

For discussion on
6 June 2002

Paper No. 8/02

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

Securities and Futures (Exempted Instruments – Information) Rules

This paper sets out the proposals of the Securities and Futures Commission (SFC) to prescribe the information that must be submitted to the SFC by the issuer of any certificate of deposit or commercial paper referred to in an advertisement, invitation or document within 10 business days of the issue of the advertisement, invitation or document under section 110(1) of the Securities and Futures Ordinance (SFO) (5 of 2002).

Proposal

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

Power to make the Rules

3. Under section 103(3)(e), (f) and (g) of the SFO the documentation for certificates of deposit and commercial paper issued by certain persons is exempted, provided that any specified minimum denomination and capitalization tests are satisfied. Some information is required to be filed under rules made under section 397 for the purposes of section 110(1) in respect of issues falling within section 103(3)(e), (f) or (g). The draft Rules set out the information required.

4. The SFC confirms that the draft Rules would be *intra vires* if made as drafted.

Major features of the draft Rules

5. The draft Rules at **Annex 1** are to be made by the SFC under section 397(1). Schedule 1 to the draft Rules prescribes the information to be submitted to the SFC in the circumstances outlined in paragraph 3 above. The intention is to allow the relevant regulatory authorities in Hong Kong to monitor the development of capital markets.

6. The SFC considers that requiring the information specified in the draft Rules would be consistent with the SFC's objectives in sections 4(a) and (c) of the SFO "to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry" and "to provide protection for members of the public investing in or holding financial products" respectively.

Public consultation

7. The SFC released a consultation document and an exposure draft of the Rules on 19 March 2002 for comment by the public. Two submissions were received. 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. We have made certain textual amendments to the exposure draft Rules and the revised draft is now at Annex 1 for Members' consideration; and
- (b) Consultation Conclusions at **Annex 3**, which set out the conclusions from the consultation. The respondents' comments and SFC's responses thereto are summarized in the Consultation Conclusions. In particular, the SFC has not accepted the comment of a respondent to require an issuer to submit additional information as this would increase the costs of compliance without any additional regulatory benefit.

Way forward

8. 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 May 2002

[cf : sections 103(3)(e), (f) and (g), 110(1) and 397(1) of the Securities and Futures Ordinance]

**SECURITIES AND FUTURES (EXEMPTED INSTRUMENTS -
INFORMATION) 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 IV of the Securities and Futures Ordinance (5 of 2002) comes into operation.

2. Interpretation

In these Rules, unless the context otherwise requires, "advertisement" (廣告), "document" (文件) and "invitation" (邀請) have the meanings respectively assigned to them by section 102 of the Ordinance.

3. Information to be submitted in respect of advertisement, invitation or document

For the purposes of section 110(1) of the Ordinance, the information that shall be submitted to the Commission is -

(a) information that is -

(i) related to the issue of a certificate of deposit or other instrument referred to in

the advertisement, invitation or document in question; and

(ii) specified in Schedule 1; or

(b) where the information specified in Schedule 1 is not applicable in relation to the issue, a statement to that effect.

SCHEDULE 1

[s. 3]

Item	Information to be submitted
1.	Description of the instrument as issued (stating whether it is negotiable/fixed rate/floating rate certificate of deposit/bill of exchange/promissory note or another form of instrument)
2.	Name of the issuer
3.	Name of the guarantor
4.	Total amount of the issue or maximum amount of the facility/programme
5.	Currency (stating whether it is denominated in HK\$/US\$/Euro/£/A\$/NZ\$ or another currency)
6.	Minimum denomination
7.	Solicitors to the issuer
8.	Deposit date
9.	Maturity date

10. Interest payments (specifying the intervals at which they are payable, e.g. quarterly/semi-annually/annually or by reference to another period)
11. Tenors available under the facility/programme
12. Terms of the facility/programme
13. Purchase/Issue price
14. Names of the parties involved (lead manager/underwriter/arranger/dealer/others)
15. Names of the facility agents, issue agents and paying agents
16. Place and manner of payment at maturity
17. Status of the obligations of the issuer and guarantor
18. Governing law

Chairman,
Securities and Futures Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (5 of 2002). They prescribe for the purposes of section 110(1) of the Ordinance the information that must be submitted to the Commission

after the issue of any advertisement, invitation or document which are made in respect of the issue of certificates of deposit or other instruments, and to which section 110(1) applies.



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

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

《證券及期貨(資料)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 (Information) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397 of the Securities and Futures Ordinance (No. of 2002) when it commences.

Introduction

1. Part IV of the Ordinance deals with the regulatory framework for the offering of investment products. It imposes a general prohibition on the issue to the public of advertisements, invitations and documentation relating to a wide range of investments. A breach of this general prohibition is an offence, but the prohibition is subject to a number of exemptions that are essentially carried down from the current legislation.

2. Under section 103(3)(e), (f) and (g) the documentation for certificates of deposit and commercial paper issued by certain persons is exempted, provided that certain minimum denomination and capitalization tests are satisfied. In addition, certain information is required to be filed under rules made for the purposes of section 110(1) in respect of issues falling within section 103(3)(e), (f) or (g). The draft Rules set out this information. The intention is to allow the relevant regulatory authorities in Hong Kong to monitor the development of capital markets.

3. In respect of issues by authorized institutions and other exempted bodies, the responsibility for filing under section 110(1) is that of the respective issuers. In respect of issues by multilateral agencies or overseas banks, the obligation rests either with the respective issuers or their authorized representatives. The reporting requirement will therefore not fall upon the general agent or professional adviser of the issuer. Once the issuer, or its authorized representative, has filed the specified information within the permitted 10 days after the issue of the instrument, the obligation under section 110(1) will be regarded as properly discharged.

4. Like the Protection of Investors Ordinance (Cap. 335) (the “PIO”), the Securities and Futures Ordinance does not contain detailed provisions setting out the information required to be provided by persons to whom section 110(1) applies. It merely gives the SFC the necessary rule-making power, under section 397, to prescribe requirements in the subsidiary legislation. This provides the flexibility to address changing market conditions by quickly amending the rules rather than the primary legislation.

5. There are controls built into the legislative system, whereby any rules made by the SFC must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398 of the Securities and Futures Ordinance. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.

6. The public may obtain copies of the consultation document and the attachments 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 16th 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 for the purposes of section 110(1) of the Ordinance the information that must be submitted to the Commission by an issuer of any certificate of deposit or other instrument referred to in an advertisement, invitation or document to which section 110(1) of the Ordinance applies. The information required to be provided is set out in Schedule 1 to the draft Rules and covers only the basic terms and conditions of such issues.

9. The draft has been prepared having regard to the matters contained in the Gazette notice issued under the existing section 7A(1) of the Protection of Investors Ordinance (Cap. 335).

New Policy Initiatives

10. No new policy changes have been incorporated into the draft Rules which are intended simply to replicate the requirements of the existing provisions.

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 (Information Rules)
12/F, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

By fax to: (852) 2877 0318

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

By e-mail to: information_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 draft Securities and Futures (Information) Rules

《證券及期貨(資料)規則》草擬本諮詢總結

Hong Kong
April 2002

香港
2002年4月

INTRODUCTION

1. On 19 March 2002, the Securities and Futures Commission ("SFC") issued a consultation paper to solicit comments on the draft Securities and Futures (Information) Rules (the "draft Rules").
2. The draft Rules set out the information required to be submitted to the SFC by an issuer of any certificate of deposit or other instrument referred to in an advertisement, invitation or document to which section 110(1) of the Securities and Futures Ordinance (No. 5 of 2002) applies.
3. The consultation exercise ended on 16 April 2002.
4. It is advisable to read this document in conjunction with the consultation paper itself.

CONSULTATION EXERCISE

5. A press release regarding the consultation exercise was issued on 19 March 2002. The consultation paper and the draft Rules were posted on the website of the SFC and distributed to all registrants through FinNet.
6. Two submissions were received. One of them was from Fidelity Investments Management (HK) Limited, which commented that:

"We believe the Information Rules would be further enhanced by the incorporation of the following requirements:
 - (a) Publication of Pricing Information (is it intended to be listed on Bloomberg / Papers, and the ticker if so)
 - (b) Regular updates as to the outstanding amount on the issue".
7. The other one was from the Hong Kong Securities Institute with the results of a survey to its members on the draft Rules. According to the Hong Kong Securities Institute, 77.8% of the nine respondents to its survey agreed with the information currently specified in Schedule 1 to the draft Rules. The remaining 22.2% of the respondents had no comment.

CONSULTATION CONCLUSIONS

8. The SFC does not think that the inclusion of the two items suggested by Fidelity Investments Management (HK) Limited would assist the relevant authorities in Hong Kong to better monitor the development of capital markets. Accordingly, the SFC considers that no amendment to the draft Rules is necessary.