

For discussion
on 6 June 2002

Paper No. 7/02

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

**Securities and Futures
(Investor Compensation – Levy) Rules**

**Securities and Futures
(Investor Compensation – Compensation Limits) Rules**

**Securities and Futures
(Transfer of Functions – Investor Compensation Company) Order**

**Securities and Futures
(Investor Compensation – Claims) Rules**

This paper sets out the proposals of the Securities and Futures Commission (SFC) to establish new investor compensation arrangements under Parts III and XII of the Securities and Futures Ordinance (SFO) (5 of 2002).

Proposal

2. We propose to recommend the Chief Executive in Council to make the following sets of subsidiary legislation under the SFO to implement the new investor compensation regime –

- (a) the Securities and Futures (Investor Compensation – Levy) Rules, now in draft at **Annex 1**;
- (b) the Securities and Futures (Investor Compensation – Compensation Limits) Rules, now in draft at **Annex 2**; and
- (c) the Securities and Futures (Transfer of Functions – Investor Compensation Company) Order, now in draft at **Annex 3**.

3. The SFC further proposes to make the Securities and Futures (Investor Compensation – Claims) Rules, in draft at **Annex 4**, under the power vested in it by the SFO.

Power to make the Rules and the major features

Securities and Futures (Investor Compensation – Levy) Rules

4. Part XII of the SFO provides for the establishment of a new compensation fund, to be known as the Investor Compensation Fund (ICF). The Chief Executive in Council may make rules setting out the means of funding the compensation fund and providing for the better carrying out of the objects and purposes of Part XII under sections 244(1)(a) and (d) respectively.

5. To preserve existing levy rates for relevant compensation funds, the draft Rules at Annex 1 provide for a levy at the rate of 0.002% on securities transactions (subject to several exceptions) and a levy in the amount of \$0.5 on each futures contract (\$0.1 for each Mini-Hang Seng Index futures contract and stock futures contract) payable by both the buyer and the seller. The draft Rules also provide for the manner of payment of the levy and other incidental matters.

6. Following the enactment of the Revenue Bill (No.3) 2001 in July 2001, the administrative arrangement is that of the 0.007% levy payable to the SFC under section 52 of the Securities and Futures Commission Ordinance, the SFC pays 0.002% to the Unified Exchange Compensation Fund (UECF). The SFC last reported to the Bills Committee on Revenue (No.3) Bill 2001 of the Legislative Council in June 2001 that the prudent level for the UECF was estimated to be \$800 million. As at end March 2002, the UECF stands at about \$780 million.

7. For the new expanded investor compensation arrangements under the SFO, the SFC estimates that the prudent level for the ICF is \$1 billion. This was explained in the SFC's consultation paper of March 2001 on Proposed New Investor Compensation Arrangements for Hong Kong. Under the SFO, the monies in the UECF may be transferred to the new ICF whilst reserving sufficient amounts to cover claims on the UECF. Money from the UECF and the proposed 0.002% levy will help ensure that the new ICF will be properly funded on inception to meet with its obligations. We will keep under review the funding level and the rate of levy in the light of the operational experience of the ICF and prevailing circumstances.

Securities and Futures (Investor Compensation – Compensation Limits) Rules

8. Under section 244(1)(b) of the SFO, the Chief Executive in Council may make rules providing for the maximum amount of compensation that may be paid to a person making a claim for compensation.

9. The draft Rules at Annex 2 provide that the maximum amount of compensation that may be paid to each claimant is \$150,000 for the losses sustained as a result of a default in relation to securities listed or traded on a recognized stock market or futures contracts traded on a recognized futures market. This is in line with the on-going policy adopted by UECF for awarding claimants in recent years.

Securities and Futures (Transfer of Functions – Investor Compensation Company) Order

10. Part III of the SFO provides for the recognition of an investor compensation company (“ICC”) by the SFC for the facilitation of the management and administration of the ICF. Under section 80(1) of the SFO, the SFC may request the Chief Executive in Council to make an Order transferring certain functions of the SFC under Part XII and Rules made under Part XII to the ICC in relation to the ICF.

11. An ICC separate from the SFC is designed to enable the ICC to dedicate its focus to investor compensation matters. This is the approach adopted for managing most compensation arrangements overseas, including those in the US, UK, Canada and Australia. The governing body of the ICC will be designed to facilitate its focus on compensation matters. It will be broadly based and representative of the stakeholders, including the SFC, the Hong Kong Exchanges and Clearing Ltd (HKEx), brokers, banking community and investors.

12. On current planning, the SFC will recognise the ICC after its incorporation as such under section 79 of the SFO, but before the SFC requests CE in Council to transfer the SFC’s functions to this company. The recognition and the Transfer Order will not take effect until Parts III and XII of the SFO come into operation. The Transfer Order is subsidiary legislation subject to LegCo’s negative vetting.

13. The draft Order at Annex 3 provides for the transfer of specified functions of the SFC in relation to the ICF to the ICC. Such functions include management of the ICF, keeping of proper accounts, investment of money, payments out of the ICF and performing certain functions of the SFC set out in the Securities and Futures (Investor Compensation – Claims) Rules at Annex 4.

Securities and Futures (Investor Compensation – Claims) Rules

14. Under section 244(2) of the SFO, the SFC may make rules relating to various matters including the circumstances in which a person is entitled to claim compensation, the manner in which a claim for compensation is to be made, the information to be supplied to the SFC to enable the claim to be determined, the persons who are not entitled to make a claim, the determination and payment of and the procedures for dealing with a claim for compensation, etc. The draft Rules at Annex 4 provide for these matters accordingly. The rules were previously referred to as the “Securities and Futures (Investor Compensation – Miscellaneous) Rules” in the public consultation exercise. They have now been retitled to better reflect the nature of the matters provided for.

15. The SFC and the Department of Justice have been consulted on the vires of the draft Rules and the draft Order. The advice is that the draft Rules and the draft Order would be *intra vires* if made as drafted.

Public consultation

16. The SFC first released a consultation paper on the concept and general framework of new investor compensation arrangements in September 1998. It outlined the rationale for new arrangements to enhance investor protection and the objectives and key features of the proposal, including the establishment of an investor compensation company regulated by the SFC.

17. Taking into account public comments received in the September 1998 consultation exercise, the SFC released a more detailed consultation document in March 2001 on the key components of the new investor compensation arrangements. They included the expanded scope of coverage of intermediaries¹, the proposed 0.002% levy on securities transactions for

¹ To cover licensed corporations and authorized institutions dealing in securities and futures contracts and providing securities margin financing in relation to products traded on HKEx.

building up the new compensation fund, the per investor compensation limit of \$150,000, and the establishment of the ICC. The proposals met with positive response from the public.

18. The SFC issued the final consultation document containing the exposure drafts of the Rules and the Order on 28 March 2002 for comment by the public. Six submissions were received. The SFC considers that no major changes need to be made to the substance of the draft Rules and the draft Order in response to these submissions. The draft Rules and the draft Order are further refined to better reflect the policy intention and to improve drafting.

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

- (a) Consultation Document on the draft Rules and the draft Order, at **Annex 5**, which sets out the underlying policy, together with the exposure drafts. The drafts as revised are at Annexes 1 to 4 for Members' consideration; and
- (b) Consultation Conclusions and Summary of Comments and SFC's Responses in respect of the consultation exercise in March 2002, at **Annex 6**, which set out the conclusions from the consultation and the SFC's responses, in the form of a table, to the comments received. A list of respondents is attached to the Consultation Conclusions.

Way forward

20. Subject to Members' views, the draft Rules and the draft Order at Annexes 1 to 4 would be submitted to the relevant authority for approval and, if approved, published in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that these Rules and Order shall come into operation on the commencement of the SFO.

Securities and Futures Commission
Financial Services Bureau
31 May 2002

DRAFT

[CF: Sections 236, 237(1), 244(1) and 244(4) of the
Securities and Futures Ordinance]

**SECURITIES AND FUTURES (INVESTOR COMPENSATION -
LEVY) RULES**

(5 OF 2002 SECTION 244(1))

ARRANGEMENT OF SECTIONS

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**SECURITIES AND FUTURES (INVESTOR COMPENSATION
- LEVY) RULES**

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (5 of 2002))

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day on which Part XII 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 Part II,
means the Stock Exchange Company;

(b) in relation to a levy payable under Part III,
means the Futures Exchange Company;

"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;

"levy" (徵費) means a levy payable under Part II or Part III;

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

"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;

"remittance" (轉交) means a payment, by way of remittance, by the Exchange Company to the Commission under section 13;

"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

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 the compensation fund, a levy for a sale and purchase of securities shall be payable to the Commission -

- (a) by the seller at the rate of 0.002% of the consideration for the sale; and
- (b) by the purchaser at the rate of 0.002% of the consideration for the purchase.

5. No levy on stock options

For the purposes of the compensation fund, no levy for a sale and purchase of a stock option shall be payable to the Commission.

6. Pilot programme securities

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of pilot programme securities is -

- (a) in the case of the seller -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the sale;
 - (ii) where the seller is a pilot programme market maker, at the rate of 0% of the consideration for the sale; or
- (b) in the case of the purchase -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the purchase;
 - (ii) where the purchaser is a pilot programme market maker, at the rate of 0% of the consideration for the purchase.

7. Exchange traded funds

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of an exchange traded fund is -

- (a) in the case of the seller -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the sale;

- (ii) where the seller is an exchange traded funds market maker, at the rate of 0% of the consideration for the sale; or
- (b) in the case of the purchaser -
 - (i) subject to sub-paragraph (ii), at the rate of 0.002% of the consideration for the purchase;
 - (ii) where the purchaser is an exchange traded funds market maker, at the rate of 0% of the consideration for the purchase.

PART III

LEVY PAYABLE IN RESPECT OF SALE AND PURCHASE OF FUTURES CONTRACTS

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 and 11, for the purposes of the compensation fund, a levy for a sale and purchase of a futures contract shall be payable to the Commission -

- (a) by the seller in the amount of \$0.50; and
- (b) by the purchaser in the amount of \$0.50.

10. Mini-Hang Seng Index Futures contracts

For the purposes of the compensation fund, the levy for a sale and purchase of a Mini-Hang Seng Index Futures contract is -

- (a) in the case of the seller, in the amount of \$0.10;
- or
- (b) in the case of the purchaser, in the amount of \$0.10.

11. Stock futures contracts

For the purposes of the compensation fund, the levy for a sale and purchase of a stock futures contract or an option on such a contract is -

- (a) in the case of the seller, in the amount of \$0.10;
- or
- (b) in the case of the purchaser, in the amount of \$0.10.

PART IV

MANNER OF PAYMENT AND INCIDENTAL MATTERS

12. Payment of levies

(1) A person who is liable to pay a levy under these rules shall pay the levy to the Exchange Company on behalf of the Commission in such manner as may be prescribed from time to time in the rules of the Exchange Company.

(2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

13. Exchange Company to collect and remit levy

The Exchange Company shall collect any levy paid to it under section 12 and, subject to section 21, 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.

14. Exchange Company to deposit levies pending remittance

Pending remittance to the Commission of any levy in accordance with section 13, the Exchange Company shall -

- (a) hold the levy on behalf of the Commission; and
- (b) deposit the levy in a bank within the meaning of the Banking Ordinance (Cap. 155) as soon as reasonably practicable after collection of the levy.

15. 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.

16. 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).

17. 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 the 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 the remittance of the levy is made.

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

(3) The Commission shall pay the late remittance charge paid to it under subsection (1) into the compensation fund.

18. Accounts

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

19. Access to accounts by the 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 18.

20. 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 15 relating to all remittances made in respect of the 12 months ending on 31 March in that year are correct and in accordance with 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.

21. Refund of levy

(1) Where a person has paid a levy , 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; 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.

22. 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.

23. Provision of information

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

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

Clerk to the Executive Council,

COUNCIL CHAMBER

2002

Explanatory Note

These Rules prescribe the means of funding the compensation fund established under section 236 of the Securities and Futures Ordinance (5 of 2002) by providing that a levy is payable on certain securities and futures contracts. They also prescribe the manner in which payment of levies must be made and some incidental matters.

DRAFT

[CF: Section 244(1) of the Securities and Futures Ordinance]

**SECURITIES AND FUTURES (INVESTOR COMPENSATION -
COMPENSATION LIMITS) RULES**

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (5 of 2002))

PART I

PRELIMINARY

1. Commencement

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

2. Interpretation

In these Rules, unless the context otherwise requires, -

"Claims Rules" (《申索規則》) means the Securities and

Futures (Investor Compensation - Claims) Rules (LN of 2002);

"associated person" (相聯者), "claimant" (申索人), "default"

(違責), "related assets" (有連繫資產) and "specified

person" (指明人士) shall have the respective meanings assigned to them in section 2 of the Claims Rules.

PART II

LIMITS ON AMOUNT OF COMPENSATION

3. Limits on compensation to be made to claimants

(1) With regard to the losses that the Commission is satisfied have been sustained by a claimant -

(a) as a result of a default committed by -

(i) a specified person; or

(ii) any associated person of the specified person;

(b) in relation to -

(i) securities listed or traded, or to be listed or traded, on a recognized stock market; and

(ii) related assets of such securities,

the total amount of compensation payable under section 9 of the Claims Rules to the claimant must not exceed the sum of \$150,000.

(2) With regard to the losses that the Commission is satisfied have been sustained by a claimant -

(a) as a result of a default committed by -

(i) a specified person; or

- (ii) any associated person of the specified person;

(b) in relation to -

- (i) any futures contract traded on a recognized futures market; and
- (ii) related assets of such futures contract,

the total amount of compensation payable under section 9 of the Claims Rules to the claimant must not exceed the sum of \$150,000.

Clerk to the Executive Council,

COUNCIL CHAMBER

2002

Explanatory Note

These Rules prescribe the maximum amount of compensation that may be paid to a person making a claim for compensation from the Investor Compensation Fund under the Securities and Futures (Investor Compensation -

Claims) Rules. These Rules should be read in the light of the Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (LN 2002) which transfers certain functions of the Commission to a recognized investor compensation company.

DRAFT

[CF: Sections 79, 80 and 236 to 242 of the Securities and Futures Ordinance]

SECURITIES AND FUTURES (TRANSFER OF FUNCTIONS - INVESTOR COMPENSATION COMPANY) ORDER

(Made by the Chief Executive in Council
at the request of the Securities and
Futures Commission under section 80 of
the Securities and Futures Ordinance (5
of 2002))

1. Commencement

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

2. Interpretation

In this Order, unless the context otherwise requires, "Investor Compensation Company" (投資者賠償公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name [the Investor Compensation Company Limited].

3. Transfer of functions of the Commission

(1) Subject to subsections (2) to (5), the functions conferred upon the Commission by the provisions set out in column 2 of the Schedule are transferred to the Investor Compensation Company.

(2) The transfer of functions under subsection (1) is subject to the reservation that the Commission is to perform the functions concurrently with the Investor Compensation Company.

(3) The function specified in item 1 of the Schedule is transferred only to the extent that the function relates to the maintenance of the compensation fund.

(4) The functions specified in items 3 and 6 of the Schedule are transferred subject to such directions in writing as the Commission may from time to time give to the Investor Compensation Company.

(5) The functions specified in items 4, 5, 7, and 8 of the Schedule are transferred to the Investor Compensation Company only to the extent that the functions relate to the part of the compensation fund that is managed and administered by the Company.

(6) A description in column 3 of the Schedule indicates for convenience of reference only the general nature of the function

under the provision specified opposite to that description in column 2 of the Schedule.

Schedule

[s. 3]

Item Provision

Description

Securities and Futures Ordinance (5 of 2002)

1. Section 236(1) Maintaining the compensation fund
2. Section 237(2) Borrowing money for the purpose of the compensation fund
3. Section 238(1) Management and administration of the compensation fund including the determination of a claim for compensation
4. Section 239 Opening accounts at authorized financial institutions and paying into or transferring to such accounts all amounts received by the Investor Compensation Company forming part of the compensation fund
5. Section 240(1) Keeping proper accounts of the compensation fund

6. Section 240(2) Maintaining separate accounts and sub-accounts
7. Section 240(5) Appointing an auditor to audit the accounts of the compensation fund
8. Section 241 Investing money which forms part of the compensation fund
9. Section 242(1) Making payments out of the compensation fund and determining the order of such payments

Securities and Futures (Investor Compensation - Claims) Rules

(LN 2002)

10. Section 3 Publishing a notice inviting claims
11. Section 4(4) Determining whether a claim not lodged within the time provided in section 4(3) is barred
12. Section 5(2) Accepting a claim lodged otherwise than in accordance with section 5(1)
13. Section 6 Requiring records to be produced
14. Section 7 Making a determination of loss
15. Section 8 Issuing a notice of determination
16. Section 9 Paying compensation

17. Section 10 Arranging for insurance, surety,
guarantee or other financial arrangements

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

The purpose of this Order is to transfer to the Investor Compensation Company certain functions of the Securities and Futures Commission in relation to the compensation fund established under Part XII of the Securities and Futures Ordinance (5 of 2002).

DRAFT

[CF: Section 244(2) of the Securities and Futures Ordinance]

**SECURITIES AND FUTURES (INVESTOR COMPENSATION - CLAIMS)
RULES
(5 OF 2002, SECTION 244(2))**

ARRANGEMENT OF SECTIONS

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**SECURITIES AND FUTURES (INVESTOR COMPENSATION - CLAIMS)
RULES**

(Made under section 244(2) of the Securities
and
Futures Ordinance (5 of 2002))

PART I

PRELIMINARY

1. Commencement

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

2. Interpretation

In these rules, unless the context otherwise requires -

"appointed day" (指定日期) means the date appointed under section 13;

"associated person" (相聯者), in relation to a specified person, means -

- (a) a person employed or otherwise engaged by the specified person; or

- (b) a person who may receive or hold client assets of the specified person under section 164 of the Ordinance; or
- (c) an employee of the person referred to in paragraph (b);

"claimant" (申索人) means a qualifying client who makes a claim under section 4;

"default" (違責) in relation to a specified person or an associated person of the specified person, means -

- (a) the insolvency, bankruptcy or winding up of the specified person; or
- (b) any breach of trust, defalcation, fraud or misfeasance committed by the specified person or associated person of the specified person,

which occurs on or after the appointed day;

"qualifying client" (合資格客戶) in relation to a specified person, means a person for whom the specified person provides a service but does not include -

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

- (c) a recognized exchange company, a recognized exchange controller, or a recognized clearing house;
- (d) a person authorized to provide automated trading services under section 95 (2) of the Ordinance
- (e) an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41);
- (f) a manager or operator of a collective investment scheme authorized under section 104(1) of the Ordinance;
- (g) a manager or operator of an arrangement referred to in paragraph (iii) of the definition of "collective investment scheme" in Part 1 of Schedule 1 to the Ordinance;
- (h) a person who is authorized, licensed or exempt by a competent authority in a jurisdiction outside Hong Kong for any activity that in the opinion of the Commission is the same as or similar to any of the activities carried on by a person referred to in paragraphs (a) to (g);
- (i) an associate of the specified person -

- (i) which is a corporation; or
- (ii) who has committed a default or assisted in the commission of a default by the specified person or any associate of the specified person;
- (j) the Government or a government of any place outside Hong Kong; and
- (k) a person in his capacity as a trustee or custodian of a person, scheme or arrangement referred to in paragraphs (a) to (j);

"related assets" (有連繫資產) means money and other property -

- (a) which is entrusted to or received by a specified person or an associated person of the specified person;
- (b) to which a claimant is entitled or in which he has a beneficial interest; and
- (c) which relates to the -
 - (i) purchase;
 - (ii) sale;
 - (iii) holding;
 - (iv) pledge;
 - (v) adjustment;
 - (vi) exercise; or

(vii) expiry,
of specified securities or futures
contracts;

"securities margin financing" (證券保證金融資) has the same meaning as in Part 2 of Schedule 5 to the Ordinance except that paragraph (v) of the definition of that expression does not apply;

"specified person" (指明人士) means -

- (a) an intermediary licensed or registered for dealing in securities or dealing in futures contracts;
- (b) an intermediary licensed for securities margin financing; or
- (c) an authorized financial institution which provides securities margin financing;

"specified securities or futures contracts" (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on a recognized stock market or recognized futures market;

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

PART II

CLAIMS FOR COMPENSATION

3. Notice inviting claims

(1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting any qualifying client of the specified person named in the notice who believes he has sustained loss as a result of such default to claim for compensation. Such a notice shall be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.

(2) A notice published under subsection (1) shall specify a date, not being earlier than 3 months after publication of the notice, on or before which a claim for compensation may be made under section 4.

4. Making a claim for compensation

(1) Where any qualifying client of a specified person sustains a loss -

(a) as a result of a default committed on or after the appointed day by -

(i) the specified person; or

(ii) an associated person of the specified person;

(b) in relation to -

(i) specified securities or futures contracts; or

(ii) related assets,

the qualifying client may claim compensation from the compensation fund in respect of such loss.

(2) A claim under subsection (1) may include a claim for the costs reasonably incurred in and incidental to the making and proving of the claim.

(3) A claim under subsection (1) shall be lodged with the Commission -

(a) if a notice under section 3(1) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after the day the claimant first became aware of the default giving rise to the claim.

(4) A claim which is not lodged within the time limit provided in subsection (3) is barred, unless the Commission determines otherwise.

5. Submission of claims

(1) Subject to subsection (2), a claim under section 4(1) shall be -

- (a) lodged in the form specified by the Commission under section 402(1) of the Ordinance for the purposes of this section;
- (b) completed and signed in accordance with such directions and instructions as are included in the form; and
- (c) accompanied by such documents as are specified in the form.

(2) The Commission may accept a claim lodged otherwise than in accordance with subsection (1).

PART III

PROCESSING OF CLAIMS

6. Commission may require records

(1) The Commission may by notice in writing served upon a person require the person to produce to the Commission originals or copies of such records as the Commission may reasonably require -

- (a) in connection with a claim for compensation made under section 4(1); or
- (b) for the purpose of assisting -

- (i) the Commission in the exercise of its rights of subrogation under section 243 of the Ordinance; or
- (ii) a recognized investor compensation company in the exercise of its rights of subrogation under section 87 of the Ordinance.

(2) A notice under subsection (1) shall specify the records required and the date by which the person served with the notice is to furnish them to the Commission.

7. Determination of loss

(1) The Commission shall, in relation to each claim for compensation, determine -

- (a) whether there has been a default by a specified person or any associated person of the specified person;
- (b) the date of such default (if any); and
- (c) the amount of the loss (if any) that the claimant has sustained in relation to specified securities or futures contracts or related assets, as a result of any such default, in accordance with subsection (2).

(2) The amount of loss referred to in subsection (1)(c) shall be the loss that the Commission is satisfied the claimant has sustained having regard to -

(a) the market value, as at the date of the default, of the specified securities or futures contracts and of any related assets less -

(i) any amount that the Commission is satisfied was due from the claimant to the specified person; and

(ii) any specified securities, futures contracts or related assets that have been returned to the claimant after the date of default; and

(b) any costs that the Commission is satisfied were reasonably incurred by the claimant incidental to the making and proving of his claim for compensation under section 4 .

8. Notice of determination

(1) Where the Commission makes a determination under section 7 it shall issue a notice of determination to the claimant as soon as practicable thereafter.

(2) Where the Commission determines to disallow a claim in whole or in part, it shall give its reasons in the notice of determination.

(3) If the Commission determines that compensation should be paid to a claimant, it shall specify the following in the notice of determination -

- (a) the date of the default;
- (b) the amount of the loss sustained by the claimant as determined under section 7;
- (c) any relevant specified securities or futures contracts or related assets; and
- (d) the amount of compensation payable under these Rules.

9. Payment of compensation

(1) Subject to subsection (2) and section 11, the following amounts shall be paid out of the compensation fund -

- (a) any compensation payable to a claimant as specified in the notice of determination under section 8(3)(d);
- (b) any compensation payable following a decision of the Tribunal or the Court of Appeal, under Part XI of the Ordinance; and

(c) any costs awarded in favour of a claimant by the Tribunal, or the Court of Appeal, following a decision referred to in paragraph (b).

(2) The total amount of compensation payable to a claimant under subsection (1)(a) and (b) shall not exceed the maximum amount prescribed by the Securities and Futures (Investor Compensation - Compensation Limits) Rules (LN 2002).

(3) In determining the total amount of compensation to be paid to a claimant under subsection (1)(a) and (b), and in applying the limits prescribed in section 3(1) and (2) of the Securities and Futures (Investor Compensation - Compensation Limits) Rules (LN 2002), the Commission may aggregate separate claims for compensation by a claimant, or a number of claimants, or parts of those claims, if it is satisfied that the separate claims, or parts of those claims, represent the losses sustained by one person arising out of the same default.

(4) The Commission may pay the compensation by instalments if it determines that it is necessary or appropriate to do so.

PART IV

MISCELLANEOUS

10. Financial arrangements

The Commission may arrange for such insurance, surety, guarantee or other financial arrangements as it considers appropriate to facilitate the administration of the compensation fund.

11. Provision where the money available to the compensation fund is insufficient to meet claims

(1) If, at any time, the Commission determines that the amount of money available to the compensation fund is insufficient to pay the total amount of compensation then payable to the claimants, or likely to become so payable

-

(a) under these Rules; and

(b) in the circumstances referred to in section 9(1)(b),

the amount available to the compensation fund is to be apportioned among the claimants in such manner as the Commission may determine.

(2) In the event that any amounts referred to in section 9(1) remain unpaid because the Commission has determined that an apportionment shall be made under

subsection (1), the amount are to be paid when there is sufficient money available to the compensation fund.

12. Discharge of claims

Upon payment of the amount determined to be payable to a claimant under these Rules has been paid, the rights of the claimant against the compensation fund in relation to that claim are absolutely discharged.

13. Appointed day

The Commission may by notice published in the Gazette appoint a date as the appointed day for the purposes of these rules.

Chairman,
Securities and Futures
Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 244(2) of the Securities and Futures Ordinance (5 of 2002). They prescribe the persons

who may make a claim for compensation from the investor compensation fund established under section 236 of the Ordinance. They also prescribe the manner in which such a claim is to be made and how such a claim will be assessed and paid.

These Rules should be read in the light of the Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (LN 2002) which transfers certain functions of the Commission to a recognized investor compensation company.



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

A Consultation Paper on

- i) Securities and Futures (Investor Compensation) Rules,
- ii) Securities and Futures (Investor Compensation – Compensation Limits) Rules,
- iii) Securities and Futures (Transfer of Functions – Investor Compensation Company) Order, and
- iv) Securities and Futures (Investor Compensation - Miscellaneous) Rules

- i) 《證券及期貨(投資者賠償)規則》；
- ii) 《證券及期貨(投資者賠償 – 賠償限額)規則》；
- iii) 《證券及期貨(轉移職能 – 投資者賠償公司)令》；及
- iv) 《證券及期貨(投資者賠償 – 雜項條文)規則》的

諮詢文件

Hong Kong
March 2002

香港
2002年3月

1. The Securities and Futures Commission (“SFC”) is publishing this Paper to consult the public on draft subsidiary legislation relating to new investor compensation arrangements to be put in place under Parts III and XII of the Securities and Futures Ordinance (No. 5 of 2002) (the “Ordinance”). The draft subsidiary legislation comprises rules to be made by the Chief Executive in Council and rules to be made by the SFC under Ordinance.
2. The Chief Executive in Council will be asked to make the following rules under section 244(1) of the Ordinance :
 - i) **Securities and Futures (Investor Compensation) Rules** (see Appendix 1);
 - ii) **Securities and Futures (Investor Compensation – Compensation Limits) Rules** (see Appendix 2).
3. The Chief Executive in Council will also be asked to make the **Securities and Futures (Transfer of Functions – Investor Compensation Company) Order** under section 80(1) of the Ordinance (see Appendix 3).
4. The SFC will make the **Securities and Futures (Investor Compensation - Miscellaneous) Rules** under section 244(2) of the Ordinance (see Appendix 4).
5. Part III and XII of the Ordinance provide for the framework for the establishment of the new compensation fund and the investor compensation company as described in the Paper on the Proposed New Investor Compensation Arrangements published by the SFC in March 2001 (“the March 2001 Paper”). The above proposed subsidiary legislation sets out the details of the compensation arrangements as proposed in that March 2001 Paper.
6. The proposed Securities and Futures (Investor Compensation) Rules will provide for details about the funding arrangements of the new compensation fund. They provide for a 0.002% compensation fund levy on securities transactions (subject to several exceptions) and a \$0.50 levy on each futures contract (\$0.2 for each Mini-Hang Seng Index futures contract and stock futures contract) payable by both the buyer and the seller.
7. The March 2001 Paper proposed that the new compensation fund should provide for a per claimant compensation payment limit. The proposed Securities and Futures (Investor Compensation – Compensation Limits) Rules provide that \$150,000 is the maximum amount of compensation that may be paid to a person making a claim from the investor compensation fund.
8. The March 2001 Paper proposed the establishment of an investor compensation company to manage the new compensation fund and process claims. Part III of the Ordinance provides for the establishment of an investor compensation company. The Securities and Futures (Transfer of Functions – Investor Compensation Company) Order prescribes the functions to be transferred to the Investor Compensation Company.

9. The Securities and Futures (Investor Compensation – Miscellaneous) Rules will prescribe the persons who may make a claim for compensation from the investor compensation fund established under section 236 of the Ordinance. The “qualifying client” defined in the rules is similar to that set out in the March 2001 Paper. They also prescribe the manner in which a claim is to be made and how such a claim will be assessed and paid and other miscellaneous matters.
10. It is the intention of the SFC that the draft Securities and Futures (Investor Compensation – Miscellaneous) 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 requirements of the draft rules.
11. The SFC invites comments on this Consultation Paper. Written comments should reach the SFC before the close of business by 25th April 2002. Written comments may be sent

By mail to: SFC (Compensation Fund)
12/F, Edinburgh Tower
The Landmark
15 Queen’s Road Central
Hong Kong
Attn : Supervision of Markets Division

By fax to: (852) 2521 7917

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

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

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 at Appendix 5.
13. If you do not wish your name and/or submission to be published by the SFC, please state that you wish your name and/or submission to be withheld from publication when you make your submission.
14. The draft Rules and Order should be read in conjunction with the Securities and Futures Ordinance itself.

SECURITIES AND FUTURES (INVESTOR COMPENSATION) RULES

(ORD. NO. 5 OF 2002 SECTION 244(1))

ARRANGEMENT OF SECTIONS

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PRELIMINARY**

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| 3. | Rate of levy payable in respect of securities | |
| 4. | Stock options | |
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**PART III
MEANS OF FUNDING THE COMPENSATION FUND –
LEVY ON FUTURES CONTRACTS**

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| 7. | Amount of levy payable in respect of futures contracts | |
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**PART IV
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13. Exchange Company to collect and remit levy
14. Depositing levy pending remittance
15. Returns
16. Adjustment of remittance and returns
17. Late remittance charge
18. Records
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20. Report
21. Refund of levy
22. Notification of failure to pay levy
23. Request for information

SECURITIES AND FUTURES (INVESTOR COMPENSATION) RULES

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (No. 5 of 2002)

PART I

PRELIMINARY

1. Commencement

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

2. Interpretation

In these Rules, unless the context otherwise requires –

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

“Exchange Company” (交易所公司) when used –

- (a) in relation to the levy imposed under Part II means the Stock Exchange Company;
- (b) in relation to the levy imposed under Part III means the Futures Exchange Company;

“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” (小型恒生指數期貨合約) 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 traded on a recognized futures market prior to the commencement of these Rules;

“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) means the period of 6 months commencing on the first day of trading in the new futures contract on a recognized futures market;

"remittance" (轉交) means a remittance under section 13;

“rules of the Futures Exchange Company” (期交所規章) means the rules –

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

“rules of the Stock Exchange Company” (聯交所規章) means the rules –

- (a) of the Stock Exchange Company;
- (b) made under section 23 of the Ordinance; and
- (c) 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

MEANS OF FUNDING THE COMPENSATION FUND – LEVY ON SECURITIES

3. Rate of levy payable in respect of securities

Subject to sections 4, 5 and 6, for the purposes of the compensation fund, a levy is payable to the Commission -

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

of securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules at the rate of 0.002% of the consideration .

4. Stock options

For the purposes of the compensation fund, the rate of levy that is payable -

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

of a stock option which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

5. Pilot programme securities

For the purposes of the compensation fund, the rate of levy that is payable by a pilot programme market maker on his sale or purchase in such capacity of pilot programme securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

6. Exchange traded funds

For the purposes of the compensation fund, the rate of levy that is payable by an exchange traded funds market maker on his sale or purchase in such capacity of shares in exchange traded funds which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

PART III **MEANS OF FUNDING THE COMPENSATION FUND - LEVY ON** **FUTURES CONTRACTS**

7. Amount of levy payable in respect of futures contracts

Subject to sections 8, 9, 10 and 11, for the purposes of the compensation fund, a levy is payable to the Commission –

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

of a futures contract traded on a recognized futures market under its rules in the amount of \$0.50.

8. Mini-Hang Seng Index Futures contracts

For the purposes of the compensation fund, the amount of levy that is payable to the Commission -

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

of a Mini-Hang Seng Index Futures contract traded on a recognized futures market is \$0.20.

9. Currency futures contracts

For the purposes of the compensation fund, the amount of levy that is payable –

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

of a currency futures contract traded on a recognized futures market is nil.

10. Newly traded futures contracts

For the purposes of the compensation fund, the amount of levy that is payable

-

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

during the relevant period of a new futures contract traded on a recognized futures market is nil.

11. Stock futures contracts

For the purposes of the compensation fund, the amount of levy that is payable –

- (a) by a seller on the sale; and
 - (b) by a purchaser on the purchase,
- of a stock futures contract traded on a recognized futures market, or an option on such a contract traded on a recognized futures market, is \$0.20.

PART IV MANNER OF PAYMENT AND INCIDENTAL MATTERS

12. Payment of levies

(1) A person who is liable to pay a levy under these rules 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.

(2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

13. Exchange Company to collect and remit levy

The Exchange Company must collect the levy paid to it and, subject to section 21, remit the same to the Commission by paying it - -

- (a) into such bank account as may be specified by the Commission; 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.

14. Depositing levy pending remittance

Pending remittance to the Commission of levy collected by the Exchange Company in accordance with section 13, such levy must -

- (a) be deposited as soon as practicable in a bank within the meaning of the Banking Ordinance (Cap. 155); and
- (b) subject to section 15, be held by the Exchange Company on behalf of the Commission until remitted.

15 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.

16 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.

17 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, calculated on a daily basis 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.

18 Records

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

19. 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 18.

20. 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 15 relating to all remittances made in respect of the 12 months ending on 31 March in that year are correct and in accordance with 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.

21. Refund of levy

- (1) Where a person has paid a levy under Part II or III, he may apply to the Commission for the refund of such levy on the ground that he -
 - (a) was in fact not liable to pay the levy;
 - (b) was subsequently found to be not liable to pay the levy; or
 - (c) 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.

22. Notification of failure to pay levy

Where the Exchange Company is aware of any person's failure to pay a levy payable by him in accordance with these Rules, it must as soon as practicable notify the Commission of the matter.

23. 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 244(1) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe the means of funding the compensation fund established under section 236 of the Ordinance. These Rules must be read in the light of any Order made under section 80 of the Ordinance transferring functions of the Commission under these Rules to a recognized investor compensation company.

SECURITIES AND FUTURES (INVESTOR COMPENSATION – COMPENSATION LIMITS) RULES

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (No. 5 of 2002)

PART I

PRELIMINARY

1. Commencement

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

2. Interpretation

(1) In these Rules, unless the context otherwise requires “Claims Rules” (《申索規則》) means the Securities and Futures (Investor Compensation – Miscellaneous) Rules (LN of 2002);

(2) In these Rules the expressions “associated person” (相聯者), “claimant” (申索人), “default” (違責), “related assets” (有連繫資產) and “specified person” (指明人士) have the respective meanings assigned to them in section 2 of the Claims Rules.

PART II

LIMITS ON AMOUNT OF COMPENSATION

3. Limits on payments to be made to claimants

(1) With regard to the losses that the Commission is satisfied have been suffered by a claimant -

- (a) as a result of a default committed by –
 - (i) a single specified person; or
 - (ii) any associated person of the specified person;
- (b) in relation to securities listed or traded, or to be listed or traded, on a recognized stock market and related assets of such securities,

the total amount of compensation that may be awarded to each claimant under section 9 of the Claims Rules must not exceed the sum of \$150,000.

(2) With regard to the losses that the Commission is satisfied have been suffered by a claimant -

- (a) as a result of a default committed by –
 - (i) a single specified person; or
 - (ii) any associated person of the specified person;

- (b) in relation to any futures contract listed or traded, or to be listed or traded, on a recognized futures market and related assets of such futures contract,

the total amount of compensation that may be paid to each claimant under section 9 of the Claims Rules must not exceed the sum of \$150,000.

(3) In determining the total amount of compensation to be paid to a claimant under section 9 of the Claims Rules, and in applying the limits prescribed in subsections (1) and (2), the Commission may aggregate separate claims for compensation by a claimant, or a number of claimants, if it is satisfied that the separate claims represent the losses suffered by one person arising out of the same default.

Clerk to the Executive Council,

COUNCIL CHAMBER

2002

Explanatory Note

These Rules are made by the Chief Executive in Council under section 244(1) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe the maximum amount of compensation that may be paid to a person making a claim from the fund under the Securities and Futures (Investor Compensation – Miscellaneous) Rules. These Rules must be read in the light of any Order made under section 80 of the Ordinance transferring functions of the Commission under these Rules to a recognized investor compensation company.

**SECURITIES AND FUTURES
(TRANSFER OF FUNCTIONS – INVESTOR COMPENSATION COMPANY) ORDER**

(Made by the Chief Executive in Council under
section 80(1) of the Securities and Futures
Ordinance (No. 5 of 2002)

1. Commencement

This Order comes into operation on the day appointed for the commencement of Part III of the Ordinance.

2. Interpretation

In this Order, unless the context otherwise requires –
"compensation" (賠償) shall have the meaning assigned to it by section 235 of the Ordinance;
and
"Investor Compensation Company" (投資者賠償公司) means the Investor Compensation Company Limited recognized as an investor compensation company under section 79 of the Ordinance.

3. Transfer of functions of the Commission

The functions conferred upon the Commission that are listed in the Schedule hereto are transferred to the Investor Compensation Company subject to –

- (a) the conditions set out in column 3 of the Schedule; and
- (b) the reservation that the Commission is to perform the functions concurrently with the Investor Compensation Company.

Schedule

| Item | Provision | Short description of function |
|-------------|--|---|
| 1. | <u>Section 236</u> of the Ordinance | To maintain the compensation fund established by the Commission under <u>section 236</u> . |
| 2. | Section <u>237(2)</u> of the Ordinance | With the consent of the Financial secretary, for the purposes of the compensation fund to borrow money and charge investments acquired under <u>section 241</u> of the Ordinance. |
| 3. | <u>Section 238</u> of the Ordinance | To be responsible for the management and administration of the compensation fund including the determination of a claim for compensation. |
| 4. | <u>Section 239</u> of the Ordinance | To open at one or more authorized financial institutions one or more accounts and to pay into or transfer to such account or accounts all amounts, received by the Investor |

- | | |
|--|--|
| | Compensation Company, forming part of the compensation fund. |
| 5. <u>Section 240(1)</u> of the Ordinance | To keep proper accounts of the compensation fund (to the extent that any amount forming part of the compensation fund is received by the Investor Compensation Company). |
| 6. <u>Section 240(2)</u> of the Ordinance | To maintain separate accounts and sub-accounts in the manner specified in <u>section 240(2)</u> of the Ordinance if the Commission or the Investor Compensation Company considers it necessary to do so. |
| 7. <u>Section 240(5) and (6)</u> of the Ordinance | To appoint an auditor to audit the accounts of the compensation fund (to the extent that any amount forming part of the compensation fund is received by the Investor Compensation Company) and submit a report to the Commission. |
| 8. <u>Section 241</u> of the Ordinance | To invest money which forms part of the compensation fund and apply any return or profit in the manner specified in <u>section 241</u> of the Ordinance. |
| 9. <u>Section 242(1)</u> of the Ordinance | To pay one or more of the amounts specified in <u>section 242(1)</u> out of the compensation fund as required and to determine the order of such payments |
| 10. Securities and Futures (Investor Compensation – Miscellaneous) Rules (<i>insert appropriate cross-reference</i>) | The functions of the Commission set out in the Securities and Futures (Investor Compensation – Miscellaneous) Rules (LN of 2002) |

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 80(1) of the Securities and Futures Ordinance (No. 5 of 2002). It transfers certain functions of the Securities and Futures Commission in relation to the compensation fund established under Part XII of the Ordinance and Securities and Futures (Investor Compensation – Miscellaneous) Rules to the Investor Compensation Company .

**SECURITIES AND FUTURES (INVESTOR COMPENSATION –
MISCELLANEOUS) RULES**

(NO. 5 OF 2002, SECTION 244(2))

ARRANGEMENT OF SECTIONS

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SECURITIES AND FUTURES (INVESTOR COMPENSATION – MISCELLANEOUS) RULES

(Made by the Securities and Futures Commission under section 244(2) of the Securities and Futures Ordinance (5 of 2002) after consulting the Financial Secretary

PART I PRELIMINARY

1. Commencement

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

2. Interpretation

In these rules, unless the context otherwise requires –

“appointed day” (指定日期) means the date appointed for the purposes of these Rules under section 13;

“associated person” (相聯者), in relation to a specified person, means –

- (a) a person employed or otherwise engaged by the specified person; or
- (b) a person ("A") who, under section 164 of the Ordinance, may receive or hold client assets of the specified person, or an employee of A;

“claimant” (申索人) means a qualifying client who makes a claim under section 3;

“default” (違責) means –

- (a) the insolvency, bankruptcy or winding up, as the case may be, of a specified person; or
- (b) any breach of trust, defalcation, fraud or misfeasance committed by a specified person or by any associated person of the specified person,

which occurs on or after the appointed day;

“qualifying client” (合資格客戶) in relation to a specified person, means a person for whom the specified person provides a service but does not include -

- (a) a licensed corporation;
- (b) an authorized financial institution;
- (c) a recognized exchange company, a recognized exchange controller, or a recognized clearing house;
- (d) a person authorized to provide automated trading services under section 95 of the Ordinance;
- (e) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
- (f) a collective investment scheme authorized under section 104 of the Ordinance;

- (g) an arrangement referred to in paragraph (iii) of the definition of “collective investment scheme” in Part 1 of Schedule 1 to the Ordinance;
- (h) a person who is authorized, licensed or exempt in a jurisdiction outside Hong Kong for any activity that in the opinion of the Commission is similar to any of the activities carried on by a person referred to in paragraphs (a) to (g);
- (i) an associate of a specified person –
 - (i) which is a corporation; or
 - (ii) who has committed a default or assisted in the commission of a default by the specified person;
- (j) the Government or a government of any place outside Hong Kong; and
- (k) a person in his capacity as a trustee or custodian of a person referred to in paragraphs (a) to (j);

“related assets” (有連繫資產) means money or other property -

- (a) that is entrusted to or received by a specified person or an associated person of the specified person;
- (b) to which a claimant is entitled or in which he has a beneficial interest; and
- (c) which relates to the -
 - (i) purchase;
 - (ii) sale;
 - (iii) holding;
 - (iv) pledge;
 - (v) adjustment;
 - (vi) exercise; or
 - (vii) expiry,
 of specified securities or futures contracts;

“securities margin financing” (證券保證金融資) has the same meaning as in Part 2 of Schedule 5 to the Ordinance except that paragraph (v) of the definition of that expression does not apply;

"specified person" (指明人士) means –

- (a) an intermediary licensed or registered for dealing in securities or dealing in futures contracts;
- (b) an intermediary licensed for securities margin financing; or
- (c) an authorized financial institution which provides securities margin financing;

“specified securities or futures contracts” (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on a recognized stock market or recognized futures market;

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

PART II CLAIMS FOR COMPENSATION

3. Making a claim for compensation

- (1) Any qualifying client of a specified person who suffers loss -
- (a) as a result of a default committed by –
 - (i) the specified person; or
 - (ii) an associated person of the specified person;
 - (b) in relation to –
 - (i) specified securities or futures contracts; or
 - (ii) related assets,

may make a claim against the compensation fund in respect of such loss.

(2) A claim under subsection (1) may include a claim for the costs reasonably incurred and incidental to the making and proving of the claim.

(3) A claim under subsection (1) must be lodged with the Commission –

- (a) if a notice under section 4(1) has been published, on or before the date specified in the notice; or
- (b) if no such notice has been published, within 6 months after the day the claimant first became aware of the default giving rise to the claim.

(4) A claim that is not lodged in accordance with subsection (3) is barred, unless the Commission determines otherwise.

4. Notice inviting claims

(1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting qualifying clients of the specified person named in the notice who believe they have suffered loss as a result of such default to make claims for compensation. Such a notice must be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.

(2) A notice published under subsection (1) must specify a date, not being earlier than 3 months after publication of the notice, on or before which claims for compensation under section 3 may be made in relation to the default of a specified person or any associated person of the specified person.

5. Submission of claims

- (1) Subject to subsection (2), a claim made under section 3(1) must be –
- (a) lodged in the form specified by the Commission in accordance with section 402(1) of the Ordinance for the purposes of making a compensation claim under these Rules;
 - (b) completed and signed in accordance with such directions and instructions as are included in the form; and

- (c) accompanied by such documents as are specified in the form.
- (2) The Commission, in its discretion, may accept a claim lodged in a manner that does not comply with subsection (1).

PART III PROCESSING OF CLAIMS

6. Commission may require records

(1) The Commission may require a person, by notice in writing served upon the person, to produce to the Commission originals or copies of such records as the Commission may reasonably require –

- (a) in connection with a claim for compensation made under section 3(1); or
- (b) for the purpose of assisting -
 - (i) the Commission in the exercise of its rights of subrogation under section 243 of the Ordinance; or
 - (ii) a recognized investor compensation company in the exercise of its rights of subrogation under section 87 of the Ordinance.

(2) A notice under subsection (1) must specify the records required and the date by which the person is to furnish them to the Commission.

(3) Where –

- (a) a claimant fails to produce to the Commission records specified in a notice served upon him under subsection (1), within the period specified in the notice or such longer period as the Commission may allow in any particular case; and
- (b) the Commission is satisfied that such records are in the possession of, are available to, or can be produced by the claimant,

the Commission may determine that –

- (c) the claim for compensation made by the claimant should not be allowed; or
- (d) part only of the claim should be allowed.

(4) The Commission, in its absolute discretion, may vary a determination made under subsection (3) if the claimant subsequently produces the records specified in the notice under subsection (1).

7. Determination of loss and compensation

(1) Subject to section 6(3), the Commission must determine the amount of compensation (if any) payable to a claimant from the compensation fund on the basis of the loss that the Commission is satisfied the claimant has suffered as a result of a default committed by a specified person or any associated person of the specified person.

(2) In determining the amount of compensation payable to a claimant under subsection (1), the Commission must –

- (a) calculate the market value as at the date of the default of the specified securities or futures contracts and any related assets –
 - (i) entrusted to or received by the specified person or any associated person of the specified person; and
 - (ii) to which the claimant was entitled or in which he had a beneficial interest;
- (b) subtract from the amount calculated under paragraph (a) any amount that the Commission is satisfied was due from the claimant to the specified person; and
- (c) add to the sum that results from the operation of paragraphs (a) and (b) the amount of any costs that the Commission is satisfied were reasonably incurred by the claimant incidental to the making and proving of his claim to the Commission.

8. Notice of determination

- (1) Where the Commission makes a determination under section 6(3) or 7(1) it must issue a notice of determination to the claimant.
- (2) Where the Commission determines to disallow a claim in whole or in part, it must give its reasons in the notice of determination.
- (3) If the Commission determines that compensation should be paid to a claimant it must specify the following in the notice of determination -
 - (a) the date of the default;
 - (b) the amount of the claimant's loss as calculated under section 7;
 - (c) any relevant specified securities or futures contracts or related assets; and
 - (d) the amount of compensation payable under these Rules.
- (4) The Commission may pay the compensation in one or more installments if it determines that it is necessary or appropriate to do so.

9. Payment of compensation

- (1) Subject to subsection (2), the following amounts are to be paid out of the compensation fund -
 - (a) any compensation payable in accordance with a determination made under section 6(3) or 7(1);
 - (b) any compensation payable following a review by the Tribunal under Part XI of the Ordinance of a determination referred to in paragraph (a); and
 - (c) any costs awarded in favour of a claimant by the Tribunal following a review referred to in paragraph (b).
- (2) The total amount of compensation that may be awarded to a claimant may not exceed the maximum that is prescribed by the Securities and Futures (Investor Compensation) Rules (insert cross-reference).

**PART IV
MISCELLANOUS**

10. Financial arrangements

The Commission may arrange for such insurance, surety, guarantee or other financial arrangements as it deems appropriate to facilitate the administration of the compensation fund.

11. Provision where the money available to the compensation fund is insufficient to meet claims

(1) If, at any time, the Commission determines that the amount of money available to the compensation fund is insufficient to pay the total amount of compensation then payable to claimants, or likely to become so payable -

(a) under these Rules; and

(b) in the circumstances referred to in section 9(1)(b),

the amount in the compensation fund is to be apportioned among the claimants in such manner as the Commission may determine in its absolute discretion.

(2) In the event that any claim remains unsatisfied because the Commission has determined that an apportionment must be made under subsection (1), any amounts referred to in section 9(1) that remain unpaid are to be paid when there is sufficient money in the compensation fund.

12. Discharge of claims

Once the amount of compensation determined to be due to a claimant in accordance with these Rules has been paid, the rights of the claimant against the compensation fund in relation to that claim are absolutely discharged.

13. Appointed day

The Commission may by notice published in the Gazette appoint a date as the appointed day for the purposes of these rules.

Chairman,
Securities and Futures
Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 244(2) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe the persons who may make a claim for compensation from the investor

compensation fund established under section 236 of the Ordinance. They also prescribe the manner in which such a claim is to be made and how such a claim will be assessed and paid.

These Rules must be read in the light of any Order made under section 80 of the Ordinance transferring functions of the Commission under these Rules to a recognized investor compensation company.

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

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

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.



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

Consultation Conclusions on the

- i) Securities and Futures (Investor Compensation) Rules,
 - ii) Securities and Futures (Investor Compensation – Compensation Limits) Rules,
 - iii) Securities and Futures (Transfer of Functions – Investor Compensation Company) Order, and
 - iv) Securities and Futures (Investor Compensation – Claims) Rules
-
- i) 《證券及期貨(投資者賠償)規則》；
 - ii) 《證券及期貨(投資者賠償-賠償限額)規則》；
 - iii) 《證券及期貨(轉移職能-投資者賠償公司)令》；及
 - iv) 《證券及期貨(投資者賠償-申索)規則》的

諮詢總結

Hong Kong
June 2002

香港
2002年6月

INTRODUCTION

1. On 28 March 2002, the Securities and Futures Commission (“SFC”) issued a consultation paper (“the Consultation Paper”) to solicit comments on draft subsidiary legislation relating to new investor compensation arrangements to be put in place under Parts III and XII of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”). The draft subsidiary legislation comprises rules to be made by the Chief Executive in Council and rules to be made by the SFC under the Ordinance.
2. The consultation period lasted until 25 April 2002.
3. The purpose of this document is to provide interested persons with an analysis of the comments raised during the consultation exercise and the rationale for the SFC’s conclusions. This document should be read in conjunction with the Consultation Paper.

PUBLIC CONSULTATION

Consultation process

4. In addition to the public announcement inviting comments, the Consultation Paper was distributed to various interested parties and professional bodies. The Consultation Paper was also published on the SFC’s website.
5. Six submissions were received from Consumer Council, The Institute of Securities Dealers Ltd., the Hong Kong Securities Institute, HSBC Broking Securities (Asia) Limited, the Hong Kong Stockbrokers Association and one organization which chooses to remain anonymous.
6. There were no substantive comments. Most comments were supportive of the proposed subsidiary legislation.

Consultation Conclusion

7. The SFC considers that no changes should be made to the existing levies and rates. The draft Securities and Futures (Investor Compensation) Rules have now been amended to achieve consistency with the existing practice. A copy of the revised draft Securities and Futures (Investor Compensation) Rules are attached at Appendix 1. No major change has been made to the substance of the other original draft Rules and the draft Order set out in the Consultation Paper. We have however refined the Rules and Order to better reflect the policy intention and to improve drafting.

SUMMARY OF COMMENTS AND SFC'S RESPONSES

8. Summaries of the comments received on each of the draft rules, and the SFC's responses, are set out in the attached tables -
 - i) Securities and Futures (Investor Compensation) Rules, now retitled the Securities and Futures (Investor Compensation – Levy) Rules (Appendix 2);
 - ii) Securities and Futures (Investor Compensation - Compensation Limits) Rules (Appendix 3);
 - iii) Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (Appendix 4);
 - iv) Securities and Futures (Investor Compensation - Miscellaneous) Rules, now retitled the Securities and Futures (Investor Compensation – Claims) Rules (Appendix 5).

Summary of Comments Received on Securities and Futures (Investor Compensation - Levy) Rules

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|--------------------------|-----------------------------|---|---|
| 1. | - | | <p>[The Institute of Securities Dealers Ltd.] *The target size of \$1 billion for the new Compensation Fund should be incorporated into the rules and a proper mechanism should be set up to handle any surplus over the expected claim amount paid to the investors.</p> <p>[HSBC] *Clarification is sought as to whether the increase in levy will be used as an ongoing measure to achieve the \$1 billion target fund size whenever the Compensation Fund falls below the threshold of \$1 billion.</p> <p>[HK Stockbrokers Association] *Even if the \$1 billion target is reached, the levy system shall go on for the foreseeable future or the rate of levy be reduced. When \$1 Billion target is reached, the \$150,000 limit can be increased.</p> | <p>The target size of the new Compensation Fund should not be incorporated into the rules because it is subject to regular review and any surplus in the Compensation Fund can be used for future needs. In the event that the surplus is more than required, the new Investor Compensation Company ("ICC") can then evaluate the possibility of raising the per investor compensation limit.</p> <p>ICC will review the fund size and also the levy rate on a regular basis and changes will be made where appropriate to ensure that the fund size be maintained at a prudent level.</p> <p>ICC will review the fund size and also the levy rate on a regular basis and changes will be made where appropriate to ensure that the fund size be maintained at a prudent level.</p> |

* Section reference was not quoted by the respondent.

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|--------------------------|--|--|--|
| 2. | 3 and 7 | A seller and a purchaser of securities which is recorded on a recognized stock market or notified to a recognized exchange company shall pay a levy at 0.002% of the consideration. A seller and a purchaser of a futures contract shall pay \$0.50 for each futures contract traded on a recognized futures market. | [The Institute of Securities Dealers Ltd.] *It was unfair to have securities investors bearing the full burden of the funding of the Compensation Fund. [Hong Kong Securities Institute ("HKSI")] *According to the survey made by the HKSI, 66.8% of their members who replied agreed to the imposition of compensation fund levy. | Section 7 imposes a levy on futures contracts traded on a recognized futures market, thus sharing the cost of funding the new compensation fund. Noted. |
| 3. | 10 | The seller and purchaser of a new futures contract traded on a recognized futures market do not have to pay compensation levy during the first 6 months. | [Name withheld] Consideration should be given to build in flexibility in extending the relevant period which has now been fixed at six months commencing on the first day of trading in the new futures contract. A longer relevant period will give a better incentive to investors to trade the new contract. | The SFC considers that no changes should be made to the existing levies and rates. The draft Securities and Futures (Investor Compensation) Rules have now been amended to achieve consistency with the existing practice. |
| 4. | Part II | Part II specifies that the seller and the purchaser of securities have each to pay to a compensation fund at 0.002% of the consideration. Trading of Stock Options, market makers of Pilot Programme Securities and Exchange Traded Funds does not attract payment of compensation fund levy. | [Name withheld] In line with the principle adopted for newly traded futures contracts under section 10, a seller and a purchaser should be exempt from payment of a compensation fund levy for the purposes of the compensation fund in respect of sale and purchase of newly launched products which are recorded on a recognized stock market or notified to a recognized exchange company under its rules, for a period relevant to the nature of a specific product so as to assist the | Following the current practice, a seller and a purchaser should be required to pay a levy for the purposes of the compensation fund in respect of sale and purchase of newly launched products without any exemption period. |

* Section reference was not quoted by the respondent.

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|-------------------|----------------------|--|---|
| | | | development of new products in the securities market, such as Equity Linked Instruments which is due to be launched in the near future. | |
| 5. | Part II | | <p>[Name withheld] For the purposes of funding the compensation fund, a seller and a purchaser of products which are covered by the compensation fund but traded over the counter should similarly be subject to the rates of levy specified in Part II.</p> <p>[HSBC] *It does not seem consistent that listed securities acquired through cross trade not reported to the exchange should be eligible for compensation claims as no levy is paid on the cross trade. We suggest that the Commission look into this and amend the definition of "specified securities or futures contract".</p> | <p>Most of the transactions done over the counter may eventually be channelled to the stock exchange when the brokers concerned placed orders through the exchange participants. The compensation fund levy should have been paid by them. Moreover, the substantial administrative costs and administrative burden in tracing over-the-counter transactions will outweigh the benefits of collecting compensation fund levy from these transactions.</p> <p>Cross trades done by or through Exchange Participants are reported and levy is paid. Although there may be cases where non-exchange participant brokers do cross trades which are not reported to the Stock Exchange and hence, no levy is paid, it will be more appropriate from the clients' protection point of view to cover those trades because clients may not be in a position to know whether levy is paid in respect of such trades. Moreover, it would be very difficult for ICC to trace whether levy was paid for a particular trade.</p> |

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Investor Compensation – Compensation Limits) Rules

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|--------------------------|--|---|--|
| 1. | 3 | Subsection (1) of section 3 provides that the total amount of compensation that may be awarded to each claimant in respect of securities listed or traded, or to be listed or traded, on a recognized stock market and related assets of such securities must not exceed \$150,000. Subsection (2) of section 3 provides that the total amount of compensation that may be awarded to each claimant in respect of futures contracts listed or traded, or to be listed or traded, on a recognized futures market must not exceed \$150,000. | [Hong Kong Securities Institute (“HKSI”)] *66.8% who responded to the survey by the HKSI agreed with the \$150,000 per claimant compensation payment limit. [Name withheld] Under the single licence regime where one or more types of regulated activities may be conducted under one licence, a claimant should be entitled to be awarded a maximum of \$150,000 for his loss in relation to each type of regulated activities carried out by a defaulted specified person or of any defaulted associated person of the specified person, who is licensed to carry out more than one type of regulated activity. | Not applicable. Section 3(1) & (2) provide that a claimant is entitled to be awarded a maximum of \$150,000 for loss as a result of a default in relation to securities and also \$150,000 for the loss as a result of a default in futures trading activities. Thus, for clients who suffer loss as a result of a default in relation to both trading activities, a maximum sum of \$300,000 can be awarded. |
| 2. | 8 | SFC can determine a compensation claim and may pay it by instalments, if necessary. | [Hong Kong Stockbrokers Association Ltd.] A time of payment should be specified. | ICC will make payments as soon as practicably after determination. |
| 3. | - | | [Hong Kong Stockbrokers Association Ltd.] *In order to ensure that investors | The new compensation arrangements will cover transactions relating to the HKEx products irrespective of whether levy is paid |

* Section reference was not quoted by the respondent.

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|--|--------------------------|-----------------------------|---|---|
| | | | compensated are people who have paid the levy, rule 3(1)(b) and (2)(b) should be amended. | for better investor protection. It will not be administratively feasible for ICC to differentiate between trades which have paid the levy from the trades which have not. |

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Transfer of Functions - Investor Compensation Company) Order

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|--------------------------|-----------------------------|---|---|
| 1. | - | | [The Institute of Securities Dealers Ltd.] SFC should retain the administration of the Compensation Fund as a division with the SFC. | It is preferable that the administration of the new compensation fund can be independent of the work of the SFC, in line with similar practices in the US, the UK, etc. |
| 2. | - | | [Hong Kong Securities Institute] The Investor Compensation Company (ICC) should not be a bulky organization and it should be cost conscious in its administration. | ICC's structure will be kept lean as far as practicable. |

* Section reference was not quoted by the respondent.

Summary of Comments Received on Securities and Futures (Investor Compensation - Claims) Rules

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|--------------------------|---|--|---|
| 1. | 2 | ... "qualifying client" in relation to a specified person, means a person for whom the specified person provides a service but does not include ... | [Hong Kong Securities Institute ("HKSI")] *66.8% who responded to the survey by the HKSI agreed with the definition of "qualifying client". | Not applicable. |
| 2. | 2 | "Claimant" means a qualifying client who makes a claim under section 3. | [The Institute of Securities Dealers Ltd.] *Clarification is sought about the claimants who have opened accounts in joint names. | Each holder of a joint account would be regarded as a claimant for the purpose of calculating the per claimant limit provided that he or she falls under the definition of "qualifying client". |
| 3. | 3 | A claim must be lodged on or before the date specified in the claim notice or, if no such date is published, within 6 months after the claimant is first aware of the default. | [Consumer Council] *There is concern about the publicity of the notice for inviting claims. | Claim notices and news will be published in newspapers and relevant websites. Press releases will be issued to advise the public that a claim notice is published. Past experience shows that press release and the notice are effective means to alert the members of the public. |
| 4. | 4 | Claim notice allowing 3 months for claim has to be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and | [Consumer Council] *In the case of liquidation of a brokerage firm, the court-appointed trustee and the SFC should send claim forms with instruction to the affected investors. | This will be done where possible but, in some cases, ICC may not have the names and addresses of the clients of the defaulted broker because they may not be in possession of the books and records of the broker. Investors will also be alerted to the default by the published claim notice and media reports. |

* Section reference was not quoted by the respondent.

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|----|---------------------|---|---|---|
| | | circulating generally in Hong Kong. | | |
| 5. | 5 | A claim must be lodged in the form specified by the SFC and completed and signed in accordance with such directions and instructions as are included in the form. | [Consumer Council] *SFC should allow online submission of claims through a standard form downloadable from the website. | It is intended that claim forms can be downloaded. However, online submission is not always feasible because claimants often have to send documents in support of their claims. |
| 6. | 7(2) | In determining the amount of compensation payable to a claimant, the Commission must calculate, amongst others, the market value of the assets "as at the date of the default". | [Name withheld] It should be specified as to how the date of the default is determined by the SFC. | "Date of default" cannot be specified in the subsidiary legislation because it varies according to the circumstance of each case. The date of default will be specified in the determination notice. |
| 7. | 8(4) | The Commission may pay the compensation in one or more instalments if it determines that it is necessary or appropriate to do so. | [Name withheld] Such determination should be published or announced to improve transparency. | Such determination will be included in the letters sent to the claimants. |
| 8. | Part II, III and IV | | [Name withheld] A change in use of terms in relation to a person making a claim against the compensation fund is noted throughout these parts: "a qualifying client of a specified person", "a person" and "claimant". Consideration may be given to maintain consistency in use of terms to avoid confusion. | The use of "person" in section 6 has a wider coverage than a claimant because the SFC may need to ask people other than claimants (for example, the defaulting broker or his related person) to produce documents during the claims verification process. |

* Section reference was not quoted by the respondent.

| | Section reference | Details of the Rules | Respondent's comments | SFC's response |
|--|--------------------------|-----------------------------|------------------------------|-----------------------|
| | | | | |

** Section reference was not quoted by the respondent.*

List of Respondents

| Date received | Respondent |
|-------------------------------|--|
| 24 April 2002 | Consumer Council |
| 25 April 2002 | The Institute of Securities Dealers Ltd. |
| 25 April 2002 | Hong Kong Securities Institute |
| 29 April 2002 (late response) | Name withheld |
| 6 May 2002 (late response) | HSBC Broking Securities (Asia) Ltd. |
| 9 May 2002 (late response) | Hong Kong Stockbrokers Association Ltd. |