consultation.

6. The public may obtain copies of the consultation document and the attachment free of charge at the SFC's office and on the SFC's Internet website at <http://www.hksfc.org.hk>.

7. The SFC invites interested parties to submit written comments on the draft Rules or to comment on related matters that might have a significant impact upon the draft Rules **no later than 24<sup>th</sup> April 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Rules.

### **The draft Rules**

8. The draft Rules prescribe that on application to the Court of First Instance in respect of orders made by the Commission for the purposes of sections 194(5) and 196(5) of the Ordinance there must be produced to the Registrar of the High Court the order, in duplicate, and notice in writing requesting that the order be registered.

### **New Policy Initiatives**

10. The draft Rules are procedural and merely implement the policy in the Ordinance which was considered in detail by the Legislative Council Bills Committee.

### **Other matters**

11. 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.

12. 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.

13. Written comments may be sent -

By mail to: SFC (Registration of Orders Rules)  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road Central  
Hong Kong

By fax to: (852) 2868 0252

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

By e-mail to: [Registration\\_of\\_Orders\\_Rules@hksfc.org.hk](mailto:Registration_of_Orders_Rules@hksfc.org.hk)

14. The draft Rules should be read in conjunction with the Securities and Futures Ordinance itself.



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

## Consultation Conclusions on the Securities and Futures (Registration of Commission Disciplinary Orders) Rules

《證券及期貨(登記證監會的紀律處分命令)規則》草擬本諮詢總結

Hong Kong  
May 2002

香港  
2002年5月

## **Consultation Conclusions**

### **INTRODUCTION**

1. On 27 March 2002, the Securities and Futures Commission ("SFC") issued a consultation paper to solicit comments on the draft Securities and Futures (Registration of Commission Disciplinary Orders) Rules (the "draft Rules").
2. The draft Rules provide for the manner in which applications may be made to register orders of the SFC in the Court of First Instance. The draft Rules prescribe that on application to the Court of First Instance in respect of orders made by the Commission for the purposes of sections 194(5) and 196(5) of the Ordinance there must be produced to the Registrar of the High Court the order, in duplicate, and notice in writing requesting that the order be registered.
3. Essentially identical rules are to be made by the Chief Justice to provide for registration of orders of the Securities and Futures Appeals Tribunal ("SFAT") and the Market Misconduct Tribunal ("MMT").
4. The consultation exercise ended on 24 April 2002.
5. It is advisable to read this document in conjunction with the consultation paper itself.

### **CONSULTATION EXERCISE**

6. A press release regarding the consultation exercise was issued on 25 March 2002. The consultation paper and the draft Rules were posted on the website of the SFC and distributed to all registrants through FinNet.
7. One submission was received. This was from the Hong Kong Securities Institute attaching the results of a survey of 180 of its corporate members on the draft Rules. According to the Hong Kong Securities Institute, of the four members who responded to the survey, three had no comment on the draft Rules and one agreed with the draft Rules.

### **CONSULTATION CONCLUSIONS**

8. After the completion of the consultation exercise, it is considered that no amendment to the substance of the draft Rules is necessary. We have, however, refined the draft Rules to improve drafting.