

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

**Securities and Futures
(Licensing and Registration) (Information) Rules**

This paper sets out the proposals of the Securities and Futures Commission (SFC) to ensure that the SFC is provided with information required for proper consideration of applications under Part V of the Securities and Futures Ordinance (Cap. 571) (SFO), to keep the information it received up to date, and to provide the public with important information on licensed persons and registered institutions.

Proposal

2. The SFC proposes to make the Securities and Futures (Licensing and Registration) (Information) Rules, now in draft at **Annex 1**, under sections 128 and 397 of the SFO.

Power to make the Rules

3. Section 128(1) of the SFO requires a person who applies for a licence, registration, approval, modification or waiver under Part V to provide such information as the SFC may reasonably require for consideration of his application. Section 128(3) provides that the SFC may make rules providing for the information to be provided by an applicant to enable the SFC to consider his application, the form, manner and time period in which such information is to be provided and any other matter relating thereto. Clause 3 of and Schedule 1 to the draft Rules set out the information required to be provided by applicants.

4. Section 135 of the SFO provides that where a person has provided any information to the SFC under Part V and a change in such information occurs, then in such circumstances as are prescribed by rules made under section 397¹ for the purposes of section 135(3), the person shall give notice in

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

writing of the change containing a full description of it within 7 business days of the change. Clause 4 of and Schedule 2 to the draft Rules specify the circumstances in which notification to the SFC of changes in information must be given.

5. Section 138(4) of the SFO requires a licensed corporation and a licensed representative to submit an annual return to the SFC within a specified period. The return is required to contain such information as is prescribed by rules made under section 397¹ for the purposes of section 138(4). Clause 5 of and Schedule 3 to the draft Rules specify the information that must be contained in an annual return.

6. Section 136(1) of the SFO requires the SFC to maintain a register of licensed persons and registered institutions in such form as it considers appropriate. Section 136(2)(e) provides that the register shall contain such particulars (in addition to those specified in section 136(2)(a) to (d)) as are prescribed by rules made under section 397¹ for the purposes of section 136(2). Clause 6 of and Schedule 4 to the draft Rules set out the additional particulars to be included in the register.

7. Section 397(1) (e) of the SFO empowers the SFC to make rules to provide for the correction of errors in the register it maintains. Section 7 of the draft Rules requires the SFC to correct errors in the register as soon as practicable.

8. In accordance with section 398(4) of the SFO, the SFC has consulted the Monetary Authority on the draft Rules.

9. The SFC is of the view that the draft Rules would be *intra vires* if made as drafted.

Major features of the draft Rules

10. The draft Rules at Annex 1 are to be made by the SFC under sections 128(3) and 397(1). They -

- (a) prescribe the information that an applicant to the SFC for a licence, registration, approval, modification or waiver under Part V must provide to enable the SFC to consider the application;

- (b) require notification to the SFC and the Monetary Authority of changes in prescribed categories of information previously provided to the SFC under Part V of the SFO;
- (c) specify the information that must be contained in an annual return; and
- (d) prescribe particulars that are to be entered in the register of licensed persons and registered institutions, and provide for their update and correction.

Public consultation

11. Members considered the draft Securities and Futures (Licensed Persons and Registered Institutions) Rules (“LPRI Rules”) (Paper No. [CB(1)1564/01-02(02)]) at the Subcommittee meeting on 29 April 2002. In the light of Members’ comment, the SFC has incorporated clauses 3, 4 and 7 of the draft LPRI Rules as clauses 4, 6 and 7 of, and Schedules 2 and 4 to, the draft Rules. Such merging is to facilitate compliance through presenting related information requirements in a single piece of subsidiary legislation. The SFC then released a consultation document and an exposure draft of the Securities and Futures (Intermediary Information) Rules² on 19 July 2002 for comment by the public. A total of 6 submissions were received. The SFC has considered the comments received and revised the draft Rules at Annex 1 as appropriate.

12. We attach the following documents for Members' reference -

- (a) Consultation Document on the draft Rules, at **Annex 2**, which sets out the underlying policy, together with the exposure draft of the Rules. The draft Rules as revised are at Annex 1 for Members’ consideration; and
- (b) Consultation Conclusions and Summary of Comments and the SFC’s Responses, at **Annex 3**, which set out the conclusions from the consultation in July/August 2002 as well as the SFC’s responses in the form of a table. A list of respondents is attached to the Consultation Conclusions.

² The draft Securities and Futures (Intermediary Information) Rules is subsequently renamed as the draft Securities and Futures (Licensing and Registration) (Information) Rules to better reflect the range of persons to which the draft Rules apply.

Way forward

13. Subject to Members' views, the SFC will proceed to make the Rules under the authority vested with it and publish the Rules so made in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that the Rules shall come into operation on the commencement of the SFO.

Securities and Futures Commission
Financial Services and the Treasury Bureau
7 September 2002

D R A F T

[Cf : Sections 128, 135, 136, 138 and 397 of the Securities and Futures Ordinance]

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REGISTRATION) (INFORMATION) RULES****CONTENTS**

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SECURITIES AND FUTURES (LICENSING AND REGISTRATION) (INFORMATION) RULES

(Made by the Securities and Futures Commission under sections 128
and 397(1) of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules shall come into operation on the day on which Part V of the Securities and Futures Ordinance (Cap. 571) comes into operation.

2. Interpretation

(1) In these Rules, unless the context otherwise requires –
“applicant” (申請人) means the person making an application under the Ordinance to the Commission;

“basic information” (基本資料) –

- (a) in relation to an individual, means, in so far as applicable, the following particulars of the individual –
 - (i) the title and the full personal name and surname in Chinese and English;
 - (ii) the date and place of birth;
 - (iii) the Chinese commercial code and the identification number on his identity card issued under the Registration of Persons Ordinance (Cap. 177), and if he is not the holder of a permanent identity card, the number, the name of the issuing agency, and the date of expiry of his passport, travel or other document issued by a competent government agency providing proof of identity;
 - (iv) nationality;
 - (v) the business, residential and correspondence addresses; and

- (vi) the contact telephone and facsimile numbers and electronic mail address;
- (b) in relation to a corporation, means, in so far as applicable, the following particulars of the corporation –
 - (i) the corporate name and business name in Chinese and English;
 - (ii) the date and place of incorporation;
 - (iii) the address of registered office;
 - (iv) the addresses of its places of business;
 - (v) the correspondence address; and
 - (vi) the telephone and facsimile numbers, electronic mail address and web site address;

“CE number” (中央編號) means the central entity identification number assigned by the Commission to an intermediary, a licensed representative or an associated entity of an intermediary;

“complaints officer” (投訴主任), in relation to an intermediary, means a person appointed by the intermediary to handle complaints made to the intermediary;

“controller” (控制人), in relation to an intermediary, or a corporation applying to become an intermediary, means each of the directors and substantial shareholders of the intermediary, or the persons who would be the directors and substantial shareholders of the corporation if its application is successful (as the case may be);

“CPT” (持續專業訓練) means –

- (a) in relation to an intermediary, the continuous training that it is required to provide to its representatives under section 169(2)(b)(i) of the Ordinance; or

- (b) in relation to a representative of an intermediary, the continuous training that he is required to undergo under section 169(2)(b)(ii) of the Ordinance;

“criminal investigatory body” (刑事調查機構) means the Hong Kong Police Force and the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204) , and public bodies in Hong Kong or elsewhere carrying out criminal investigations;

“minor offence” (輕微罪行) means an offence punishable by a fixed penalty under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), or offence of similar nature committed in a place outside Hong Kong;

“permanent identity card (永久性居民身分證) has the meaning assigned to it by section 1A of the Registration of Persons Ordinance (Cap. 177);

“principal” (主事人) has the meaning assigned to it by section 113 of the Ordinance;

“reporting period” (申報表所涵蓋的期間) means –

- (a) the period of one year to the anniversary of the date on which a person is licensed by the Commission as a licensed corporation or licensed representative; or
- (b) such other period as may be approved by the Commission by notice in writing.

(2) Where a person is a registered institution, a requirement in these Rules for a person to provide information or particulars (however described) to the Commission shall be construed as a requirement to provide information or particulars (however described) only in relation to the businesses which constitute any regulated activities for which it is registered.

(3) Where an associated entity is an authorized financial institution, a requirement in these Rules for a person to provide information or particulars (however described) to the Commission shall be construed as a requirement to provide information or particulars (however described) only in relation to its business of receiving or holding client assets in Hong Kong of any intermediary of which it is an associated entity.

3. Information to be provided with applications to Commission

(1) For the purposes of section 128(1) of the Ordinance, an application to the Commission under the provisions referred to below shall be made in the applicable form (if any) specified by the Commission in accordance with section 402(1) of the Ordinance, and shall –

- (a) in the case of an application –
 - (i) under section 116 or 117 of the Ordinance by a corporation for a licence;
 - (ii) under section 119 of the Ordinance by an authorized financial institution for registration as a registered institution;
 - (iii) under section 127 of the Ordinance by an intermediary for variation of the regulated activity specified in its licence or certificate of registration;
 - or
 - (iv) under section 134 of the Ordinance by an intermediary or a licensed representative for the grant of a modification or waiver, in relation to the intermediary or licensed representative (as the case may be), in respect of any condition specified in or imposed under, or any of the requirements of

the provisions referred to in subsection (1) of that section,

contain, in so far as applicable, such information, details or matters in respect of the applicant or other person in each item in Part 1 of Schedule 1 as are required to be specified by the form;

- (b) in the case of an application –
- (i) under section 120(1) or (2) or 121(1) of the Ordinance by an individual for a licence ;
 - (ii) under section 122(1) of the Ordinance by a licensed representative for approval of his accreditation, or under section 122(2) of the Ordinance for approval of the transfer of his accreditation to another corporation licensed under section 116 or 117 (as the case may be) of the Ordinance;
 - (iii) under section 126 of the Ordinance by a licensed representative for approval as a responsible officer of a licensed corporation to which he is accredited;
or
 - (iv) under section 127 of the Ordinance by a licensed representative for a variation of the regulated activity specified in his licence by adding to or reducing the regulated activity so specified,

contain, in so far as applicable, such information, details or matters in respect of the applicant or other person in each item in Part 2 of Schedule 1 as are required to be specified by the form; or

- (c) in the case of an application –

- (i) under section 130(1) of the Ordinance by a person for approval of premises to be used by a licensed corporation for keeping records or documents required under the Ordinance;
- (ii) under section 132 of the Ordinance by a person for approval to become or continue to be (as the case may be) a substantial shareholder of a corporation licensed under section 116 of the Ordinance;
- (iii) under section 134 of the Ordinance by a person (other than an intermediary or a licensed representative) for the grant of a modification or waiver, in relation to him, in respect of any condition specified in or imposed under, or any of the requirements of the provisions referred to in subsection (1) of that section; or
- (iv) by a person for any other matter requiring the approval of the Commission under Part V of the Ordinance,

contain, in so far as applicable, such information, statements or matters in respect of the applicant or other person in each item in Part 3 of Schedule 1 as are required to be specified by the form.

(2) Nothing in item 6(b) or (c) of Part 1 of Schedule 1, item 5(b) or (c) of Part 2 of Schedule 1, or item 6(b) or (c) of Part 3 of Schedule 1 shall require disclosure of information concerning an ongoing criminal investigation by a criminal investigatory body if such disclosure is prohibited by any statutory provision in Hong Kong or elsewhere, but on completion of the investigation, the applicant shall notify the Commission of the results of the investigation.

4. Changes to be notified by intermediaries, licensed representatives and substantial shareholders

(1) This section applies in relation to the information specified in Schedule 2 that has been provided to the Commission under any provision of Part V of the Ordinance.

(2) Where there is a change in the information referred to in subsection (1), a notice in writing of the change containing a full description of it shall, within 7 business days after the change takes place, be given to the following person or persons –

- (a) (where the information has been provided in connection with an application under any provision of Part V of the Ordinance and the Commission is still considering the application) the Commission; or
- (b) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority.

(3) A licensed corporation shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 1 of Schedule 2.

(4) A registered institution shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 2 of Schedule 2.

(5) A licensed representative shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 3 of Schedule 2.

(6) A substantial shareholder shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 4 of Schedule 2.

(7) Subsections (3), (4), (5) and (6) also apply to –

- (a) a corporation that has applied for a licence under section 116 or 117 of the Ordinance;
- (b) an authorized financial institution that has applied for registration as a registered institution under section 119 of the Ordinance;
- (c) an individual who has applied for a licence under section 120 or 121 of the Ordinance; or
- (d) a person who has applied for approval to become or continue to be (as the case may be) a substantial shareholder of a corporation licensed under section 116 of the Ordinance,

as the case may be, if the application is still subsisting, with the modifications made under subsection (8).

(8) In subsections (3), (4), (5) and (6) and Schedule 2, a reference to –

- (a) a licensed corporation;
- (b) a registered institution;
- (c) a licensed representative; and
- (d) a substantial shareholder,

shall be construed as including a reference respectively to –

- (e) the intended licensed corporation which licence is being applied for;
- (f) the intended registered institution which registration is being applied for;
- (g) the intended licensed representative whose licence is being applied for; and
- (h) the intended substantial shareholder the approval to whom to become or continue to be (as the case may be) a substantial shareholder is being applied for.

(9) Nothing in item 7(b) or (c) of Part 1 of Schedule 2, item 7(b) or (c) of Part 2 of Schedule 2, item 5(b) or (c) of Part 3 of Schedule 2, or item 2(b) or

(c) of Part 4 of Schedule 2 shall require disclosure of information concerning an ongoing criminal investigation by a criminal investigatory body if such disclosure is prohibited by any statutory provision in Hong Kong or elsewhere, but on completion of the investigation, the applicant shall notify the Commission of the results of the investigation.

5. Information to be contained in annual returns

For the purposes of section 138(4) of the Ordinance, an annual return required to be submitted to the Commission shall –

- (a) in the case of a licensed corporation –
 - (i) contain the information specified in Part 1 of Schedule 3; and
 - (ii) where there has been a change in the information provided to the Commission pursuant to Part V of the Ordinance, or rules made for the purposes of Part V of the Ordinance, and a full description of such change has not been provided to the Commission, contain a full description of the change; or
- (b) in the case of a licensed representative –
 - (i) contain the information specified in Part 2 of Schedule 3; and
 - (ii) where there has been a change in the information provided to the Commission pursuant to Part V of the Ordinance, or rules made for the purposes of Part V of the Ordinance, and a full description of such change has not been provided to the Commission, contain a full description of the change.

6. Information and particulars to be entered in register of licensed persons and registered institutions

(1) For the purposes of section 136(2)(e) of the Ordinance, the register maintained under section 136(1) of the Ordinance shall, in addition to the information referred to in section 136(2)(a), (b), (c) and (d) of the Ordinance, contain the particulars specified in Schedule 4.

(2) Where, pursuant to section 135 of the Ordinance and section 4, the Commission is notified of any change in the information or particulars relating to a licensed person or registered institution, it shall make such amendments in the register as it considers necessary to record the change.

(3) Information in the register is to be updated at such intervals as the Commission considers appropriate.

7. Correction of errors

Where an error exists in the register maintained under section 136 of the Ordinance, the Commission shall correct the error as soon as practicable.

SCHEDULE 1

[s. 3]

INFORMATION TO BE PROVIDED WITH
APPLICATIONS TO COMMISSION

PART 1

Item	Description of information
1.	Basic information in respect of – <ul style="list-style-type: none"> (a) the applicant; (b) each controller of the applicant; (c) each person who is, or is proposed to be, a responsible officer or executive officer of the applicant;

- (d) each subsidiary of the applicant that carries on any regulated activity as its principal business; and
 - (e) each related corporation of the applicant that carries on any regulated activity as its principal business.
- 2. Basic information in respect of –
 - (a) any corporation that is, or is proposed to be, an associated entity of the applicant; and
 - (b) any persons who are, or are proposed to be, executive officers of an associated entity referred to in paragraph (a).
- 3. The name, correspondence address, contact telephone and facsimile numbers and electronic mail address of –
 - (a) each contact person appointed by the applicant as the person whom the Commission may contact in the event of market emergency or other urgent need; and
 - (b) each person who is, or is proposed to be, a complaints officer of the applicant.
- 4. The details of any registration or authorization (however described) to carry on a regulated activity by a regulatory organization or authority in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.
- 5. In so far as applicable, the membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.

6. Any matters that might reasonably be considered relevant to the applicant's fitness and properness to be licensed or registered, including whether any of the persons referred to in item 1 is or has been –
- (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the applicant to be licensed or registered;
 - (e) (in the case of a corporation other than a registered institution) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator; or
 - (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).
7. The following details, in so far as applicable, in respect of each of the persons referred to in item 1 –
- (a) his academic record showing the highest educational qualification achieved stating –

- (i) the names of educational establishments and courses that he has attended to obtain that qualification;
 - (ii) the dates when those courses were attended; and
 - (iii) details of any examinations passed;
 - (b) his professional record that provides –
 - (i) the names of educational establishments and courses that he has attended;
 - (ii) the dates when those courses were attended; and
 - (iii) details of any professional qualifications achieved; and
 - (c) his employment record that provides the names of his employers and the dates of employment.
- 8. In the case of a person applying to be licensed as a licensed corporation, the financial information in respect of the applicant showing that he is capable of meeting his obligations under the Securities and Futures (Financial Resources) Rules (L.N. _____ of 2002).
- 9. The nature of the business and types of services provided or to be provided by the applicant.
- 10. The business plan of the applicant covering internal controls, organizational structure, contingency plans and related matters.
- 11. The capital and shareholding structure of the applicant and the basic information in respect of any person in accordance with whose directions or instructions it is, or its directors are, accustomed or obliged to act.

12. In the case of a person applying to be licensed as a licensed corporation, the following particulars in respect of any bank account that he has opened for the purpose of the carrying on regulated activities –
 - (a) the name of the bank with which the account is opened;
 - (b) the number of the account; and
 - (c) whether the account is a trust account.
13. The name and address of the auditor of the applicant and the date of his appointment.
14. The address of each of the premises where –
 - (a) the business of the applicant is, or is to be, conducted; and
 - (b) records of the applicant (in the case of a corporation other than a registered institution) are, or are to be kept.
15. Such other information as may be required in the form specified that is relevant to the nature of the application being made.

PART 2

Item	Description of information
1.	Basic information in respect of – <ol style="list-style-type: none">(a) the applicant; and(b) the licensed corporation to which the applicant is accredited or wishes to be accredited.
2.	The details of any registration or authorization (however described) to carry on a regulated activity of the applicant by a regulatory organization or authority in Hong Kong or elsewhere, and whether the applicant's

travel document is endorsed with a condition of stay prohibiting him from taking employment in Hong Kong.

3. In so far as applicable, the membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.
4. The types of services to be provided by the applicant on behalf of the licensed corporation to which the applicant is accredited or wishes to be accredited.
5. Any matters that might reasonably be considered relevant to the applicant's fitness and properness to be licensed, including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the applicant to be licensed;
or
 - (e) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a

receiver of his property under the Bankruptcy Ordinance (Cap. 6).

6. The following details, in so far as applicable, in respect of each of the persons referred to in item 1 –
 - (a) his academic record that provides –
 - (i) the names of educational establishments and courses that he has attended;
 - (ii) the dates when those courses were attended; and
 - (iii) details of –
 - (A) any examinations passed in secondary level education; and
 - (B) any qualifications achieved in tertiary level education;
 - (b) his professional record that provides –
 - (i) the names of educational establishments and courses that he has attended;
 - (ii) the dates when those courses were attended; and
 - (iii) details of any professional qualifications achieved;
 - (c) his employment record that provides the names of his employers and the dates of employment.
7. The mental health of the applicant.
8. Such other information as may be required in the form specified that is relevant to the nature of the application being made.

PART 3

Item	Description of information
1.	<p data-bbox="325 394 788 430">Basic information in respect of –</p> <ul style="list-style-type: none"><li data-bbox="421 454 730 490">(a) the applicant;<li data-bbox="421 512 1369 607">(b) each controller of the applicant (in the case of an intermediary);<li data-bbox="421 629 1369 723">(c) each person who is, or is proposed to be, a responsible officer or executive officer of the applicant;<li data-bbox="421 745 1369 840">(d) each subsidiary of the applicant that carries on any regulated activity as its principal business; and<li data-bbox="421 862 1369 965">(e) each related corporation of the applicant that carries on any regulated activity as its principal business.
2.	<p data-bbox="325 1048 788 1084">Basic information in respect of –</p> <ul style="list-style-type: none"><li data-bbox="421 1108 1369 1202">(a) any corporation that is, or is proposed to be, an associated entity of the applicant; and<li data-bbox="421 1225 1369 1323">(b) any persons who are, or are proposed to be, executive officers of an associated entity referred to in paragraph (a).
3.	A statement setting out the nature of the application.
4.	A statement setting out the reason for the application.
5.	In the case of a person applying for approval to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation under section 132 of the Ordinance, the financial information concerning the applicant and its business and each controller of the applicant to show that it is a fit and proper person to be a substantial shareholder of the licensed corporation.

6. Any matters that might reasonably be considered relevant to the applicant's fitness and properness to become or continue to be a substantial shareholder, including whether any of the persons referred to in item 1 is or has been –
- (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the applicant to become or continue to be a substantial shareholder;
 - (e) (in the case of a corporation) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator; or
 - (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).
7. In the case of a person applying for approval of premises under section 130(1) of the Ordinance –

- (a) the address of each of the premises where records or documents required under the Ordinance are to be kept by the applicant;
 - (b) evidence that the premises are suitable for being used for the purpose of keeping records or documents required under the Ordinance.
8. Such other information as may be required in the form specified that is relevant to the nature of the application being made.

SCHEDULE 2

[s. 4]

NOTIFICATION OF CHANGES

PART 1

CHANGES TO BE NOTIFIED BY LICENSED CORPORATIONS

Item	Description of information
1.	<p>Changes in the basic information in respect of –</p> <ul style="list-style-type: none"> (a) the licensed corporation; (b) each controller of the licensed corporation; (c) each person who is a responsible officer of the licensed corporation; and (d) each subsidiary of the licensed corporation that carries on any regulated activity as its principal business.

2. Changes in the persons who are controllers, responsible officers or subsidiaries of the licensed corporation that carry on any regulated activity as their principal business.
3. Changes in the following particulars of any corporation that is, or becomes, or ceases to be, an associated entity of the licensed corporation –
 - (a) in the case where the corporation is an intermediary –
 - (i) the basic information in respect of the corporation;
 - (ii) its CE number;
 - (iii) the date of its becoming, or ceasing to be, an associated entity;
 - (iv) whether it has any executive officers;
 - (v) the basic information in respect of its executive officers (if any);
 - (b) in any other case –
 - (i) the basic information in respect of the corporation;
 - (ii) the date of its becoming, or ceasing to be, an associated entity;
 - (iii) whether it has any executive officers;
 - (iv) the basic information in respect of its executive officers (if any);
 - (v) in the case of a corporation becoming an associated entity, the facts that gave rise to the corporation becoming an associated entity;
 - (vi) in the case of a corporation ceasing to be an associated entity, the facts that gave rise to the corporation ceasing to be an associated entity and (except in the case of an authorized financial institution) confirmation that all client assets of

the intermediary that are received or held by the corporation prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets of the intermediary that have not been fully accounted for and properly disposed of.

4. Changes in the name, correspondence address, contact telephone and facsimile numbers and electronic mail address of –
 - (a) each contact person appointed by the licensed corporation as the person whom the Commission may contact in the event of market emergency or other urgent need; and
 - (b) each person who is, or is proposed to be, a complaints officer of the licensed corporation.
5. Changes in the status of any registration or authorization (however described) to carry on a regulated activity by a regulatory organization or authority in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.
6. Changes in the status of the membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.
7. Changes in any matters that might reasonably be considered relevant to the licensed corporation's fitness and properness to be licensed, including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;

- (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the licensed corporation to be licensed; or
 - (e) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator.
8. Significant changes in the nature of the business and types of services provided or to be provided by the licensed corporation.
9. Significant changes in the business plan of the licensed corporation covering internal controls, organizational structure, contingency plans and related matters.
10. Changes in the capital and shareholding structure of the licensed corporation, or of any person in accordance with whose directions or instructions the licensed corporation is, or its directors are, accustomed or obliged to act.

11. Changes in the status of any bank accounts of the licensed corporation relating to the conduct of regulated activities including the following particulars –
 - (a) the name of the bank with which the account is opened;
 - (b) the number of the account;
 - (c) the date of opening or closing any such account; and
 - (d) whether the account is a trust account.
12. Changes in the name or address of the auditor of the licensed corporation and the reasons for the change in the auditor.
13. Changes in the address of each of the premises where the business of the licensed corporation is, or is to be, conducted.
14. The address of each of the premises where records or documents of the licensed corporation are no longer kept.

PART 2

CHANGES TO BE NOTIFIED BY REGISTERED INSTITUTIONS

- | Item | Description of information |
|------|--|
| 1. | Changes in the basic information in respect of – <ol style="list-style-type: none">(a) the registered institution;(b) each controller of the registered institution;(c) each person who is an executive officer of the registered institution; and(d) each subsidiary of the registered institution that carries on any regulated activity as its principal business. |

2. Changes in the persons who are controllers, executive officers or subsidiaries of the registered institution that carry on any regulated activity as their principal business.

3. Changes in the following particulars of any corporation that is, or becomes, or ceases to be, an associated entity of the registered institution –
 - (a) in the case where the corporation is an intermediary –
 - (i) the basic information in respect of the corporation;
 - (ii) its CE number;
 - (iii) the date of its becoming, or ceasing to be, an associated entity;
 - (iv) whether it has any executive officers;
 - (v) the basic information in respect of its executive officers (if any);
 - (b) in any other case –
 - (i) the basic information in respect of the corporation;
 - (ii) the date of its becoming, or ceasing to be, an associated entity;
 - (iii) whether it has any executive officers;
 - (iv) the basic information in respect of its executive officers (if any);
 - (v) in the case of a corporation becoming an associated entity, the facts that gave rise to the corporation becoming an associated entity;
 - (vi) in the case of a corporation ceasing to be an associated entity, the facts that gave rise to the corporation ceasing to be an associated entity and (except in the case of an authorized financial

institution) confirmation that all client assets of the intermediary that are received or held by the corporation prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets of the intermediary that have not been fully accounted for and properly disposed of.

4. Changes in the name, correspondence address, contact telephone and facsimile numbers and electronic mail address of –
 - (a) each contact person appointed by the registered institution as the person whom the Commission may contact in the event of market emergency or other urgent need; and
 - (b) each person who is, or is proposed to be, a complaints officer of the registered institution.

5. Changes in the status of any registration or authorization (however described) to carry on a regulated activity by a regulatory organization or authority in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.

6. Changes in the status of the membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere in respect of each of the persons referred to in item 1.

7. Changes in any matters that might reasonably be considered relevant to the registered institution's fitness and properness to be registered, including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;

- (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty; or
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the registered institution to be registered.
8. Significant changes in the nature of the business and types of services provided or to be provided by the registered institution.
9. Significant changes in the business plan of the registered institution covering internal controls, organizational structure, contingency plans and related matters.
10. Changes in the capital and shareholding structure of the registered institution, or of any person in accordance with whose directions or instructions the registered institution is, or its directors are, accustomed or obliged to act.
11. Changes in the name or address of the auditor of the registered institution and the reasons for the change in the auditor.

PART 3

CHANGES TO BE NOTIFIED BY LICENSED REPRESENTATIVES

Item	Description of information
1.	Changes in the basic information in respect of the licensed representative.
2.	Changes in the status of any registration or authorization (however described) to carry on a regulated activity by a regulatory organization or authority in Hong Kong or elsewhere in respect of the licensed representative.
3.	Changes in the status of the licensed representative's membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere.
4.	Significant changes in the types of services provided, or to be provided, by the licensed representative on behalf of the licensed corporation to which the licensed representative is accredited or wishes to be accredited.
5.	Changes in any matters that might reasonably be considered relevant to the licensed representative's fitness and properness to be licensed, including whether he is or has been – <ol style="list-style-type: none">(a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;(b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;

- (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
- (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the licensed representative to be licensed; or
- (e) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

6. Changes in the mental health of the licensed representative.

PART 4

CHANGES TO BE NOTIFIED BY SUBSTANTIAL SHAREHOLDERS

Item	Description of information
1.	Changes in the basic information in respect of the substantial shareholder.
2.	Changes in any matters that might reasonably be considered relevant to the substantial shareholder's fitness and properness to be a substantial shareholder, including whether he is or has been – <ul style="list-style-type: none"> (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;

- (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a regulatory body or criminal investigatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that are material or relevant to the fitness and properness of the substantial shareholder to be a substantial shareholder;
 - (e) (in the case of a corporation) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator; or
 - (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).
3. Significant changes in the capital and shareholding structure of the substantial shareholder.
4. In the case of an individual, changes in the mental health of the substantial shareholder.

INFORMATION IN ANNUAL RETURNS

PART 1

INFORMATION IN ANNUAL RETURNS OF LICENSED CORPORATIONS

Item	Description of information
1.	The reporting period of the licensed corporation.
2.	Information to enable the Commission to assess whether the licensed corporation and its licensed representatives have complied with the CPT requirements.

PART 2

INFORMATION IN ANNUAL RETURNS OF LICENSED REPRESENTATIVES

Item	Description of information
1.	The reporting period of the licensed representative.
2.	Information to enable the Commission to assess whether the licensed representative has complied with the CPT requirements.

SCHEDULE 4

[s. 6(1)]

PARTICULARS TO BE CONTAINED IN REGISTER

PART 1

PARTICULARS OF LICENSED PERSONS TO BE CONTAINED IN REGISTER

The following particulars in respect of a licensed person shall be contained in the register –

- (a) his CE number;
- (b) the date of grant of the licence under Part V of the Ordinance;
- (c) the effective date of such conditions (if any) of the licence as the Commission contains in the register under section 136(2)(b) of the Ordinance;
- (d) the regulated activity or activities for which the person is licensed and the effective date of the approval for the person to carry on the regulated activity or activities;
- (e) whether or not the licence is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date;
- (g) a record of each public disciplinary action (if any) taken by the Commission against him in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and each disciplinary action so recorded is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect;
- (h) in the case of a corporation –

- (i) its electronic mail address (if any) and web site address (if any);
 - (ii) its contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of its complaints officer;
 - (iii) whether it holds a licence granted under section 117 of the Ordinance; and
 - (iv) a list of its accredited representatives;
- (i) in the case of a licensed representative –
- (i) whether he holds a licence granted under section 121 of the Ordinance;
 - (ii) whether he holds a provisional licence granted under section 120(2) of the Ordinance;
 - (iii) whether he is approved as a responsible officer and, if so, the regulated activity for which he is responsible; and
 - (iv) the date of accreditation to his principal.

PART 2

PARTICULARS OF REGISTERED INSTITUTIONS TO BE CONTAINED IN REGISTER

The following particulars in respect of a registered institution shall be contained in the register –

- (a) its CE number;
- (b) the date of the certificate of the registration under Part V of the Ordinance;

- (c) the effective date of such conditions (if any) of the certificate as the Commission contains in the register under section 136(2)(b) of the Ordinance;
- (d) the regulated activity or activities for which the institution is registered and the effective date of the approval for the institution to carry on the regulated activity or activities;
- (e) whether or not the registration is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date;
- (g) a record of each public disciplinary action (if any) taken by the Commission against it in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and each disciplinary action so recorded is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect;
- (h) its electronic mail address (if any) and web site address (if any); and
- (i) its contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of its complaints officer.

Chairman,
Securities and Futures Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission ("Commission") under sections 128 and 397(1) of the Securities and Futures Ordinance (Cap. 571). They prescribe the information that is to be provided to the Commission by a person making an application to the Commission under Part V of the Ordinance and the matters and changes that are required to be notified by licensed persons, its substantial shareholders and registered institutions to the Commission. They also prescribe for the purposes of section 138(4) of the Ordinance the information that is required to be contained in an annual return submitted to the Commission by a corporation or individual licensed under section 116(1) or 120(1) of the Ordinance. The Rules further prescribe the particulars that are to be entered in the register of licensed persons and registered institutions.



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

Annex 2

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

《證券及期貨（中介人資料）規則》諮詢文件

Hong Kong
JULY 2002

香港
2002年7月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Intermediary Information) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397(1) of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Under the existing Securities Ordinance and Commodities Trading Ordinance, licensing application forms constitute part of the subsidiary legislation. In addition, the current Securities and Futures Commission Ordinance also prescribe in subsidiary legislation a specific form for the making of annual returns by licensed persons. This arrangement has proved to be inflexible and is not consistent with modern securities legislation.
2. The Securities and Futures Ordinance (“SFO”) dispenses with this arrangement. Instead, it provides for the SFC to make Rules prescribing the information that is to be provided in making licensing applications and annual returns.
3. The draft Rules set out the information the SFC may ask from a person making an application under Part V of the SFO. They also describe the changes that are required to be notified by licensed persons, their substantial shareholders and registered institutions, as well as the information that is required to be contained in annual returns to be submitted by licensed persons. (Part V of the Ordinance pertains to licensing and registration matters.)
4. There are controls built into the legislative system, whereby any rules made by the SFC must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398 of the Ordinance for such rules. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.
5. The public may obtain copies of the consultation document and the attachment free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.
6. The SFC invites interested parties to submit written comments on the draft Rules or to comment on related matters that might have a significant impact upon the draft Rules **no later than 8 August 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Rules.

The draft Rules

7. Section 3 of the draft Rules prescribes the information the SFC may ask from a person making an application under Part V of the SFO. The information would be requested in forms specified by the SFC. (The forms are now being designed by the SFC with the assistance of industry practitioners.)

8. The relevant applications covered in section 3 above include an application for:

- licence by a corporation or an individual;
- registration by an authorized financial institution;
- approval of accreditation or approval of transfer of accreditation to a principal by a licensed representative;
- approval to be a responsible officer of a licensed corporation by a licensed representative;
- variation of the type of regulated activity for which a person is licensed or registered;
- approval of premises to be used by a licensed corporation for keeping records or documents;
- approval to become or continue to be a substantial shareholder;
- modification or waiver by an applicant, a licensed person or registered institution, a substantial shareholder or an associated entity; and
- any other matter requiring the SFC's approval under Part V of the SFO.

9. Section 4 of the draft Rules describes the changes that are required to be notified by licensed persons, their substantial shareholders and registered institutions. The notification requirement pertains to changes in information that had been previously provided to the SFC. Except for the substantial shareholders, the requirements to be imposed on licensed persons and registered institutions reflect the consultation conclusions on the Licensed Persons and Registered Institutions Rules. The SFC proposes to group these requirements under the draft Rules to make them more coherent and user friendly.

10. Section 5 of the draft Rules specifies the information that is required to be contained in the annual return to be submitted by licensed persons. The required information is limited to the reporting period of the return, compliance with the continuous professional training requirements, and any change that had not been notified under section 4 above.

11. Sections 6 and 7 of the draft Rules pertain to the particulars to be entered in the public register and the correction of errors in the register. These sections merely reflect the consultation conclusions on the Licensed Persons and Registered Institutions Rules and are again grouped in the draft Rules to make them more user friendly. As these matters had been subject to a previous public consultation exercise, comments are not therefore being sought in these areas.

Other matters

12. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

13. You may not wish your name to be published by the SFC. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

14. Written comments may be sent -

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

By fax to: (852) 2293-5755

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

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

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

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines
 - made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

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

Enquiries

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

The Data Privacy Officer
The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen's Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

**SECURITIES AND FUTURES (INTERMEDIARY
INFORMATION) RULES**

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SECURITIES AND FUTURES (INTERMEDIARY INFORMATION) RULES

(Made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (5 of 2002))

1. Commencement

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

2. Interpretation

(1) In these Rules –

“applicant” (申請人) means the person making an application under the Ordinance to the Commission;

“basic information” (基本資料) –

- (a) in relation to an individual, means (in so far as applicable) the following particulars of the individual –
 - (i) title and the full personal name and surname in Chinese and English;
 - (ii) the date and place of birth;
 - (iii) the Chinese Commercial Code and the identification number on his Hong Kong identity card issued under the Registration of Persons Ordinance (Cap. 177);
 - (iv) the number and name of the issuing agency, and the date of expiry of his passport, travel or other document issued by a competent government agency providing proof of identity;
 - (v) business, residential and correspondence addresses; and

- (vi) contact telephone and facsimile numbers, and electronic mail address;
- (b) in relation to a corporation, means (in so far as applicable) the following particulars of the corporation –
 - (i) it's corporate name and business name in English and Chinese;
 - (ii) the date and place of incorporation;
 - (iii) the address of registered office;
 - (iv) the addresses of its places of business;
 - (v) correspondence address; and
 - (vi) telephone and facsimile numbers, electronic mail address and web site address.

“CE number” (中央編號) means the central entity identification number assigned by the Commission to an intermediary, or an associated entity of an intermediary;

“complaints officer” (投訴主任), in relation to an intermediary, means a person appointed by the intermediary to handle complaints made to the intermediary;

“controller” (控制人), in relation to an intermediary, means each of the directors and substantial shareholders of the intermediary;

“CPT” (持續專業培訓) means –

- (a) in the case of an intermediary the continuous training that it is required to provide to its representatives under section 169(2)(b)(i) of the Ordinance; and

- (b) in the case of a representative of an intermediary, the continuous training that he is required to undergo under section 169(2)(b)(ii) of the Ordinance;

“criminal investigatory body” (刑事調查機構) means the Hong Kong Police Force and the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap 204) , and bodies carrying out criminal investigatory functions in Hong Kong or elsewhere;

“minor offence” (輕微罪行) means an offence punishable by a fixed penalty, under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), or the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), or the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), or equivalent legislation of a place outside Hong Kong;

“principal” (主事人) has the meaning assigned to it by section 113 of the Ordinance;

“reporting period” (申報表所涵蓋的期間) means –

- (a) the period of one year to the anniversary of the date on which a person is licensed by the Commission as a licensed corporation or licensed representative; or
 - (b) such other period as may be approved by the Commission by notice in writing.
- (2) Where a person is a registered institution, a requirement in these Rules for a person to provide information or particulars (however described) to the Commission shall be construed as a requirement to

provide particulars only in relation to the businesses which constitute any regulated activities for which it is registered.

- (3) Where an associated entity is an authorized financial institution, a requirement in these Rules for a person to provide information or particulars (however described) to the Commission shall be construed as a requirement to provide particulars only in relation to its business of receiving or holding client assets in Hong Kong of any intermediary of which it is an associated entity.

3. Information to be provided with applications to the Commission

For the purposes of section 128(3) of the Ordinance, an application to the Commission under the provisions referred to below shall be made in the applicable form (if any) specified by the Commission in accordance with section 402(1) of the Ordinance, and shall –

- (a) in the case of an application –
 - (i) under section 116 or 117 of the Ordinance by a corporation for a licence;
 - (ii) under section 119 of the Ordinance by an authorized financial institution for registration;
 - (iii) under section 127 of the Ordinance by a licensed corporation or registered institution for variation of the regulated activity specified in the licensed corporation's or registered institution's licence or certificate of registration (as the case may be); and
 - (iv) under section 134 of the Ordinance by a licensed corporation or registered institution for a modification or waiver, in relation to the licensed corporation or

registered institution (as the case may be), in respect of any condition specified in or imposed under, or any of the requirements of the provisions mentioned in subsection (1) of that section of the Ordinance, contain, in so far as applicable, such information, details or matters in respect of the applicant or other person in each item in Part 1 of Schedule 1 as are required to be specified by the form, if any;

- (b) in the case of an application –
- (i) under section 120(1) or (2), or 121(1) of the Ordinance by an individual for a licence;
 - (ii) under section 122(1) of the Ordinance by a licensed representative for approval of accreditation, or under section 122(2) of the Ordinance, for approval of transfer of accreditation to another corporation licensed under section 116 or 117 (as the case may be) of the Ordinance;
 - (iii) under section 126 of the Ordinance by a licensed representative for approval as a responsible officer of a licensed corporation to which he is accredited; and
 - (iv) under section 127 of the Ordinance by a licensed representative for a variation of the regulated activity specified in his licence by adding to or reducing the regulated activity so specified,

contain, in so far as applicable, such information, details or matters in respect of the applicant or other person in each item in Part 2 of Schedule 1 as are required to be specified by the form;

- (c) in the case of an application –

- (i) under section 130(1) of the Ordinance by a person for approval of premises to be used by a licensed corporation for keeping of records or documents required under the Ordinance;
 - (ii) under section 132 of the Ordinance by a person for approval to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation under section 116 of the Ordinance;
 - (iii) under section 134 of the Ordinance by a person (other than a licensed corporation or registered institution) for the grant of a modification or waiver in relation to him, in respect of any condition specified in or imposed under, or any of the requirements of the provisions mentioned in subsection (1) of that section of the Ordinance;
 - (iv) by a person for any other matter requiring the approval of the Commission under Part V of the Ordinance,
- contain such information, details or matters, in so far as applicable, in respect of the applicant or other person in each item in Part 3 of Schedule 1 as are required to be specified by the form.

4. Changes to be notified by licensed persons, registered institutions and substantial shareholders

(1) This section applies in relation to information that has been provided to the Commission under any provision of Part V of the Ordinance and a change in the information occurs.

(2) Where there is a change in the information under subsection (1), a notice in writing of the change shall be given to the

(a) (where the information has been provided in connection with an application under any provision of Part V of the Ordinance and the Commission is still considering the application) the Commission; or

(b) (in other cases) the Commission and (if the information provided relates to a registered institution) the Monetary Authority,

within 7 business days together with a full description of the change.

(3) A licensed corporation shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 1 of Schedule 2.

(4) A registered institution shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 2 of Schedule 2.

(5) A licensed representative shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 3 of Schedule 2.

(6) A substantial shareholder shall give a notice in writing under subsection (2) if a change occurs in relation to any of the information specified in Part 4 of Schedule 2.

(7) Subsections (3), (4), (5) and (6) also apply to –

(a) a corporation that has applied for a licence;

- (b) an authorized financial institution who has applied for registration as a registered institution;
- (c) an individual who has applied for a licence; and
- (d) a person who has applied for approval to become or continue to be a substantial shareholder,

as the case may be, if the application is still subsisting, with the modifications made under subsection (8).

(8) In subsections (3), (4), (5) and (6), and Schedule 2, the references to –

- (a) a licensed corporation;
- (b) a registered institution;
- (c) a licensed representative; and
- (d) a substantial shareholder,

are to be construed, as the case may be, as including the references to –

- (e) the intended licensed corporation which licence is being applied for;
- (f) the intended registered institution which registration is being applied for;
- (g) the intended licensed individual whose license is being applied for; and
- (h) the intended substantial shareholder the approval to whom to become or continue to be a substantial shareholder is being applied for.

5. Information to be contained in annual returns

For the purposes of section 138(4) of the Ordinance, an annual return required to be submitted to the Commission shall –

- (a) in the case of a licensed corporation –
 - (i) contain the information specified in Part 1 of Schedule 3; and
 - (ii) where there has been a change in the information provided to the Commission pursuant to Part V of the Ordinance, or rules made for the purposes of Part V of the Ordinance, and a full description of such change has not been provided to the Commission, contain a full description of the change; or
- (b) in the case of a licensed representative –
 - (i) contain the information specified in Part 2 of Schedule 3; and
 - (ii) where there is a change in the information provided to the Commission pursuant to Part V of the Ordinance, or rules made for the purposes of Part V of the Ordinance, and a full description of such change has not been provided to the Commission, contain a full description of the change.

6. Particulars to be entered in the register of licensed persons and registered institutions

- (1) In addition to the information prescribed under section 136(2) of the Ordinance, the particulars specified in Schedule 4 shall also be included in the register.
- (2) Where, pursuant to section 135 of the Ordinance and section 4, the Commission is notified of any change in the particulars relating to a licensed person or registered institution, it shall make such

amendments in the register as it considers necessary to record the change.

- (3) Information in the register is to be updated at such intervals as the Commission considers appropriate.

7. Correction of errors

Where an error exists in the register kept under section 136 of the Ordinance, or in a licence or certificate of registration, the Commission shall correct the error as soon as practicable.

INFORMATION TO BE PROVIDED WITH
APPLICATIONS TO THE COMMISSION

PART 1

Item	Description of information
1. Basic information in respect of –	<ul style="list-style-type: none"> <li data-bbox="400 786 687 824">(a) the applicant; <li data-bbox="400 846 938 884">(b) each controller of the applicant; <li data-bbox="400 907 1366 1003">(c) each person that is, or is proposed to be, a responsible officer or executive officer of the applicant; <li data-bbox="400 1025 1366 1122">(d) each subsidiary of the applicant that conducts, or proposes to conduct, any regulated activity as its principal business. <li data-bbox="400 1144 1366 1294">(e) each related corporation of the applicant that conducts, or proposes to conduct, any regulated activity as its principal business.
2. Basic information in respect of –	<ul style="list-style-type: none"> <li data-bbox="400 1444 1366 1541">(a) any corporation that is or is proposed to be an associated entity of the applicant; <li data-bbox="400 1563 1366 1659">(b) any persons that are, or are proposed to be, executive officers of an associated entity referred to in paragraph (a).
3. The name, correspondence address, contact telephone and facsimile numbers and electronic mail address of –	

- (a) each contact person appointed by the applicant as the person whom the Commission may contact in the event of market emergency or other urgent need; and
 - (b) each person that is, or is proposed to be, the complaints officer of the applicant.
- 4. The details of any registration or authorization (however described) by a regulatory organization or authority in Hong Kong or elsewhere of each of the persons referred to in item 1.
- 5. The following details in respect of each of the persons referred to in item 1 –
 - (a) his membership (however described) of a stock exchange or futures exchange outside Hong Kong; and
 - (b) the extent of his participation of a recognized exchange company.
- 6. Any matters that might reasonably be considered relevant to the applicant's fitness and propriety to be licensed or registered (as the case may be), including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;

- (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere which are material or relevant to the fitness and properness of the applicant to be licensed or registered;
- (e) (in the case of a corporation other than a registered institution) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; or
- (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

7. The following details, in so far as applicable, in respect of each of the persons referred to in item 1 –

- (a) his academic record providing the names of educational establishments and courses attended, the dates of the courses that were attended and details of –
 - (i) any examinations passed in secondary level education;
 - (ii) any qualifications achieved in tertiary level education;
- (b) his professional record providing the names of educational establishments and courses attended, the dates of the courses that were attended and details of professional qualifications (if any) obtained; and
- (c) his employment record providing the names of employers and dates of employment.

8. In the case of a person applying to be licensed as a licensed corporation, financial information in respect of the applicant showing that it is capable

of meeting its obligations under the Securities and Futures (Financial Resources) Rules (L.N. _____ of 2002).

9. The nature of the business and types of services provided or to be provided by the applicant.
10. A business plan of the applicant covering internal controls, organizational structure, contingency plans and related matters.
11. The capital and shareholding structure of the applicant and the basic information in respect of any person in accordance with whose directions or instructions it, or its directors, are accustomed to act.
12. In the case of a person applying to be licensed as a licensed corporation, the following particulars in respect of any bank account that it has opened for the purpose of the conduct of regulated activities –
 - (a) the name of the bank with which the account is opened;
 - (b) the number of the account; and
 - (c) whether the account is a trust account.
13. The name and address of the auditor of the applicant and the date of his appointment.
14. The address of each of the premises where –
 - (a) the business of the applicant is, or is to be, conducted; and
 - (b) records of the applicant (in the case of a corporation other than a registered institution) are kept or are to be kept.
15. Such other information as may be required in the form specified.

PART 2

Item	Description of information
1.	Basic information in respect of – (a) the applicant; and (b) the licensed corporation to which the applicant is accredited or wishes to be accredited.
2.	Details of any registration or authorization (however described) of the applicant by a regulatory organization or authority in Hong Kong or elsewhere and whether the applicant requires an employment visa to work in Hong Kong as a licensed representative.
3.	The following details, in so far as applicable, in respect of each of the persons referred to in item 1 – (a) his membership (however described) of a stock exchange or futures exchange outside Hong Kong; and (b) the extent of his participation of a recognized exchange company.
4.	The types of services to be provided by the applicant on behalf of the licensed corporation to which the licensed representative is or wishes to be accredited.
5.	Any matters that might reasonably be considered relevant to the applicant's fitness and properness to be licensed, including whether any of the persons referred to in item 1 is or has been – (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;

- (b) subject to any disciplinary action, or investigation, by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
- (c) subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
- (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and properness of the applicant to be licensed; or
- (e) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

6. The following details, in so far as applicable, in respect of each of the persons referred to in item 1 –

- (a) his academic record providing the names of educational establishments and courses attended, the dates of the courses that were attended and details of –
 - (i) any examinations passed in secondary level education;
 - (ii) any qualifications achieved in tertiary level education;
- (b) his professional record providing the names of educational establishments and courses attended, the dates of the courses that were attended and details of the professional qualifications (if any) obtained;
- (c) his employment record providing the names of employers and dates of employment.

7. The mental health of the applicant.
8. Such other information as may be required in the form specified.

PART 3

Item	Description of information
1.	Basic information in respect of – <ol style="list-style-type: none">(a) the applicant;(b) each controller of the applicant;(c) each person that is, or is proposed to be, a responsible officer or executive officer of the applicant;(d) each subsidiary of the applicant that conducts, or proposes to conduct, any regulated activity as its principal business;(e) each related corporation of the applicant that conducts, or proposes to conduct, any regulated activity as its principal business.
2.	Basic information in respect of – <ol style="list-style-type: none">(a) any corporation that is or is proposed to be an associated entity of the applicant;(b) any persons that are, or are proposed to be, executive officers of an associated entity referred to in paragraph (a).
3.	A statement setting out the nature of the application.
4.	A statement setting out the reason for the application.
5.	In the case of a person applying for approval to become or continue to be (as the case may be) a substantial shareholder of a licensed corporation under section 132 of the Ordinance, financial information concerning the applicant and its business and each controller of the applicant to show that

it is a fit and proper person to be a substantial shareholder of the licensed corporation.

6. Any matters that might reasonably be considered relevant to the applicant's fitness and properness to be licensed, or to become or continue to be a substantial shareholder, including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action, or investigation, by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and properness of the applicant to be licensed; or
 - (e) (in the case of a corporation) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; or
 - (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

7. In the case of a person applying for approval of premises under section 103(1) of the Ordinance –

- (a) the address of each of the premises where records of the applicant are to be kept;
- (b) evidence that the premises are suitable for being used for the purpose of keeping records and documents required under the Ordinance.

8. Such other information as may be required in the form specified.

NOTIFICATION OF CHANGES

PART 1

Item	Description of information
1.	<p>Changes in the basic information in respect of –</p> <ul style="list-style-type: none"><li data-bbox="395 725 842 763">(a) the licensed corporation;<li data-bbox="395 786 1098 824">(b) each controller of the licensed corporation;<li data-bbox="395 846 1374 943">(c) each person that is a responsible officer of the licensed corporation;<li data-bbox="395 965 1374 1061">(d) each subsidiary of the licensed corporation that conducts any regulated activity as its principal business;<li data-bbox="395 1084 1374 1180">(e) each related corporation of the licensed corporation that conducts any regulated activity as its principal business, <p>and changes in the persons who are controllers, responsible officers, subsidiaries or related corporations of the licensed corporation that conduct any regulated activity as their principal business.</p>
2.	<p>Changes in the following particulars of any corporation that is, or becomes or ceases to be, an associated entity of the licensed corporation –</p> <ul style="list-style-type: none"><li data-bbox="395 1563 1374 1955">(a) in the case where the corporation is an intermediary –<ul style="list-style-type: none"><li data-bbox="491 1621 1257 1659">(i) basic information in respect of the corporation;<li data-bbox="491 1682 810 1720">(ii) its CE number;<li data-bbox="491 1742 1374 1839">(iii) the date of its becoming, or ceasing to be, an associated entity;<li data-bbox="491 1861 1114 1899">(iv) whether it has any executive officers;<li data-bbox="491 1921 1374 1955">(v) the basic information of its executive officers (if any);

- (b) in any other case –
 - (i) basic information in respect of the corporation;
 - (ii) the date of its becoming an associated entity;
 - (iii) whether it has any executive officers;
 - (iv) the basic information in respect of its executive officers (if any);
 - (v) in the case of a corporation becoming an associated entity, the facts that gave rise to the corporation becoming an associated entity;
 - (vi) in the case of an associated entity ceasing to be an associated entity, the circumstances under which it ceases to be an associated entity and (except in the case of an authorized financial institution) confirmation that all client assets of the intermediary that are received or held by the entity prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets of the intermediary that have not been fully accounted for and properly disposed of.

3. Changes in the name, correspondence address, telephone and facsimile numbers and electronic mail address of –

- (a) each contact person appointed by the licensed corporation as the person whom the Commission may contact in the event of market emergency or other urgent need; and
- (b) each person that is, or is proposed to be, the complaints officer of the licensed corporation.

4. Changes in the status of any registration or authorization (however described) by a regulatory organization or authority in Hong Kong or elsewhere of each of the persons referred to in item 1.
5. In respect of each of the persons referred to in item 1 changes in the status of –
 - (a) his membership (however described) of a stock exchange or futures exchange outside Hong Kong; and
 - (b) the extent of his participantship of a recognized exchange company.
6. Changes in any matters which might reasonably be considered relevant to the licensed corporation's fitness and properness to be licensed or registered (as the case may be), including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
 - (b) subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and properness of the licensed corporation to be licensed;

- (e) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator.
- 7. Significant changes in the nature of the business and types of services provided or to be provided by the licensed corporation.
- 8. Significant changes in the business plan of the licensed corporation covering internal controls, organizational structure, contingency plans and related matters.
- 9. Changes in the capital and shareholding structure of the licensed corporation or any person in accordance with whose directions or instructions it, or its directors, are accustomed to act.
- 10. Changes in the status of any bank accounts of the licensed person relating to the conduct of regulated activities including the following particulars –
 - (a) the name of the bank with which the account is opened;
 - (b) the number of the account;
 - (c) the date of opening or closing any such account;
 - (d) whether the account is a trust account.
- 11. Changes in the name or address of the auditor of the licensed person and the reasons for the change in the auditor.
- 12. Changes in the address of each of the premises where the business of the licensed corporation is, or is to be, conducted.
- 13. The address of each of the premises where records of the licensed person are no longer kept.

PART 2

Item	Description of information
1.	<p>Changes in the basic information in respect of –</p> <ul style="list-style-type: none"><li data-bbox="395 533 847 566">(a) the registered institution;<li data-bbox="395 593 1110 627">(b) each controller of the registered institution;<li data-bbox="395 654 1366 745">(c) each person that is an executive officer of the registered institution;<li data-bbox="395 772 1366 864">(d) each subsidiary of the registered institution that conducts any regulated activity as its principal business;<li data-bbox="395 891 1366 983">(e) each related corporation of the registered institution that conducts any regulated activity as its principal business, <p>and changes in the persons who are controllers, executive officers, subsidiaries or related corporations of the registered institution that conduct any regulated activity as their principal business.</p>
2.	<p>Changes in the following particulars of any corporation that is, or becomes or ceases to be, an associated entity of the registered institution –</p> <ul style="list-style-type: none"><li data-bbox="395 1368 1374 1821">(a) in the case where the corporation is an intermediary –<ul style="list-style-type: none"><li data-bbox="491 1429 1249 1462">(i) basic information in respect of the corporation;<li data-bbox="491 1489 807 1523">(ii) its CE number;<li data-bbox="491 1550 1366 1641">(iii) the date of its becoming, or ceasing to be, associated entity;<li data-bbox="491 1668 1110 1702">(iv) whether it has any executive officers;<li data-bbox="491 1729 1366 1821">(v) the basic information in respect of its executive officers (if any);<li data-bbox="395 1848 1374 2000">(b) in any other case –<ul style="list-style-type: none"><li data-bbox="491 1908 1249 1942">(i) basic information in respect of the corporation;<li data-bbox="491 1968 1222 2002">(ii) the date of its becoming an associated entity;

- (iii) its executive officers (if any);
- (iv) the basic information of its executive officers (if any);
- (v) in the case of a corporation becoming an associated entity, the facts that gave rise to the corporation becoming an associated entity;
- (vi) in the case of an associated entity ceasing to be an associated entity, the circumstances under which it ceases to be an associated entity and (except in the case of an authorized financial institution) confirmation that all client assets of the intermediary that are received or held by the entity prior to its ceasing to be an associated entity have been fully accounted for and properly disposed of and, if not, the particulars of any such client assets of the intermediary that have not been fully accounted for and properly disposed of.

3. Changes in the name, correspondence address, contact telephone and facsimile numbers and electronic mail address of –
 - (a) each contact person appointed by the registered institution as the person whom the Commission may contact in the event of market emergency or other urgent need; and
 - (b) each person that is, or is proposed to be, the complaints officer of the registered institution.
4. Changes in the status of any registration or authorization (however described) by a regulatory organization or authority in Hong Kong or elsewhere of each of the persons referred to in item 1.

5. In respect of each of the persons referred to in item 1 changes in the status of –
 - (a) his membership (however described) of a stock exchange or futures exchange outside Hong Kong; and
 - (b) the extent of his participantship of a recognized exchange company.

6. Changes in any matters which might reasonably be considered relevant to the registered institution's fitness and properness to be registered, including whether any of the persons referred to in item 1 is or has been –
 - (a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere
 - (b) subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
 - (c) subject to, or involved in the management of a corporation or business that is or has been subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
 - (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and properness of the registered institution to be registered.

7. Significant changes in the nature of the business and types of services provided or to be provided by the registered institution.

8. Significant changes in the business plan of the registered institution covering internal controls, organizational structure, contingency plans and related matters.
9. Changes in the capital and shareholding structure of the registered institution or any person in accordance with whose directions or instructions it, or its directors, are accustomed to act.
10. Changes in the name or address of the auditor of the registered institution and the reasons for the change in the auditor.

PART 3

Item	Description of information
1.	Changes in the basic information in respect of the licensed representative.
2.	Changes in the status of any registration or authorization (however described) by a regulatory organization or authority in Hong Kong or elsewhere of the licensed representative.
3.	Changes in the status of – <ul style="list-style-type: none"><li data-bbox="400 891 1366 981">(a) his membership (however described) of a stock exchange or futures exchange outside Hong Kong; and<li data-bbox="400 1010 1366 1099">(b) the extent of his participantship in a recognized exchange company.
4.	Changes in the types of services to be provided by the licensed representative on behalf of the licensed corporation to which the licensed representative is or wishes to be accredited.
5.	Changes in any matters which might reasonably be considered relevant to the licensed representative's fitness and properness to be licensed, including whether he is or has been – <ul style="list-style-type: none"><li data-bbox="400 1601 1366 1691">(a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;<li data-bbox="400 1720 1366 1870">(b) subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;<li data-bbox="400 1899 1366 1993">(c) subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a

criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;

- (d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the fitness and propriety of the licensed representative to be licensed; or
- (e) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

6. Changes in the mental health of the licensed representative.

PART 4

Item	Description of information
1.	Changes in the basic information in respect of the substantial shareholder.
2.	Changes in the status of any registration or authorization (however described) by a regulatory organization or authority in Hong Kong or elsewhere of the substantial shareholder.
3.	Changes in the status of the substantial shareholder's – <ul style="list-style-type: none"><li data-bbox="395 900 1370 990">(a) membership (however described) of a stock exchange or futures exchange outside Hong Kong; and<li data-bbox="395 1012 1370 1057">(b) extent of participantship of a recognized exchange company.
4.	Changes in any matters which might reasonably be considered relevant to the substantial shareholder's fitness and properness to be a substantial shareholder, including whether he is or has been – <ul style="list-style-type: none"><li data-bbox="395 1312 1370 1415">(a) convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;<li data-bbox="395 1438 1370 1594">(b) subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;<li data-bbox="395 1617 1370 1886">(c) subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;<li data-bbox="395 1908 1370 2004">(d) engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere that are material or relevant to the

fitness and properness of the substantial shareholder to be a substantial shareholder;

- (e) (in the case of a corporation) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a provisional liquidator; or
- (f) (in the case of an individual) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap. 6).

5. Changes in the capital and shareholding structure of the substantial shareholder or the persons that are interested in its shares or any person in accordance with whose directions or instructions it, or its directors, are accustomed to act.
6. In the case of an individual, changes in the mental health of the substantial shareholder.

SCHEDULE 3

[s. 5]

INFORMATION IN ANNUAL RETURNS

PART 1

Item	Description of information
1.	The reporting period of the licensed corporation.
2.	Information to enable the Commission to assess whether the licensed corporation and its licensed representatives has complied with the CPT.

PART 2

Item	Description of information
1.	The reporting period of the licensed representative.
2.	Information to enable the Commission to assess whether the licensed representative has complied with the CPT.

PARTICULARS TO BE INCLUDED IN PUBLIC REGISTER

PART 1

The following particulars in respect of a licensed person shall be included in the register –

- (a) its CE number;
- (b) the date of grant of the licence under Part V of the Ordinance;
- (c) the effective date of such conditions (if any) of the licence as the Commission includes in the register under section 136(2)(b) of the Ordinance;
- (d) the regulated activity or activities for which the person is licensed and the effective date of the approval for the licensed person to carry on the regulated activity or activities;
- (e) whether or not the licence is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date;
- (g) a record of each public disciplinary action (if any) taken by the Commission against him in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and each disciplinary action so recorded is to be kept in the register for a period of 5 years from and after the date when the relevant disciplinary action takes effect;
- (h) in the case of a corporation –
 - (i) its electronic mail address (if any) and web site address (if any);

- (ii) the contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of the assigned complaints officer;
- (iii) whether it holds a temporary licence granted under section 117 of the Ordinance; and
- (iv) a list of its accredited representatives;
- (i) in the case of a licensed representative –
 - (i) whether he holds a temporary licence granted under section 121 of the Ordinance;
 - (ii) whether he holds a provisional licence under section 120(2) of the Ordinance;
 - (iii) whether he is approved as a responsible officer and, if so, the regulated activity for which he is responsible; and
 - (iv) the date of accreditation to his principal.

PART 2

The following particulars in respect of a registered institution shall be included in the register –

- (a) its CE number;
- (b) the date of the certificate of the registration under Part V of the Ordinance;
- (c) the effective date of such conditions (if any) of the certificate as the Commission includes in the register under section 136(2)(b) of the Ordinance;
- (d) the regulated activity or activities for which the institution is registered and the effective date of the approval for the institution to carry on the regulated activity or activities;

- (e) whether or not the registration is suspended;
- (f) the modification or waiver granted (if any), together with such particulars as the Commission considers appropriate in relation to any condition imposed, and the corresponding effective date;
- (g) a record of each public disciplinary action (if any) taken by the Commission against him in Hong Kong that is not the subject of a pending appeal, or a successful appeal, and each disciplinary action recorded is to be kept in the register for a period of 5 years from the date when the relevant disciplinary action takes effect;
- (h) its electronic mail address (if any) and web site address (if any); and
- (i) its contact details (including correspondence address, telephone and facsimile numbers and electronic mail address) of the assigned complaints officer.

Chairman
Securities and Futures Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (5 of 2002). They

prescribe the information that is to be provided to the Commission by a person making an application to the Commission under Part V of the Ordinance and the matters and changes that are required to be notified by licensed persons, its substantial shareholders and registered institutions to the Commission. They also prescribe for the purposes of section 138(4) of the Ordinance the information that is required to be contained in an annual return submitted to the Commission by a corporation or individual licensed under section 116(1) or 120(1) of the Ordinance. The Rules further prescribe the particulars that are to be entered in the register of licensed persons and registered institutions.



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

Consultation Conclusions on the Draft Securities and Futures (Intermediary Information) Rules

《證券及期貨（中介人資料）規則》草擬本 諮詢文件總結

Hong Kong
September 2002

香港
2002年9月

Introduction

1. On 19 July 2002, the Securities and Futures Commission (“SFC”) published a Consultation Document on the Draft Securities and Futures (Intermediary Information) Rules (“Consultation Document”). The consultation period ended on 8 August 2002.
2. The draft Rules set out the information the SFC may ask from a person making an application under Part V¹ of the Securities and Futures Ordinance. They also describe the changes that are required to be notified by licensed persons, their substantial shareholders and registered institutions, as well as the information that is required to be contained in annual returns to be submitted by licensed persons.
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 Document.*
4. A total of 6 submissions were received from industry practitioners, legal professionals and other interested parties. All the submissions have been published on the SFC’s website.

Summary of consultation comments and the SFC’s responses

5. The commentators have not objected to the rules and the submissions essentially focussed on detail points and clarification. As a result, no fundamental changes to the draft Rules will be made. A summary of the consultation comments on the draft Rules and the SFC’s responses are set out in the Annex.
6. In processing applications, the SFC will endeavour not to request for information that it has been previously provided. We will so explain in the relevant forms, which are being drafted in consultation with a working group comprising of industry practitioners. In addition, the SFC will in due course issue licensing transitional guides to assist in the smooth transition of existing registrants and exempt persons to the new regime.
7. The SFC would like to thank the respondents for their valuable suggestions and comments in response to the Consultation Document.
8. As a final note, the name of the Rules will be changed to Securities and Futures (Licensing and Registration) (Information) Rules to better reflect its contents.

¹ Part V of the Ordinance pertains to licensing and registration matters.

Summary of comments on Draft Securities and Futures (Intermediary Information) Rules

Annex

(Now renamed as "Securities and Futures (Licensing and Registration) (Information) Rules")

#	Section Reference	Area Commented	Market Comments	SFC's Responses
1.	General comments		<p>The Law Society of Hong Kong</p> <p>As a general comment it is not clear whether, and if so which, provisions of the Draft Rules will apply to licensing applications filed before the SFO and the Draft Rules take effect. For example, it is not clear whether an application filed under the SFO's predecessor legislation but not processed prior to the commencement of the SFO would need to be refiled under the SFO in a manner which complies with section 3 of the Draft Rules. On a literal reading of the SFO and the Draft Rules, such an application would need to be refilled (or supplemented). This point is not addressed in the transitional provisions in Schedule 10 paragraph 60 of the SFO (which only deems a pre-SFO application to be an application for the appropriate licence under SFO but which does not address the contents of the application).</p>	<p>The draft Rules should come into effect upon the commencement of the Securities and Futures Ordinance (SFO). As the information required under section 3 of the draft Rules does not differ significantly from those required under the existing regime, in practice, applications not processed prior to its coming into effect should not give rise to material difficulties. The SFC will only require further relevant information (such as those related to associated entities) to be provided, but not the refilling of applications. In addition, the SFC will in due course issue licensing transitional guidelines to assist in the smooth transition of existing registrants and exempt persons to the new regime.</p>
2.	Section 2	Interpretation	<p>A group of 10 financial institutions</p> <p>Basic information - section (a)(iii & iv) asks for the Hong Kong ID card number and the passport details of an individual. If a person has a Hong Kong ID card, that information should be sufficient; to ask for passport details is unnecessary and, as passports expire every ten years, there is a high likelihood that changes in passport details will go unreported. A similar situation and problem existed until fairly recently with directors' details required to be filed under the Hong Kong Companies Ordinance. In view of those problems, the Hong Kong Registrar sensibly had the legislation amended to require only Hong Kong ID card number, failing which a passport number.</p> <p>Section 2 (a)(v) - the definition of "basic information" includes "business, residential and correspondence</p>	<p>It may be noted that certain passport details may be required when the SFC wishes to verify with its overseas counterparts information provided by applicants. In addition, the HK ID card does not state the nationality of the holder. However, in view of the comment, we will only request for the nationality but not the passport details where the applicant holds a HK permanent ID, and the draft Rules have been accordingly amended.</p> <p>A residential address is often required for the purposes of service of notices or correspondence, in particular</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>address". We suggest that the requirement for residential address be deleted. A "business address, and correspondence address (if different from the business address)" should be sufficient.</p> <p>Section 2 (b)(iv) requires a corporation to provide details of "the addresses of its places of business". For any registered institution (or regional licensed corporation) with a branch network in Hong Kong and/or overseas, this could be a considerable number of addresses. We recommend that this should be confined to the address of its "principal place of business".</p> <p>A fair amount of the information that is required to be provided to the SFC by registered institutions under the Draft Rules will also have to be provided to the Hong Kong Monetary Authority ("HKMA") under other legislation. The duplication of reporting requirements for authorized financial institutions and registered institutions creates a reporting burden as well as an administrative and cost burden for registered institutions. It would be helpful for registered institutions as a whole in Hong Kong if the SFC and the HKMA could issue guidance to registered institutions as to what information has to be provided directly to the SFC, what information has to be provided to the HKMA with the aim, where possible, of reducing the amount of information required to be provided to both regulators.</p>	<p>when the individual concerned has left the employment of his accredited firm. A correspondence address that is not different from his business address may not be helpful in such a case.</p> <p>In the application form for registered institutions, in view of the nature of their operations and that they would be under the primary supervision of the HKMA, the requested business address will be limited to the principal place of business. In respect of licensed corporations, for supervision purposes, all business addresses should be required. This should not give rise to specific difficulties to a "regional licensed corporation" as unlike banks, securities houses do not normally establish branches, but subsidiaries, overseas.</p> <p>The intention is for the SFC to be provided with information relating only to the regulated activities undertaken by the registered institutions, and this is provided in section 2(2) of the draft Rules. We take note of the comment and will discuss with the HKMA with a view to reducing unnecessary burden for registered institutions.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
3.	Section 3	Information to be provided with applications to the Commission	<p>The Law Society of Hong Kong An entity which is, or becomes, the subject of a regulatory investigation may be under a statutory obligation not to disclose the existence of the investigation. It is submitted that applicants should not be placed under an obligation to breach any law applicable to them.</p>	<p>We have clarified in the draft Rules that the disclosure should only be made to the extent that it is not prohibited by law. Please see section 3(2) of the revised draft Rules.</p>
4.	Section 4	Changes to be notified by licensed persons, registered institutions and substantial shareholders	<p>The Hong Kong Association of Banks The period for giving notice of any change in information is 7 business days. Given the scope of information to be provided, we would suggest that 14 business days would be more reasonable.</p> <p>The Law Society of Hong Kong The applicant's/licensee's obligation under section 4 should be to notify changes of which it is aware – it is not a certainty that the applicant/licensee will be aware of changes in all particulars immediately on occurrence. This comment is subject to the contents of the relevant forms.</p>	<p>The SFC considers prompt notification to be important and is required on investor protection grounds. Under section 135 of the SFO, contravention of the notification requirements constitutes an offence if such was done without reasonable excuse. Licensees or registrants that fail to comply will be considered on a case by case basis, including consideration of any reasonable excuse. (The existing rules also require notification within 7 days.)</p> <p>In addition to the above, the consideration would also include whether the person concerned is aware of the changes.</p>
5.	Section 5	Information to be contained in annual returns	<p>A group of 10 financial institutions Section 5(a)(ii) and 5(b)(ii) stipulate that the annual return should include a full description of any change in the information provided to the Commission if a full description of such change has not been provided to the Commission. We would be grateful if the SFC could confirm that subsequent to the notification made in the annual return, a separate notification in writing of the same change as required by Section 4(2) would not then</p>	<p>Duplication of notification is not required.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			be necessary.	
6.	Schedule 1 Part 1	Information to be provided with applications to the Commission – by corporations	<p>A group of 10 financial institutions We suggest that Item 1(b), (d) and (e) be deleted. It is reasonable to ask for basic information in respect of the applicant. Is it necessary to require the basic information in respect of each controller, subsidiary or related corporation conducting regulated activities? We consider that the name should be sufficient. If a subsidiary or related corporation conducts (or proposes to conduct) any regulated activity, then they will have to (or will be required to) apply to the SFC and will supply their “basic information” as an applicant. Furthermore, the applicant company may not know what activities are undertaken by its related corporations, including regulated activities due to the existence of Chinese walls. Such information may be difficult to obtain. Information which is relevant to the application would be the activity of the applicant and if any other member of the applicant's group is also involved in a regulated activity, this information should already be known to the SFC. The disclosure of this information causes unnecessary administrative burden to organisations. For similar reasons, the equivalent Items in Schedule 1 Part 3, Schedule 2 Part 1 and Schedule 2 Part 2 should also be deleted.</p> <p>Item 5(b) refers to the "the extent of his participantship of a recognized exchange company". It is unclear as to whether this clause is meant to apply to the status of membership of the applicant. It would be helpful if the SFC could clarify if what is required are details of whether the applicant is a participant of such an exchange company. This comment applies to Schedule</p>	<p>In assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC.</p> <p>The intention is to ask whether or not the corporation is a trading participant of a recognized exchange company. We have accordingly amended item 5.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>1 Part 2 Item 3(b), Schedule 2 Part 1 Item 5(b), Schedule 2 Part 2 Item 5(b), Item 3(b) of Part 3 of Schedule 2 and Item 3(b) of Part 4 of Schedule 2. In any event, this Item should be amended to read “the extent of its participation in a recognised exchange company”.</p> <p>Items 6(b) and (c) require disclosure of any existing or previous investigation by a regulatory or criminal investigatory body in Hong Kong or elsewhere. We believe that disclosure of this information is problematic. For example, SFC investigations are confidential under the current legislation, and likewise investigations by the ICAC and Commercial Crime Bureau would also be confidential and disclosure would not be permitted under the relevant legislation. We believe it would be preferable to adhere to the current requirements of the SFC which require disclosure of any past censure, disciplinary action or proceedings. In addition, when an investigation is ongoing, it may be prejudicial to the applicant to disclose such information, if the applicant is subsequently cleared as a result of the investigation.</p> <p>Items 6(e) and (f) also require disclosure of the existence of any matters which might render a corporation insolvent or lead to the appointment of a provisional liquidator, while clause (f) which requires a disclosure by an individual of the existence of any matter which may render him insolvent or lead to the appointment of a receiver of his property. We would suggest that these requirements be deleted as they are highly subjective and are difficult for a corporate applicant or individual to assess, as a variety of factors could be taken into account with regard to the insolvency or bankruptcy of an individual or company. It is difficult for the individual or</p>	<p>We have clarified in the draft Rules that the disclosure should only be made to the extent that it is not prohibited by law. For the purposes of assessing the fitness and properness of an applicant, it is necessary to require the disclosure of any pending investigation or proceedings, as is currently required. Please see section 3(2) of the revised draft Rules.</p> <p>These matters will be reduced to specific questions (such as whether there has been any unpaid judgement debts or been a party to a scheme of arrangement regarding payment of debts) in the relevant forms. The information requested in this area will not differ substantially from the current requirements.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>company to determine this at any given point of time. These comments are also applicable to Item 5 of Part 2 of Schedule 1, Item 6 of Part 3 of Schedule 1, Item 6 of Part 1 of Schedule 2, Item 6 of Part 2 of Schedule 2, Item 5 of Part 3 of Schedule 2 and Item 4 of Part 4 of Schedule 2.</p> <p>Furthermore, Item 6(f) should be deleted as Schedule 1 Part 1 does not apply to individuals in any event.</p> <p>The requirements of Item 7(a) are far too detailed. We recommend that the academic record to be provided should be the highest educational qualification attained by the particular individual, as secondary level educational qualifications would not be relevant if the person in question has a higher qualification. We believe it would also be helpful if the SFC could clarify as to whether they require a certificate to be provided as part of the application process. If certificates are required, we would suggest that only the certificate(s) pertaining to the highest level of education attained should be required. These comments are also applicable to Item 6(a) of Part 2 of Schedule 1.</p> <p>Item 10 refers to the need to disclose the business plan of the applicant. Normally this would refer to the commercial strategy of a Licensed Corporation or Registered Institution, however, this item goes on to state "covering internal controls, organisational structure, contingency plans and related matters". Could the SFC expand on what this item is intended to cover and as the term "related matters" has not been defined, please could</p>	<p>Schedule 1 Part 1 applies to individuals where they are e.g. controllers of a corporate applicant.</p> <p>The forms will only request for information relating to the highest educational qualification attained. This part of the schedule will be amended accordingly. However, in respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he has not obtained a relevant post-secondary qualification. Again, only details of the relevant subjects will be required. The SFC will not normally require any educational certificate to be provided as part of the application process. Instead, reliance will be placed on the accredited corporation to verify that its accredited staff had attained the relevant qualifications asserted.</p> <p>It is not the SFC's intention to enquire into the commercial strategy of a regulated corporation. This item intends to cover the competence required of a corporation to carry out its functions effectively and efficiently, as well as to protect its clients' interests. Thus a corporate applicant should be able to satisfy the SFC that its has proper business structures, good internal systems and qualified personnel to enable it to</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>clarification be given.</p> <p>We recommend that Item 12 be deleted. Intermediaries maintain a large number of bank accounts which are opened from time to time and regularly as part of an intermediary's business. We believe it would cause significant administrative burden for intermediaries for such information to be disclosed at the outset and also if intermediaries have to notify the SFC each time they open a new bank account and within the required notice period of 7 business days. The rationale behind this requirement may be to assist the SFC in monitoring the activities of unscrupulous intermediaries who may establish new accounts to retain their clients' funds or other assets. However, the implementation of such a requirement will certainly cause a significant administrative burden to other law-abiding intermediaries, as any unscrupulous intermediaries could choose not to notify the Commission when they open a new account. These comments are also applicable to Item 10 of Part 1 of Schedule 2.</p> <p>The Law Society of Hong Kong Some of the requirements of Schedules 1 and 2 are potentially subjective (e.g. Part 1 paragraph 6, Part 2 paragraph 5, Part 3 paragraph 6 etc. of Schedule 1 and equivalent provisions in Schedule 2). This flexibility is consistent with the discretionary nature of the SFC's licensing powers.</p> <p>A corporation which has been subject to "investigation by a</p>	<p>properly manage the risks it will encounter in carrying on its business as detailed in its business plan. These requirements are outlined in the Guidance Note on Competence.</p> <p>The SFC believes that information relating to bank accounts of licensed corporations is necessary for supervision purposes. This is also currently required. However, we note the comments and adopting a pragmatic approach, will state in the forms that the required information will be limited to those concerning segregated trust accounts and major operational accounts.</p> <p>Comment noted and would specify the requirements in the form as far as possible.</p> <p>Such information would be helpful to the SFC in</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>regulatory body ...” (e.g. Schedule 2, Part 1, paragraph 6) but is not found to have been culpable of the relevant act or omission should not be required to make disclosure of that information. To do so would be both unduly burdensome and irrelevant. Also, a “lawful excuse” exception should be provided for.</p> <p>It is submitted that there should be a time-limit for the disclosure of past investigations done (e.g. in the past 5 years) otherwise this is a potentially an onerous obligation, as (i) the applicant’s/licensee’s present management could be very different from the circumstances pertaining at the time of the investigation and (ii) it may be unduly burdensome for applicants/licensees which have been in existence for a long time and which operate in multiple jurisdictions to obtain this information.</p> <p>Linklaters on behalf of 6 financial institutions Paragraph 1 requires “basic information” from a number of different entities, including each related corporation that conducts, or proposes to conduct, any regulated activity that is its principal business. This is not currently required and in relation to an international financial institution would create a serious administrative burden. The Group suggests that this is either deleted or limited to those related corporations that are licensed or registered to carry on regulated activities in Hong Kong, in which case the SFC should already have information on these entities and it should be necessary to provide no more than the name and CE Number. The Group also suggests that this should be limited to related corporations that are actually carrying on business and not those that propose to carry on business, unless it is</p>	<p>assessing the fitness and properness of an applicant for licence. Under section 135 of the SFO, contravention of the notification requirements constitutes an offence if such was done without reasonable excuse. Failure to disclose or notify will be considered on a case by case basis as to whether reasonable excuse could be established.</p> <p>While the SFC does not agree that there should be a time-limit for such disclosure, the lapse of time is a factor for consideration in assessing the fitness and properness of an applicant. This approach is currently adopted by the SFC.</p> <p>In assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC.</p> <p>For practical reasons, we agree that the required information should be limited to those that are actually carrying on business and should not include those that propose to carry on business. We have amended amend the draft Rules accordingly. Again, information</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>limited to those related corporations that have already submitted an application to the SFC, in which case again the SFC should have information on these entities and it should only be necessary to provide a name and brief details of the application being made.</p> <p>Paragraph 6 requires certain information to be disclosed that might be relevant to an applicant's fitness or properness. This has been extended to all entities referred to in Paragraph 1, so again would create a substantial administrative burden for international financial services groups if all related corporations remained in paragraph 1. In the Licensed Persons and Registered Institutions Rules, this information was restricted to the directors and responsible officers of the intermediary.</p> <p>Sub-paragraphs (b) and (c) appear to overlap, and it is suggested that sub-paragraph (c) is limited to involvement in management, as sub-paragraph (b) should pick-up being subject to investigations. The Group has similar comments, where applicable, to Parts 2 and 3 of Schedule 1.</p> <p>Regarding the requirements under paragraph 7(a) and Part 2 paragraph 6(a), in practice it is often quite difficult for an applicant to provide full details in relation to the examinations he passed in his secondary level education. The Group believes that where an applicant has acquired tertiary level qualifications, the applicant should not be required to provide academic details of his</p>	<p>that has been previously provided will not be requested.</p> <p>As stated above, in assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC. (It may be noted that the Licensed Persons and Registered Institutions Rules pertain to the notification of changes but not to the provision of information at the time of making applications.)</p> <p>Agree, have amended the draft Rules accordingly.</p> <p>The SFC will only request for information relating to the highest educational qualification attained. This part of the schedule will be amended accordingly. However, in respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>secondary education.</p> <p>In addition, currently the SFC only requires an applicant to supply employment records for the last 5 years. This should still be the case under paragraph 7(c) and Part 2 paragraph 6(c) of the Rules.</p> <p>Paragraph 15 (and paragraph 8 of Part 2 of Schedule 1 and paragraph 8 of Part 3 of Schedule 1) gives the SFC wide power to include "such other information as may be required in the form specified". This means the draft Rules are of limited use in providing certainty to the industry as to what information will be required by the SFC. It is suggested that this at least be limited to information that is relevant to the particular application being made, which is what the Group believes the SFC intended.</p>	<p>has not obtained a relevant post-secondary qualification. Again, only details of the relevant subjects will be required.</p> <p>The forms will require the provision of employment records for the last 5 years only. It may be noted that in cases where the individual applicant wishes to act as a responsible officer, employment record up to 8 years may be required to substantiate that he has the requisite competence.</p> <p>The draft Rules have been amended to limit the information required to those relevant to the particular application, as suggested.</p>
7.	Schedule 1 Part 2	Information to be provided with applications to the Commission – by individuals	<p>The Hong Kong Association of Banks</p> <p>Item 2 - should the registration or authorisation not be limited to any that are related to regulated activities?</p> <p>Item 6 - any matters that "might reasonably be considered relevant" to the applicant's fitness and properness is unduly broad as failure to include any such matter is a breach of the Rules. We suggest it be changed to read "reasonably considered to be relevant".</p> <p>Sub-item (b) - should "investigation" not be restricted to "investigations of which the applicant was not cleared"?</p>	<p>Yes, and the draft Rules provides so in section 2(2).</p> <p>We do not consider the proposed amendment changes the meaning of the clause.</p> <p>Such information would be helpful to the SFC in assessing the fitness and properness of an applicant</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>Item 6(a) - is the SFC really looking for details of secondary level education if the person attended university? There is no differentiation in the Rules as drafted.</p> <p>Item 7 - We are not sure how the "mental health" of the applicant can be confirmed.</p>	<p>for licence. In the assessment, consideration would be given to whether or not the applicant was cleared.</p> <p>In respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he has not obtained a relevant post-secondary qualification.</p> <p>As per existing requirements, the relevant forms will request the applicant to state whether he has ever been detained in a mental hospital or been a patient as defined under the Mental Health Ordinance.</p>
8.	Schedule 1 Part 3	Information to be provided with applications to the Commission – other applications	<p>Linklaters on behalf of 6 financial institutions It should be made clearer which items relate to which application. It is unnecessary to provide all the information set out in Paragraphs 1 and 2 where the applicant is the licensed person and when the application relates to the approval of premises for the keeping of records or documents.</p> <p>The Group would also like to make the comment that given current technological advances and the prevalence of cross-border computer networking capabilities, it would often be impossible or impracticable to identify the precise physical location at any one time of the electronic data constituting an electronic record and hence apply for SFC approval. We believe that where the records are in electronic format and are available from/at premises in Hong Kong, the premises to be approved should be the Hong Kong premises. It should not be necessary to obtain approval for the location of servers or systems,</p>	<p>We will only require information that is relevant to the application, and the form will so provide.</p> <p>We agree with the comments, and take the view that approval for the location of servers or systems is not necessary where the records are available at approved premises in Hong Kong. However, it would be incumbent on the licensed corporation to ensure the integrity of the systems and records.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			etc. based overseas.	
9.	Schedule 2 Part 1	Notification of changes – by licensed corporations	<p>Hong Kong Securities Institute Item 10 (changes in status of bank accounts) – members disagreed. What are the underlying reasons of reporting the Companies’ bank accounts to the SFC? Suggestion: This item should be deleted.</p> <p>A group of 10 financial institutions Item 1(d) should be deleted as this requirement to disclose is repetitive. Any subsidiary of the applicant which is conducting a regulated activity would be registered with the SFC and would have to provide any updated information with regard to itself.</p> <p>Item 2(a)(ii) requires a corporation to notify the SFC of any changes in its CE number. However, as this number is assigned by the SFC to the intermediary, the intermediary should not have to notify the SFC of any changes. The same comments apply for Item 2(a)(ii) of Part 2 of Schedule 2.</p> <p>Item 8 requires that any significant changes in the business plan of a licensed corporation covering internal controls, organisational structure, contingency plans and related matters are to be notified to the SFC. It is unclear as to whether this requirement is directed specifically at the business plans of the licensed corporation or is</p>	<p>The SFC believes that information relating to bank accounts of licensed corporations is necessary for supervision purposes. This is also currently required. However, we note the comments and adopting a pragmatic approach, will state in the forms that the required information will be limited to those concerning segregated trust accounts and major operational accounts.</p> <p>While the SFC would be aware where the subsidiary conducts regulated activities in Hong Kong, this may not be the case where the subsidiary conducts regulated activities overseas.</p> <p>The intention is not to request the notification of changes in the CE number, but rather to request for the CE number of the corporation concerned, where it becomes or ceased to be an associated entity.</p> <p>It is not the SFC’s intention to request for sensitive or confidential commercial strategies of a regulated corporation. This request is directed at the competence required of a corporation to continue to carry out its functions effectively and efficiently. Thus, a corporate licensee must notify the SFC of any</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>intended to be directed at any changes in the internal controls, organisational structure, contingency plans and related matters of the licensed corporation. We believe that intermediaries would have significant problems with providing copies of their business plans per se as these are highly confidential documents. Where the intermediary concerned is a public company, its business plan may contain material inside information. We would be grateful if the SFC could clarify this requirement as if the intention is to obtain any information from a licensed corporation with regard to any significant changes concerning its internal controls, organisational structure or contingency plans, this information can be provided to the SFC without reference to the actual business plans of the intermediary which are highly confidential and sensitive. It would be preferable if clause 8 could be clarified. In addition, the words "related matters" are unclear and clarification would be helpful.</p> <p>Similar comments apply to Item 8 of Part 2 of Schedule 2. In the case of registered institutions, we would read this requirement to apply only in respect of their regulated activities.</p> <p>Item 11 should refer to the "licensed corporation" instead of the "licensed person". Similar amendments should be made to clause 13 of Part 1 of Schedule 2.</p> <p>Linklaters on behalf of 6 financial institutions To the extent relevant the Group has the same comments on the information to be provided under Schedule 2 as it does to Schedule 1. Again of particular concern to the Group is that changes to information on related corporations that conduct regulated activities are</p>	<p>material change in its business structures, internal systems and key personnel that may affect its ability to remain fit and proper. These are not new requirements and they are outlined in the Guidance Note on Competence.</p> <p>Yes, in the case of registered institutions, this requirement only applies in respect of their regulated activities. Section 2(2) of the draft Rules so provides.</p> <p>Agree, and have amended the draft Rules accordingly.</p> <p>Noting the concerns, the draft Rules will be amended to require a licensed corporation to notify changes to information relating to itself, its responsible officers, its subsidiaries and its controllers only but not its other related corporations. This would also apply in regard</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>required. Also changes that might affect the fitness and properness of an intermediary have been extended to any person referred to in Part 1 of Schedule 2. In the case of substantial shareholders (which fall under the definition of “controllers”) this overlaps with the requirements for substantial shareholders to report such changes in Section 4(6). If the requirement is to be expanded to all persons referred to in Part 1, it is suggested that the reporting requirement should only be triggered once the intermediary becomes aware of such changes to the information initially provided to the SFC.</p>	<p>to changes affecting the fitness and properness of such related corporations. This does not overlap with the requirements in Section 4(6), which imposes an obligation on substantial shareholders to report on changes regarding themselves.</p>
10.	Schedule 2 Part 3	Notification of changes – by licensed representatives	<p>Linklaters on behalf of 6 financial institutions Two new categories have been added: changes in the type of services to be provided by the licensed representative on behalf of the licensed corporation, and changes to the mental health of the licensed representative. It is suggested that only significant changes in the type of services should be reported, which is consistent with the approach taken for intermediaries. If the licensed representative were undertaking a new regulated activity, the licensed representative would need to apply for a modification to the licence in any case. The Group would like some guidance on what is meant by “changes to the mental health of the licensed representative”.</p>	<p>Agree that only significant changes in the type of services should be reported. The draft Rules will be amended accordingly. Changes relating to the mental health would be limited to whether or not the licensed representative had been detained in a mental hospital or been a patient as defined under the Mental Health Ordinance.</p>
11.	Schedule 2 part 4	Notification of changes – by substantial shareholders	<p>A group of 10 financial institutions It would be difficult for large international financial groups which have numerous substantial shareholders to comply with some of the requirements of Part 4. While providing changes in basic information in respect of the substantial shareholder(s) should not prove too difficult, the other changes such as Items 2, 3, and 4 to be notified under</p>	<p>Noting the concerns, the SFC is willing to dispense with Items 2 (on changes in registration status) and 3 (on changes in exchange membership status). The draft Rules have been amended accordingly. However, Item 4 (now item 2) (on changes which might reasonably be considered relevant to the substantial</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>Part 4 may prove difficult to comply with, insofar as large international financial groups are concerned. It is arguable whether details of changes in registrations or stock exchange memberships of overseas companies in a company's chain of substantial shareholders would be particularly relevant to that company's licensed status with the SFC in Hong Kong. In order to comply with the requirements of Part 4, intermediaries which are part of large international financial groups would have to set up an elaborate system internally to obtain this information from overseas for notification to the SFC. This would cause an administrative burden. We would urge the SFC to reconsider this requirement insofar as substantial shareholders which are overseas entities are concerned and to limit the notification of such changes to entities which are based in Hong Kong as this would reduce the administrative burden.</p> <p>In particular, Item 5 requires notification to the SFC with regard to changes in the capital and shareholding structure of the substantial shareholders or persons which are interested in the shares etc. Some of these changes may be immaterial but under the current clause as drafted would be required to be reported. Again this would cause undue administrative burden. It would be preferable if the requirements of Item 5 could be changed to only require a notification of any significant changes in the capital or shareholding structure of the substantial shareholder.</p> <p>Linklaters on behalf of 6 financial institutions Part 4 sets out the changes relating to a substantial shareholder that must be reported. This is new and was not in the Licensed Persons and Registered Institutions Rules. As mentioned above, this overlaps with the</p>	<p>shareholder's fitness and properness) should be retained in the interests of investor protection. This is not a new requirement, as such a change is currently required to be reported in the Annual Return.</p> <p>We note the comment and have amended Item 5 (now item 3) to require only substantial changes in the capital or shareholding structure of the substantial shareholder need to be reported.</p> <p>Part 4, which requires a substantial shareholder to report changes regarding itself, does not overlap with section 4(3) and (4), which requires a licensed corporation or a registered institution to report on</p>

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			reporting requirement of intermediaries under Section 4(3) and (4).	changes regarding its controllers.
12.	Schedule 3	Information in annual returns – from licensed persons	<p>Linklaters on behalf of 6 financial institutions Parts 1 and 2 require information to enable the SFC to assess whether a licensed corporation and a licensed representative have complied with the CPT requirements. The Group would like some guidance on what information is specifically required.</p>	<p>The approach will be no different from the one currently adopted. The same specific questions will be asked in the Annual Return form. For corporations, they will be required to state whether or not they have implemented a training programme to meet the training needs of their accredited representatives. For representatives, they will be asked whether or not they had fulfilled the required CPT hours.</p>
13.	Schedule 4	Particulars to be included in public register of licensed persons and registered institutions	<p>Hong Kong Stockbrokers Association We specifically have concern on the requirement for each public disciplinary action taken by the Commission against a licensed person or a registered institution to be kept in the register for a period of 5 years from and after the date when the relevant disciplinary action takes effect. We felt that a 5-year period for all types of public disciplinary action regardless of the seriousness of the offence is too harsh and too long. Instead, it will be fairer and more just to set the length of time kept in the public register to be depended on the seriousness of the offence with up to a maximum of 5 years.</p> <p>Moreover, when a bank that participates in the securities dealing business, whether there is any provision for its public disciplinary action record related to securities dealing be published in a similar action. Only if such a provision is present can the public investors be getting a clear and complete picture. Also, this would help maintain</p>	<p>This issue was debated in the consultation on the Licensed Persons and Registered Institutions Rules. As stated in its consultation conclusion, the SFC, having considered various representations, took the view that the disclosure of a 5-year public disciplinary record was appropriate.</p> <p>The HKMA will include similar public disciplinary records in respect of relevant individuals of registered institutions in its public register. This is provided under the revised section 20 of the Banking Ordinance.</p>

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			<p>a level playing field between the banks and the securities brokers to create a fairer market among the different players.</p> <p>Linklaters on behalf of 6 financial institutions Paragraph (g) of Parts 1 and 2 require a record of public disciplinary action to be kept in the register for a period of 5 years from the date the relevant disciplinary action takes effect. The Group believes the period of 5 years is too long and that it should be reduced to 2 years.</p>	<p>This issue was debated in the consultation on the Licensed Persons and Registered Institutions Rules. As stated in its consultation conclusion, the SFC, having considered various representations, took the view that the disclosure of a 5-year public disciplinary record was appropriate.</p>

List of Respondents

Date received	Respondent
8 August 2002	Hong Kong Association of Banks
8 August 2002	Hong Kong Securities Institute
8 August 2002	A group of 10 financial institutions
8 August 2002	The Law Society of Hong Kong
8 August 2002	Linklaters (on behalf of 6 financial institutions)
21 August 2002	Hong Kong Stockbrokers Association Ltd