

For discussion
on 6 June 2002

Paper No. 6/02

**Subcommittee on Draft Subsidiary Legislation to commence
the Securities and Futures Ordinance**

**Securities and Futures (Levy) Order
Securities and Futures (Levy) Rules**

This paper sets out the proposals to –

- (a) specify the rates of levy payable by sellers and purchasers of securities and futures contracts under the Securities and Futures Ordinance (SFO) (5 of 2002); and
- (b) prescribe the manner in which payments of levies must be made, impose charges for late payment of such levies and prescribe matters concerning the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment to the Securities and Futures Commission (SFC) of such levies.

Proposal

2. We propose to recommend the Chief Executive in Council to make the Securities and Futures (Levy) Order, now in draft at **Annex 1**, and the Securities and Futures (Levy) Rules, now in draft at **Annex 2**, under sections 394(1) and 394(5) of the SFO respectively.

Power to make the Order/Rules

Levy Order

3. Section 394(1)(a) of the SFO empowers the Chief Executive in Council to specify, by order published in the Gazette, the rate of levy payable to the SFC by specified persons for every sale and purchase of securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules. Section 394(1)(b) gives the Chief Executive in Council similar power with respect to every sale

and purchase of any futures contract traded on a recognized futures market. Pursuant to section 394(2), the Chief Executive in Council may specify (a) the rate or amount of the levy payable for any sale and purchase as a percentage of the consideration, a fixed amount, nil or as calculated in any other manner; and (b) different rates for different classes of securities or futures contracts.

Levy Rules

4. Section 394(5) of the SFO empowers the Chief Executive in Council to make rules for the payment of levies under section 394(1) and the imposition of charges or penalties for late payment of such levies, and the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment to the SFC of such levies.

5. The Department of Justice has advised that the draft Order and the draft Rules would be *intra vires* if made as drafted.

Major features of the draft Order

6. The draft Order at Annex 1 is to be made by the Chief Executive in Council under section 394(1). The draft Order is adapted from the existing Securities and Futures Commission (Levy)(Securities) Order (Cap. 24 Sub. Leg. A) and the Securities and Futures Commission (Levy) (Futures Contracts) Order (Cap. 24 Sub. Leg. B). The draft Order specifies that –

- (a) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of securities is 0.005% of the consideration, save that no levy is payable in respect of stock options, or by market makers in respect of pilot programme securities or exchange traded funds; and
- (b) the levy payable by each of the seller on the sale, and the purchaser on the purchase, of a futures contract is \$1.00, save that the amount of levy payable in respect of Mini-Hang Seng Index Futures contracts and stock futures contracts is \$0.20 and no levy is payable in respect of currency futures contracts and new futures contracts.

7. In relation to sales and purchases of securities, the levy payable is 0.007% of the consideration under the existing Securities and Futures Commission (Levy) (Securities) Order. This levy is payable to the SFC. In effect, the SFC retains the levy of 0.005% for its own expenses; and pays the levy of 0.002% into the Unified Exchange Compensation Fund established under the Securities Ordinance (Cap. 333). Under the SFO, the 0.002% levy is specifically payable for the purposes of the new compensation fund to enhance transparency¹.

Major features of the draft Rules

8. The draft Rules at Annex 2 are to be made by the Chief Executive in Council under section 394(5). The draft Rules are adapted from the Securities and Futures Commission (Levy) Rules (Cap. 24 Sub. Leg. G). The draft Rules provide that –

- (a) a person who is liable to pay a levy must pay it to the relevant Exchange Company in accordance with the rules of the Exchange Company;
- (b) the Exchange Companies must remit the levy paid to it to the SFC each month in the manner specified and must submit to the SFC a return relating to each remittance within 7 days after a remittance is made;
- (c) a charge of 2% above the average of the best lending rates of all note-issuing banks is payable on late remittances;
- (d) the Exchange Companies must keep proper records relating to the levies and that the SFC must have access to those records;
- (e) the Exchange Companies must furnish to the SFC annually auditor's reports certifying that the returns furnished to the SFC are correct and comply with the Securities and Futures (Levy) Order;
- (f) a person who has paid a levy but was not liable so to do may apply to the SFC for a refund of that levy; and

¹ Please refer to Paper No. 7/02 relating to the Securities and Futures (Investor Compensation – Levy) Rules.

- (g) an Exchange Company must notify the SFC if it becomes aware of any person's failure to pay a levy payable by him.

Public consultation

9. The SFC released a consultation document and an exposure draft of the Order and the Rules on 3 April 2002 for comment by the public. One submission was received. The following documents are attached for Members' reference –

- (a) Consultation Document on the draft Order and the draft Rules, at **Annex 3**; and
- (b) Consultation Conclusion, at **Annex 4**, which sets out the SFC's conclusions from the consultation, together with a summary of the comments and SFC's response thereto.

Way forward

10. Subject to Members' views, we will submit the draft Order and the draft Rules to the Chief Executive in Council 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 Order and the draft Rules will come into operation on the commencement of the SFO.

Financial Services Bureau
Securities and Futures Commission
31 May 2002

DRAFT

[cf.: sections 394(1) and 394(2) of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (LEVY) ORDER

(Made by the Chief Executive in Council under section 394(1) of the Securities and Futures Ordinance (5 of 2002))

PART I

PRELIMINARY

1. Commencement

This Order shall come into operation on the day on which Part XVI of the Securities and Futures Ordinance (5 of 2002) comes into operation.

2. Interpretation

In this Order, unless the context otherwise requires -

"currency futures contract" (貨幣期貨合約) means a futures contract in respect of any currency;

"exchange traded fund" (交易所買賣基金) means a collective investment scheme that -

- (a) holds portfolios of securities;
- (b) is designed generally to correspond to the price and yield performance of the underlying portfolios of securities with in kind creation and redemption facilities; and

(c) is listed or traded on a recognized stock market operated by the Stock Exchange Company as a single security;

"exchange traded funds market maker" (交易所買賣基金莊家) means any person who is registered as an exchange traded funds market maker by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company;

"Mini-Hang Seng Index Futures contract" (小型恆生指數期貨合約) means the stock index futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company;

"new futures contract" (新期貨合約) means a futures contract that -

- (a) has been approved by the Commission for the purposes of section 20(2)(a) of the Ordinance; and
- (b) has not been traded on a recognized futures market operated by the Futures Exchange Company prior to the commencement of this Order;

"pilot programme" (試驗計劃) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme market maker" (試驗計劃莊家) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme securities" (試驗計劃證券) means securities that are traded on a recognized stock market operated by the Stock Exchange Company under the pilot programme;

"relevant period" (有關期間) in relation to a new futures contract, means the period of 6 months commencing on the first day of trading in the contract on a recognized futures market operated by the Futures Exchange Company;

"stock futures contract" (股票期貨合約) means a stock futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company.

PART II

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF SECURITIES DESCRIBED IN SECTION 394(1)(a) OF ORDINANCE

3. Application of Part II

This Part does not apply in relation to a sale and purchase of securities unless it is recorded on a recognized stock market or notified to a recognized exchange company under its rules.

4. Securities

Subject to sections 5, 6 and 7, for the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of securities -

- (a) is payable by the seller and purchaser; and
- (b) is -

- (i) in the case of the seller, 0.005% of the consideration for the sale; or
- (ii) in the case of the purchaser, 0.005% of the consideration for the purchase.

5. Stock options

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of a stock option -

- (a) is payable by the seller and purchaser; and
- (b) is -

- (i) in the case of the seller, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser, 0% of the consideration for the purchase.

6. Pilot programme securities

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of pilot programme securities -

- (a) is payable by the seller and purchaser; and
- (b) is -

- (i) in the case of the seller -
 - (A) subject to sub-subparagraph (B),
0.005% of the consideration for the sale;

- (B) where the seller is a pilot programme market maker, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser -
 - (A) subject to sub-subparagraph (B), 0.005% of the consideration for the purchase;
 - (B) where the purchaser is a pilot programme market maker, 0% of the consideration for the purchase.

7. Exchange traded funds

For the purposes of section 394(1)(a) of the Ordinance, the levy payable for a sale and purchase of an exchange traded fund -

- (a) is payable by the seller and purchaser; and
- (b) is -

- (i) in the case of the seller -
 - (A) subject to sub-subparagraph (B), 0.005% of the consideration for the sale;
 - (B) where the seller is an exchange traded funds market maker, 0% of the consideration for the sale; or
- (ii) in the case of the purchaser -

(A) subject to sub-subparagraph (B),
0.005% of the consideration for the
purchase;

(B) where the purchaser is an exchange
traded funds market maker, 0% of the
consideration for the purchase.

PART III

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF FUTURES CONTRACTS DESCRIBED IN SECTION 394(1)(b) OF ORDINANCE

8. Application of Part III

This Part does not apply in relation to a sale and purchase of a futures contract unless it is traded on a recognized futures market.

9. Futures contracts

Subject to sections 10, 11, 12 and 13, for the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a futures contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, \$1.00; or

(ii) in the case of the purchaser, \$1.00.

10. Mini-Hang Seng Index Futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a Mini-Hang Seng Index Futures contract -

- (a) is payable by the seller and purchaser; and
- (b) is -
 - (i) in the case of the seller, \$0.20; or
 - (ii) in the case of the purchaser, \$0.20.

11. Currency futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a currency futures contract -

- (a) is payable by the seller and purchaser; and
- (b) is -
 - (i) in the case of the seller, nil; or
 - (ii) in the case of the purchaser, nil.

12. New futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a new futures contract during the relevant period of the contract -

- (a) is payable by the seller and purchaser; and
- (b) is -
 - (i) in the case of the seller, nil; or
 - (ii) in the case of the purchaser, nil.

13. Stock futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the levy payable for a sale and purchase of a stock futures contract, or an option on such a contract -

(a) is payable by the seller and purchaser; and

(b) is -

(i) in the case of the seller, \$0.20; or

(ii) in the case of the purchaser, \$0.20.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 394(1) of the Securities and Futures Ordinance (5 of 2002). It specifies the rate of levy payable on a sale and purchase of securities. It also specifies the amount of levy payable on a sale and purchase of a futures contract.

DRAFT

[cf. : sections 394(1), 394(3), 394(4) and 394(5) of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (LEVY) RULES

(Made by the Chief Executive in Council under section 394(5) of the Securities and Futures Ordinance (5 of 2002))

1. Commencement

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

2. Interpretation

In these Rules, unless the context otherwise requires -

"Exchange Company" (交易所) -

(a) in relation to a levy payable under section 394(1)(a) of the Ordinance, means the Stock Exchange Company;

(b) in relation to a levy payable under section 394(1)(b) of the Ordinance, means the Futures Exchange Company;

"levy" (徵費) means a levy payable under section 394(1)(a) or (b) of the Ordinance;

"remittance" (轉交) means a payment, by way of remittance, by the Exchange Company to the Commission under section 4.

3. Payment of levy

A person who is liable to pay a levy shall pay the levy to the Exchange Company in such manner as may be prescribed from time to time in the rules of the Exchange Company.

4. Exchange Company to remit levies

Where the Exchange Company has collected the levy paid to it under section 3, it shall pay the levy, by way of remittance, to the Commission by paying it -

- (a) into such bank account as may be specified by the Commission;
- (b) on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a business day, on the next business day.

5. Returns relating to remittance

(1) Within 7 days after the date of each remittance, the Exchange Company shall furnish to the Commission a return relating to the remittance.

(2) A return furnished under subsection (1) shall -

- (a) be in such form as may be specified by the Commission;

- (b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and
- (c) contain such information as may be specified by the Commission.

6. Adjustment of remittance and returns

A return or the amount of remittance to which it relates may be adjusted by the Exchange Company to reflect any error in a previous return or remittance (as the case may be).

7. Late remittance charge

(1) If the Exchange Company fails to remit any levy when required under these Rules, it shall pay to the Commission a late remittance charge of 2% above the average of the best lending rates of all note-issuing banks within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65), on the amount of the levy, calculated on a daily basis commencing on the date of default until remittance of the levy is made.

(2) The late remittance charge payable under subsection (1) is recoverable as a civil debt due to the Commission.

8. Accounts

The Exchange Company shall keep proper accounts in respect of all transactions relating to the collection and remittance of levies.

9. Access to accounts by Commission

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of a copy of the authorization, inspect and make copies of the accounts kept under section 8.

10. Report

(1) Subject to subsection (3), the Exchange Company shall, within 1 month after 31 March in each year or such longer period as may be specified by the Commission either generally or in a particular case, furnish to the Commission a report certifying that the returns furnished under section 5 relating to all remittances made in respect of the 12 months ending on 31 March in that year are correct and in accordance with the Securities and Futures (Levy) Order (L. N. of 2002) and these Rules.

(2) The report furnished under subsection (1) shall be -

(a) in such form as may be specified by the Commission;

and

(b) prepared and certified, at the expense of the Exchange Company, by an auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 32).

(3) The first report furnished by the Exchange Company under subsection (1) shall deal with returns furnished in respect of all remittances made by it on or before 31 March 2003.

11. Refund of levy

(1) Where a person has paid a levy, he may apply to the Commission for the refund of the levy on the ground that -

- (a) he was in fact not liable to pay the levy; or
- (b) he subsequently became not liable to pay the levy.

(2) An application under subsection (1) shall be -

- (a) in writing; and
- (b) accompanied by all relevant information.

(3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it shall refund the levy to the applicant.

12. Notification of failure to pay levy

Where the Exchange Company is aware that any person has failed to pay a levy payable by him, it shall as soon as reasonably practicable notify the Commission in writing of the failure.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

These Rules are made by the Chief Executive in Council under section 394(5) of the Securities and Futures Ordinance (5 of 2002). They prescribe the manner in which payment of levies under section 394(1) must be made and impose charges for late payment of such levies. They also prescribe matters relating to the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment to the Securities and Futures Commission of such levies.



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

A Consultation Paper on the Securities and Futures (Levy) Order and the Securities and Futures (Levy) Rules

《證券及期貨(徵費)令》及《證券及期貨(徵費)
規則》的諮詢文件

Hong Kong
April 2002

香港
2002年4月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Levy) Order** (“the draft Order”) and the **Securities and Futures (Levy) Rules** (“the draft Rules”) which it is proposed should be made by the Chief Executive in Council under section 394(1) and (5) respectively of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Like the Securities and Futures Commission Ordinance (Cap. 24) (“the SFC Ordinance”), the Ordinance does not contain detailed provisions setting out how the arrangements for the imposition and payment to the Securities and Futures Commission (“the SFC”) of transactions levies will operate. It merely gives the Chief Executive in Council the necessary power, under section 394(1) and (5), to prescribe requirements in the subsidiary legislation. This provides the flexibility to address changing market conditions by quickly amending the order and rules rather than the primary legislation.

2. There are controls built into the legislative system, whereby any order or rules made by the Chief Executive in Council must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398 of the Ordinance. The SFC therefore now releases the draft Order (see Attachment 1) and the draft Rules (see Attachment 2) for public consultation.

3. 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>.

4. The SFC invites interested parties to submit written comments on the draft Order and the draft Rules or to comment on related matters that might have a significant impact upon the draft Order and the draft Rules **no later than 30 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 Order and the draft Rules.

Background to the draft Order and the draft Rules

5. Copies of the draft Order and the draft Rules are attached.

6. The draft Order specifies, for the purposes of section 394(1)(a) of the Ordinance, the rate of levy payable by a seller and a purchaser, respectively, on a sale and purchase of securities. It also specifies, for the purposes of section 394(1)(b) of the Ordinance, the amount of levy payable by a seller and a purchaser, respectively, on a sale and purchase of a futures contract.

7. The draft Order has been prepared having regard to the existing Securities and Futures Commission (Levy)(Securities) Order and Securities and Futures Commission (Levy)(Futures Contracts) Order, which are made, respectively, under section 52(1) and (2) of the SFC Ordinance.

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
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.

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

SECURITIES AND FUTURES (LEVY) ORDER

(NO. 5 of 2002, SECTION 394(1))

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SECURITIES AND FUTURES (LEVY) ORDER

(Made by the Chief Executive in Council under section 394(1) of the Securities and Futures Ordinance (No. 5 of 2002))

PART I

PRELIMINARY

1. Commencement

This Order shall come into operation on the day appointed for the commencement of Part XVI of the Securities and Futures Ordinance (No. 5 of 2002).

2. Interpretation

In this Order, unless the context otherwise requires -

"currency futures contract" (貨幣期貨合約) means a futures contract in respect of currency;

"exchange traded funds" (交易所買賣基金) means collective investment schemes that hold portfolios of securities which are designed generally to correspond to the price and yield performance of the underlying portfolio of

securities with in kind creation and redemption facilities and which are listed or traded on a recognized stock market operated by the Stock Exchange Company as a single security;

"exchange traded funds market maker" (交易所買賣基金莊家) means any person who is registered as an exchange traded funds market maker by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company;

"Mini-Hang Seng Index Futures contract" (小型恆生指數期貨合約) means the stock index futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company;

"new futures contract" (新期貨合約) means a futures contract that -

- (a) has been approved as such by the Commission under section 20(2)(a) of the Ordinance; and
- (b) has not been traded on a recognized futures market prior to the commencement of this Order;

"pilot programme" (試驗計劃) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme market maker" (試驗計劃莊家) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme securities" (試驗計劃證券) means securities that are traded on a recognized stock market operated by the Stock Exchange Company under the pilot programme;

"relevant period" (有關期間) in relation to a new futures contract means the period of 6 months commencing on the first day of trading in the contract on a recognized futures market;

"rules of the Futures Exchange Company" (期交所規章) means the rules of the Futures Exchange Company -

(a) made under section 23 of the Ordinance; and

(b) approved by the Commission under section 24 of the Ordinance;

"rules of the Stock Exchange Company" (聯交所規章) means the rules of the Stock Exchange Company -

- (a) made under section 23 of the Ordinance; and
- (b) approved by the Commission under section 24 of the Ordinance;

"stock futures contract" (股票期貨合約) means a stock futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company.

PART II

LEVY ON SECURITIES

3. Rate of levy specified under section 394(1)(a) of the Ordinance in respect of securities

Subject to sections 4, 5 and 6, for the purposes of section 394(1)(a) of the Ordinance, the levy that is payable by each of -

- (a) a seller on the sale; and
- (b) a purchaser on the purchase,

of securities is 0.005% of the consideration.

4. Stock options

For the purposes of section 394(1)(a) of the Ordinance, the levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a stock option is 0% of the consideration.

5. Pilot programme securities

For the purposes of section 394(1)(a) of the Ordinance, the levy that is payable by a pilot programme market maker on each of his sales or purchases in such capacity of pilot programme securities is 0% of the consideration.

6. Exchange traded funds

For the purposes of section 394(1)(a) of the Ordinance, the levy that is payable by an exchange traded funds market maker on each of his sales or purchases in such capacity of shares in exchange traded funds is 0% of the consideration.

PART III

LEVY ON FUTURES CONTRACTS

7. Amount of levy specified under section 394(1)(b) of the Ordinance in respect of futures contracts

Subject to sections 8, 9, 10 and 11, for the purposes of section 394(1)(b) of the Ordinance, the amount of levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a futures contract is \$1.00.

8. Mini-Hang Seng Index Futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the amount of levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a Mini-Hang Seng Index Futures contract is \$0.20.

9. Currency futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the amount of levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a currency futures contract is nil.

10. New futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the amount of levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a new futures contract during the relevant period of the contract is nil.

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11. Stock futures contracts

For the purposes of section 394(1)(b) of the Ordinance, the amount of levy that is payable by each of -

(a) a seller on the sale; and

(b) a purchaser on the purchase,

of a stock futures contract, or an option on such a contract, is \$0.20.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 394(1) of the Securities and Futures Ordinance (No. 5 of 2002). It specifies the levy payable by a seller and a purchaser, respectively, on a sale and purchase of securities. The Order also specifies the amount of levy payable by a seller and a purchaser, respectively, on a sale and purchase of a futures contract.

SECURITIES AND FUTURES (LEVY) RULES

(NO. 5 of 2002, SECTION 394(5))

ARRANGEMENT OF SECTIONS

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SECURITIES AND FUTURES (LEVY) RULES

(Made by the Chief Executive in Council under section 394(5) 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 XVI of the Securities and Futures Ordinance (No. 5 of 2002).

2. Interpretation

In these Rules, unless the context otherwise requires -

"Exchange Company" (交易所公司) when used -

- (a) in relation to a levy imposed under section 394(1)(a) of the Ordinance means the Stock Exchange Company;

(b) in relation to a levy imposed under section 394(1)(b) of the Ordinance means the Futures Exchange Company;

"levy" (徵費) means a levy imposed under section 394(1)(a) or (b) of the Ordinance;

"remittance" (轉交) means a remittance under section 4;

3. Payment of levy

A person who is liable to pay a levy must pay the levy in such manner as may be prescribed from time to time in the rules of the Exchange Company as approved by the Commission under section 24 of the Ordinance.

4. Exchange Company to collect and remit levies

The Exchange Company must collect the levy paid to it and remit the same to the Commission by paying it -

(a) into such bank account as may be specified; and

- (b) on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a working day, on the next working day.

5. Depositing levy pending remittance

Pending remittance to the Commission of levy collected by the Exchange Company in accordance with section 4, such levy must -

- (a) be deposited as soon as practicable in any bank within the meaning of Banking Ordinance (Cap. 155);
and
- (b) be held by the Exchange Company on behalf of the Commission until remitted.

6. Returns

(1) Within 7 days after the date of each remittance of levy the Exchange Company must furnish to the Commission a return relating to the remittance.

- (2) A return furnished under subsection (1) must -
- (a) be in such form as may be specified by the Commission;
 - (b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and
 - (c) contain such information as may be specified by the Commission.

7. Adjustment of remittance and returns

A return or the amount of remittance to which it relates may be adjusted to reflect any deduction made during the month covered by it or any error in a previous return or remittance.

8. Late remittance charge

(1) If the Exchange Company fails to remit the levy when required under these Rules, it is liable to pay to the Commission a late remittance charge of 2% above the best lending rate of The Hongkong and Shanghai Banking Corporation Limited, on the amount of the late remittance, calculated on a daily basis commencing on the date of default until such remittance is made.

(2) The amount of the late remittance and the late remittance charge payable under subsection (1) is recoverable as a civil debt due to the Commission.

9. Records

The Exchange Company must keep proper records of all transactions relating to the collection, deduction, refund and remittance of the levy.

10. Commission access to records

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these

Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of his authority, inspect and make copies of the records kept under section 9.

11. Report

(1) Subject to subsection (3), the Exchange Company must furnish to the Commission -

(a) within 1 month after 31 March in each year or such longer period as may be specified by the Commission;

(b) a report certifying that the returns furnished under section 6 relating to all remittances made in respect of the 12 months ending on 31 March in that year are correct and in accordance with the Securities and Futures (Levy) (Order) (L. N. of 2002) and these Rules.

(2) The report furnished under subsection (1) must be -

- (a) in such form as may be specified by the Commission;
- (b) prepared and certified by the auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 32); and
- (c) at the expense of the Exchange Company.

(3) The first report furnished under subsection (1) must deal with returns furnished in respect of all remittances made on or before 31 March 2003.

12. Refund of levy

(1) Where a person paid a levy under section 394(1)(a) or (b) of the Ordinance, he may apply to the Commission for the refund of such levy on the ground that -

- (a) he was in fact not liable to pay the levy;
- (b) he was subsequently found to be not liable to pay the levy; or

(c) he subsequently became not liable to pay the levy.

(2) An application under subsection (1) must be -

(a) in writing; and

(b) accompanied by all relevant information.

(3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it must refund the levy to the applicant.

13. Notification of failure to pay levy

Where the Exchange Company is aware of any person's failure to pay a levy payable by him under section 394(1)(a) or (b) of the Ordinance, it must as soon as practicable notify the Commission of the matter.

14. Request for information

(1) The Commission, by notice in writing, may require the Exchange Company to provide information specified in the notice relating to the collection, deposit, refund, deduction and remittance of the levy.

(2) Where a notice is given under subsection (1), the Exchange Company must as soon as practicable provide the information specified in the notice.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

These Rules are made by the Chief Executive in Council under section 394(5) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe the manner in which payments of levies under section 394(1) must be made and impose

charges for late payment of such levies. They also prescribe matters relating to the keeping, inspection and audit of the accounts of recognized exchange companies relating to the collection and payment to the Commission of such levies.



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

Consultation Conclusions on the Securities and Futures (Levy) Order and the Securities and Futures (Levy) Rules

《證券及期貨(徵費)令》及
《證券及期貨(徵費)規則》諮詢總結

Hong Kong
June 2002

香港
2002年6月

INTRODUCTION

1. On 3 April 2002, the Securities and Futures Commission (the “Commission”) issued a consultation paper (the “Consultation Document”) to solicit public comments on the draft Securities and Futures (Levy) Order (the “draft Order”) and the draft Securities and Futures (Levy) Rules (the “draft Rules”), which it is proposed should be made by the Chief Executive in Council under section 394(1) and (5) respectively of the Securities and Futures Ordinance (No.5 of 2002) (the “Ordinance”) when it commences.
2. The consultation period lasted until 30 April 2002.
3. The purpose of this document is to provide interested persons with an analysis of the main comments raised during the consultation exercise and the rationale for the Commission’s conclusions. *This document should be read in conjunction with the Consultation Document.*

PUBLIC CONSULTATION

Consultation process

4. Public announcement inviting comments on the Consultation Document was published on the Commission’s website.
5. One formal submission was received from Hong Kong Securities Institute (the “HKSI”) while two similar verbal queries were received from Hang Seng Bank.
6. There were no substantive comments.

Consultation Conclusion

7. The Commission concludes that the comments received should not necessitate amendments to the draft Order and Rules attached to the Consultation Document. However, certain amendments have been made to the consultation draft of the Order and Rules with a view to improving the drafting of the Order and Rules.

SUMMARY OF COMMENTS AND SFC’S RESPONSES

8. According to the survey made by the HKSI, the majority of their respondents agreed with the draft Order and Rules. There was no disagreement.
9. Two similar queries were received from Hang Seng Bank questioning whether the levy on securities was reduced from 0.007% to 0.005% under section 3 of the draft Order. There will not be any change in the actual amount of levy payable by the purchaser or seller of securities. Under the existing Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 Sub. Leg. A), the

levy payable to the SFC is 0.007%. The SFC retains the levy of 0.005% for its own expenses and pays 0.002% into the investor compensation fund established under the Securities Ordinance (Cap. 333). Under the Securities and Futures Ordinance, the levy of 0.002% will be specifically payable for the purposes of the new investor compensation fund. The Securities and Futures (Investor Compensation – Levy) Rules to be made separately would be relevant.