

For discussion
on 6 June 2002

Paper No.11/02

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

Securities and Futures (Associated Entities) Rules

This paper sets out the proposals of the Securities and Futures Commission (SFC) to prescribe the information that must be provided to the SFC under section 165(1) of the Securities and Futures Ordinance (SFO) (5 of 2002) by a corporation when it becomes, or ceases to be, an associated entity of an intermediary.

Proposal

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

Power to make the Rules

3. Section 165(1) of the SFO requires a corporation to notify the SFC within 7 business days after it becomes, or ceases to be, an associated entity of an intermediary of that fact; and to provide the information specified in rules made by the SFC under section 397¹ for this purpose. The draft Rules specifies the types of information required.

4. In accordance with section 398(4) of the SFO, the SFC has consulted the Monetary Authority on the draft Rules. The SFC is of the view that the draft Rules would be *intra vires* if made as drafted.

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

Major features of the draft Rules

5. The draft Rules at Annex 1 are to be made by the SFC under section 397(1). Clause 3 of the draft Rules prescribes the information to be submitted to the SFC when a corporation becomes an associated entity. Notices given by associated entities that are already licensed or registered with the SFC are required to provide only certain basic information whilst other associated entities are required to provide more detailed information. Clause 4 of the draft Rules prescribes the information to be submitted to the SFC when a corporation ceases to be an associated entity.

6. The SFC considers that the draft Rules, by providing it with information required for effective regulation, would be consistent with its objectives in section 4(c) of the SFO, namely “to provide protection for members of the public investing in or holding financial products”.

Public consultation

7. The SFC released a consultation document and an exposure draft of the Rules on 22 March 2002 for comment by the public. A total of three submissions were received. While the submissions generally supported the exposure draft, the SFC considers that it is necessary to amend the draft Rules to give guidance to intermediaries which are required to provide information under section 165 of the SFO, and to reflect changes in the Securities and Futures (Licensed Persons and Registered Institutions) Rules. The SFC has also further particularized the types of information which require reporting. 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 the draft Rules are further refined for the aforesaid reasons. The draft Rules as revised are at Annex 1 for Members’ consideration; and
- (b) Consultation Conclusions at **Annex 3**, which set out the conclusions from the consultation and the SFC’s responses to the comments received. The names of respondents are included in the Consultation Conclusions.

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
30 May 2002

D R A F T

**SECURITIES AND FUTURES (ASSOCIATED ENTITIES)
RULES**

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[cf : section 165 of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (ASSOCIATED ENTITIES) 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 VI of the Securities and Futures Ordinance (5 of 2002) comes into operation.

2. Interpretation

(1) In these Rules, “CE number” (中央編號) means the central entity identification number assigned by the Commission to a licensed person or a registered institution which is shown, in relation to each licence or registration, on the register maintained under section 136 of the Ordinance.

(2) Where an associated entity that becomes or ceases to be such associated entity is an authorized financial institution, a requirement in these Rules for it to provide particulars to the Commission shall not be construed as a requirement to provide particulars relating to its business other than that of receiving or holding client assets of any intermediary of which it is an associated entity.

3. Particulars to be notified on becoming an associated entity

(1) For the purposes of section 165 of the Ordinance, the particulars required to be provided to the Commission in the event that a licensed corporation or a registered institution becomes an associated entity of an intermediary are –

- (a) its name and business name (if different);

- (b) its CE number;
- (c) the date it became an associated entity of the intermediary;
and
- (d) the name of the intermediary.

(2) For the purposes of section 165 of the Ordinance, the particulars required to be provided to the Commission in the event that a corporation other than a licensed corporation or a registered institution becomes an associated entity of an intermediary are –

- (a) its name and business name (if different);
- (b) the date and place of its incorporation;
- (c) the address of its registered office;
- (d) the address of its principal place of business in Hong Kong (if any);
- (e) its correspondence address;
- (f) its telephone and facsimile numbers, electronic mail address (if any) and web site address (if any);
- (g) the date it became an associated entity of the intermediary;
- (h) the name of the intermediary;
- (i) whether it has any executive officers and, if so, the following particulars of each of the executive officers –
 - (i) the name of the executive officer;
 - (ii) the Hong Kong identity card number of the executive officer or, if he is not the holder of such an identity card, the number, the name of the issuing agency and the date of expiry of his passport, travel or other document issued by a competent government agency providing proof of identity;
 - (iii) his residential address in Hong Kong (if any); and
 - (iv) his correspondence address;

- (j) the following particulars of each person who is its controlling entity –
 - (i) the name of the person;
 - (ii) where the person is an individual –
 - (A) his Hong Kong identity card number or, if he is not the holder of such an identity card, the number, the name of the issuing agency and the date of expiry of his passport, travel or other document issued by a competent government agency providing proof of identity;
 - (B) his residential address in Hong Kong (if any); and
 - (C) his correspondence address; and
 - (iii) where the person is a corporation –
 - (A) if it is registered under the Business Registration Ordinance (Cap. 310), its business registration number;
 - (B) the address of its principal place of business in Hong Kong (if any); and
 - (C) its correspondence address;
- (k) the address of each of the premises where books and records relating to client assets of the intermediary, which are received or held by it in Hong Kong, are kept;
- (l) the circumstances under which it becomes an associated entity of the intermediary;
- (m) subject to subsection (3), whether it is aware of the existence of any matter that might render it insolvent or lead to the appointment of a liquidator; and

- (n) subject to subsection (3), the following particulars in respect of any bank account of it that holds, or that has been opened to hold, client assets of the intermediary that are received or held by it in Hong Kong –
 - (i) the name of the bank with which the account is opened; and
 - (ii) the number of the account.

(3) Where an associated entity that becomes such associated entity is an authorized financial institution, subsection (2)(m) and (n) do not apply to it.

4. Particulars to be notified on ceasing to be an associated entity

(1) For the purposes of section 165 of the Ordinance, the particulars required to be provided to the Commission in the event that a licensed corporation or a registered institution ceases to be an associated entity of an intermediary are –

- (a) its name and business name (if different);
- (b) its CE number;
- (c) the date it ceased to be an associated entity of the intermediary; and
- (d) the name of the intermediary.

(2) For the purposes of section 165 of the Ordinance, the particulars required to be provided to the Commission in the event that a corporation other than a licensed corporation or a registered institution ceases to be an associated entity of an intermediary are –

- (a) the date it ceased to be an associated entity of the intermediary;
- (b) the name of the intermediary;
- (c) whether all client assets of the intermediary that are received or held by it prior to its ceasing to be such

associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets of the intermediary that have not been fully accounted for and properly disposed of; and

(d) the circumstances under which it ceases to be an associated entity of the intermediary.

(3) Where an associated entity that ceases to be such associated entity is an authorized financial institution, subsection (2)(c) does not apply to it.

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) (“the Ordinance”). They prescribe, for the purposes of section 165 of the Ordinance, the particulars that an associated entity of an intermediary must provide under that section of the Ordinance to the Commission by notice in writing when it becomes or ceases to be such associated entity.



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

A Consultation Paper on the Securities and Futures (Associated Entities) Rules

《證券及期貨(有聯繫實體)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 (Associated Entities) 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. Part VI of the Ordinance empowers the SFC to make rules imposing ongoing financial and operational requirements on persons licensed or registered under Part V of the Ordinance.

2. Part VI also closes a regulatory gap under the existing legislation that enables an intermediary, for example a securities dealer, to register client’s securities held in the dealer’s safe custody in the name of a nominee company set up by the securities dealer. These nominees are presently unregulated. To improve investor protection section 164 of the Ordinance prescribes the types of persons that are allowed to receive or hold in Hong Kong client assets. These persons now include an “associated entity of an intermediary” - a term that would cover most nominees that hold assets of intermediaries. However, the provisions of Part VI require an associated entity to comply with the various rules made under Part VI, except the Financial Resources Rules.

3. In addition, section 165(1) requires an associated entity to notify the SFC within 7 business days after it becomes, or ceases to be, an associated entity of an intermediary and provide the information specified in rules made by the SFC for this purpose. The rules that the SFC propose to make for this purpose are the draft Rules.

4. The term “intermediary” means a licensed corporation (i.e. a corporation licensed by the SFC under Part V of the Ordinance for a regulated activity) or a registered institution (i.e. an authorized financial institution registered under Part V of the Ordinance). The term “associated entity” means a company that is in a controlling entity relationship with an intermediary and receives or holds in Hong Kong client assets of the intermediary. A “controlling entity relationship” exists, for example, if either the associated entity or the intermediary would, either alone or with any of its associates –

- (a) be entitled to exercise or control the exercise of not less than 20% (or such other percentage as may be prescribed), of the voting power at general meetings of the other; or
- (b) have the right to nominate any of the directors of the other; or
- (c) have an interest in shares carrying the right to veto any resolution or vary, modify, limit or add conditions to any resolution, at general meetings of the other.

5. The Securities and Futures Ordinance does not contain detailed provisions setting out the information required to be provided by persons to whom section 165(1) applies. It merely gives the SFC the necessary rule-making power, under section 397,

to prescribe requirements in subsidiary legislation. This provides the flexibility to address evolving market needs by quickly amending the rules rather than the primary legislation.

6. 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 for rules made by the SFC. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.

7. 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>.

8. 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 19th 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

9. The draft Rules prescribe for the purposes of section 165(1) of the Ordinance the particulars that an associated entity of an intermediary (other than an associated entity that is a licensed corporation or an authorized financial institution) must provide to the Commission by notice in writing when it becomes or ceases to be an associated entity. A notice is also required when there is a change in any such particulars.

10. The draft has been prepared having regard to the information that the SFC would ask a licensed corporation to provide. It is the intention of the SFC that the draft Rules should be user-friendly and, for example, they have been drafted in plain English where possible with this objective in mind. The SFC would welcome suggestions from industry participants on any specific improvements that could be made to streamline procedures or make it easier for participants to comply with the Ordinance and the draft Rules.

New Policy Initiatives

11. No new policy changes have been incorporated into the draft Rules which are intended simply to implement the policy already explained in section 165 of the Ordinance.

Other matters

12. 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.

13. 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.

14. Written comments may be sent -

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

By fax to: (852) 2293 5755

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

By e-mail to: Associated_Entities_Rules@hksfc.org.hk

15. The draft Notice should be read in conjunction with the Securities and Futures Ordinance itself.

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 Data¹ 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 PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper 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 Paper. The names of persons who submit comments on the Consultation Paper 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 Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Enquiries

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

The Data Privacy Officer

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

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 (ASSOCIATED ENTITIES) RULES

(Made by the Securities and Futures Commission
under section 397(1) of the Securities and
Futures Ordinance (No. 5 of 2002)

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part VI of the Securities and Futures Ordinance (No. 5 of 2002).

2. Application

These Rules do not apply to an associated entity that is –

- (a) a licensed corporation; or
- (b) an authorized financial institution.

3. Particulars to be notified on becoming an associated entity

A notice given by an associated entity under section 165(1)(a) of the Ordinance must state -

- (a) the name of the associated entity and its business name (if different);
- (b) (in the case of a corporation) the country of incorporation, the date of incorporation and the registered office address of the associated entity;
- (c) the address of the principal place of business in Hong Kong of the associated entity;
- (d) the telephone and facsimile numbers, and electronic mail address (if any) of the associated entity;
- (e) the date that it became an associated entity;
- (f) the name of each intermediary with which it is associated and the address of the principal place of business in Hong Kong of each such intermediary;
- (g) the name, Hong Kong identity card number or passport number and residential address of each executive officer of the associated entity;
- (h) the name of any person which is a controlling entity of the associated entity and -
 - (i) where such person is an individual, the person's Hong Kong identity card number or passport number and residential address in Hong Kong; or

- (ii) where such person is a corporation, the address of its principal place of business in Hong Kong and the corporation's Hong Kong business registration number;
- (i) whether the associated entity holds client assets as nominee for any intermediary or for a client of any intermediary;
- (j) whether any executive officer of the associated entity is a licensed representative under the Ordinance and, if so, the name of each intermediary to which he is accredited and the address of the principal place of business in Hong Kong of each such intermediary;
- (k) the address of each premises where books and records of the associated entity are kept; and
- (l) the circumstances under which it became an associated entity.

4. Particulars to be notified on ceasing to be an associated entity

A notice given by an associated entity under section 165(1)(b) of the Ordinance must state -

- (a) the date that it ceased to be an associated entity of any intermediary; and
- (b) the circumstances under which it ceased to be an associated entity of that intermediary and confirmation that all client assets held prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of.

5. Form of notice

A notice under –

- (a) section 3;
- (b) section 4; or
- (c) section 165(2) of the Ordinance,

must be given in the applicable form specified by the Commission in accordance with section 402(1) of the Ordinance.

Chairman,
Securities and Futures
Commission

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe for the purposes of section 165(1) of the Ordinance the particulars that an associated entity of an intermediary (other than an associated entity that is a licensed corporation or an authorized financial institution) must provide to the Commission by notice in writing when it becomes or ceases to be an associated entity. A notice is also required when there is a change in any such particulars.



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

Consultation Conclusions on the Draft Securities and Futures (Associated Entities) Rules

《證券及期貨(有聯繫實體)規則》草擬本
諮詢文件總結

Hong Kong
MAY 2002

香港
2002年5月

INTRODUCTION

1. On 22 March 2002, the Securities and Futures Commission ("SFC") issued a Consultation Paper to solicit comments on the draft Securities and Futures (Associated Entities) Rules (the "draft Rules").
2. The draft Rules prescribe for the purposes of section 165 of the Securities and Futures Ordinance (No. 5 of 2002) ("the Ordinance") the particulars that an associated entity of an intermediary must provide to the SFC when it becomes or ceases to be an associated entity. A notice is also required when there is a change in any such particulars.
3. The consultation exercise ended on 19 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 22 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. Three submissions were received. Two of them were from The Institute of Securities Dealers Ltd and the Hong Kong Stockbrokers Association Ltd. They had no comment on the draft Rules.
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 that survey, 88.8% of the respondents agreed with the information currently specified in the draft Rules. The remaining 11.2% of the respondents had no comment.

CONSULTATION CONCLUSIONS

8. While the submissions generally supported the form of the original draft Rules attached to the Consultation Paper, we consider that it is necessary to amend the draft Rules to give guidance to corporations who are required to give notice under section 165 of the Ordinance, and to reflect changes in the Securities and Futures (Licensed Persons and Registered Institutions) Rules. The relevant part of these latter rules are to be regrouped as the Securities and Futures (Intermediary Information) Rules and are therefore called the "Intermediary Information Rules" in this paper. We have also further particularized the types of information which require reporting.

Standardizing information provided by associated entities

9. Whilst section 165 of the Ordinance requires all corporations to give a notice on becoming associated entities, formerly the draft Rules did not specify the particulars that licensed corporations and authorized financial institutions were required to give in the notice. The SFC takes the view that the particulars should be standardized - with notices given by associated entities already licensed or registered with the SFC containing only certain basic information and other associated entities providing more detailed information. The Rules have been amended accordingly.
10. Consistent with the Intermediary Information Rules, associated entities are now required to advise the SFC of their correspondence address and web site address (if any). Reporting of correspondence address of their executive officers and controlling entities is also required. Where the associated entity is not an authorized financial institution, it should also provide details of its bank accounts for receiving or holding client assets in Hong Kong.
11. The SFC considers that it is not necessary for associated entities to report the address of the principal place of business of any intermediary because changes in business address will be provided by the intermediary itself.
12. In addition, associated entities will not be required to report whether their executive officers are licensed representatives since such information is already available to the SFC.

Holding of client assets

13. We do not believe that it is necessary to retain the requirement that an associated entity gives particulars of whether it holds assets for other intermediaries (formerly clause 3(i) in the original draft Rules) because an intermediary cannot, unless it is approved by the SFC, deposit client assets with an entity other than its associated entity or an authorized financial institution. An intermediary is already required to identify such entity under the Intermediary Information Rules or when the intermediary seeks approval from the SFC.
14. If a corporation intends to cease being an associated entity of an intermediary, it must properly return client assets that it held for that intermediary prior to such cessation. The Rules require associated entities to provide confirmation that the assets have been properly accounted for. However, where such confirmation cannot be given, we think that details of such client assets must be provided to the SFC for the purpose of safeguarding investors' interests. The Rules have been amended to require such particulars to be provided by the associated entities.
15. Where the associated entity is an authorized financial institution, the SFC views that it should not be required to provide confirmation that all client

assets are disposed of when it ceased to be an associated entity. This is because section 164 of the Ordinance allows an authorized financial institution (irrespective of whether it is an associated entity) to hold client assets. As such, it may continue to hold client assets for any intermediary after it ceased to be its associated entity.

16. The Rules have also been amended such that associated entities will only need to notify the address of each of the premises where books and records relating to client assets of the intermediary that are received or held by them in Hong Kong are kept.

Solvency of associated entities

17. The SFC thinks that information on financial soundness of associated entities (who hold client assets) is important for investor protection. Associated entities (other than authorized financial institutions which are regulated by the Hong Kong Monetary Authority) are therefore required to notify the SFC if they are aware of the existence of any matters that might render them insolvent. The Rules have been amended to require such particulars to be provided by associated entities when they first become an associated entity. As associated entities are required to notify the SFC of any change in the particulars given, they will be under a duty to notify the SFC when they become aware of the existence of any matters that might render them insolvent.