

For discussion on
24 October 2002

Paper No. 35/02

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

**Securities and Futures
(Contract Notes, Statements of Account and Receipts) Rules**

Members considered the draft Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules at the Subcommittee meeting on 7 June 2002. In the light of the comments of the LegCo Legal Adviser and other necessary changes to better reflect policy intention and improve drafting, we submit at **Annex** the **revised draft** of the Rules, with the proposed amendments marked up for easy reference. The reasons for the amendments are explained in the footnotes.

Securities and Futures Commission
Financial Services and the Treasury Bureau
17 October 2002

Revised Draft

SECURITIES AND FUTURES (CONTRACT NOTES, STATEMENTS OF ACCOUNT AND RECEIPTS) RULES

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[cf. : Section 152 of the Securities and Futures Ordinance]

**SECURITIES AND FUTURES (CONTRACT NOTES,
STATEMENTS OF ACCOUNT AND RECEIPTS)
RULES**

(Made by the Securities and Futures Commission under section 152(1)
of the Securities and Futures Ordinance (~~5 of 2002~~Cap. 571))¹

PART 11

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day ~~on which Part VI of~~
appointed for the commencement of the Securities and Futures Ordinance (5 of
~~2002~~Cap. 571) ~~comes into operation~~².

2. Interpretation

In these Rules, unless the context otherwise requires –

“~~approved jurisdiction~~” (~~—————~~) ~~means a jurisdiction specified in~~
Schedule 1;³

“asset management” (~~—————~~) has the meaning assigned to it by Part 2 of
Schedule 5 to the Ordinance;

“balance” (~~—————~~) includes, where applicable, money ledger balance;

“~~dealing in futures contracts~~” (~~—————~~) ~~has the meaning assigned to it~~
by Part 2 of Schedule 5 to the Ordinance⁴;

¹ Minor drafting amendment.

² Drafting amendment to reflect the policy intention to commence concurrently these Rules and the Securities and Futures Ordinance as a whole.

³ This amendment should be read together with the newly added definition of “specified jurisdiction”. The replacement of the term “approved jurisdiction” with the term “specified jurisdiction” is to avoid the perception that there would be an approval mechanism for jurisdictions to be included in Schedule 1.

⁴ Deleted as, upon reflection, the reference to “dealing in futures contracts” should follow the meaning of “dealing” defined in Part 1 of Schedule 1 to the Ordinance, and accordingly no specific definition is required. Please also see footnote 10.

~~“dealing in securities” () has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance⁵;~~

~~“designated person” () means a person designated in writing by a client of an intermediary, other than an employee or officer of the client's intermediary;⁶~~

“floating loss” () means unrealized losses calculated by marking to market open positions;

“floating profit” () means unrealized profits calculated by marking to market open positions;

“foreign intermediary” () means –

- (a) a person who carries on a business of providing financial or investment services and is regulated in respect of that business in ~~an approved~~ a specified jurisdiction; or
- (b) a bank that is regulated under the law of ~~an approved~~ specified³ jurisdiction;

“margin ratio” (), in relation to each description of securities collateral, means the percentage of the value of such collateral up to which a client of an intermediary is ~~generally~~⁷ permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

“margin value” (), in relation to each description of securities collateral, means the maximum amount of money which a client of an intermediary is ~~generally~~⁷ permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

⁵ Deleted as, upon reflection, the reference to “dealing in securities” should follow the meaning of “dealing” defined in Part 1 of Schedule 1 to the Ordinance, and accordingly no specific definition is required. Please also see footnote 10.

⁶ This amendment should be read together with the deletion of the definition of “serve” and the addition of new clause 17. Drafting amendments to adopt the approach to generally extend the meaning of “client” as recipient of specified information to include also persons designated by him, through the new clause 17.

⁷ Minor drafting amendment.

⁸ “margined transaction” () means a relevant contract which requires a client with whom or on whose behalf an intermediary has entered into the relevant contract to –

- (a) pay a margin to the intermediary; or
- (b) provide security to the intermediary to meet the client's obligations,

other than under an arrangement where financial accommodation is provided to the client by the intermediary;

“marking to market” () means the method or procedure of adjusting the valuation of open positions to reflect their current market value;⁹

“net equity” (), in relation to a client of an intermediary, means the balance in the client's account at any given time –

- (a) plus any floating profit;
- (b) less any floating loss; and
- (c) after adjusting for any income credited to and charges levied against that account;

¹⁰ “relevant contract” () means a contract entered into in Hong Kong by an intermediary with or on behalf of a client of the intermediary in the conduct by the intermediary of any of the businesses which constitute of

(a) any regulated activity for which the intermediary is licensed or registered, that is a contract –

(a)(i) other than a market contract, for the purchase, sale, exchange or other a dealing in securities (except a market contract), including a transaction under a securities borrowing and lending agreement; or

⁸ Minor drafting amendment, made in the light of the comment of the LegCo Legal Adviser as set out in his letter of 4 June 2002.

⁹ The definition is added to assist the interpretation of “floating losses” and “floating profits”.

¹⁰ Drafting amendments, including the amendments to simplify paragraphs (a)(i) and (ii) with reference to the meaning of “dealing” as defined in Part 1 of Schedule 1 to the Ordinance. Please see footnotes 4 and 5.

~~(b)(ii) other than a market contract, for the purchase, sale, exchange or other a dealing in a futures contracts (except a market contract); or~~

~~(e)(b) the regulated activity of leveraged foreign exchange trading for which the intermediary is licensed, that is a leveraged foreign exchange contract;~~

⁶~~“serve” (—) includes—~~

~~(a) cause to be served; and~~

~~(b) in relation to any requirement in these Rules to serve on a client of an intermediary, service on a designated person instead of on the client.~~

³~~“specified jurisdiction” (—) means a jurisdiction specified in Schedule 1.~~

3. Application

(1) ¹¹~~These Rules, other than section 11(4) and (5) and 13, do not apply to –~~

~~(a) an intermediary licensed or registered for asset management; or~~

~~(b) an associated entity of ~~the~~ such an intermediary,~~

~~in relation to the conduct by the intermediary of asset management, except—~~

~~(c) as provided for in section 11(5); and (d)~~

~~in relation to receipts as referred to in section 12.~~

~~(2) (2) Where a client of an intermediary is a professional investor within the meaning of –~~

~~(a) ¹² any of paragraphs (a) to (i) of the definition of “professional investor” in Part 1 of Schedule 1 to the Ordinance, and –~~

- (i) ~~the intermediary or an associated entity of the intermediary notifies~~ has notified the client in writing that unless the client objects, the intermediary ~~or the associated entity~~ will not provide to the client any contract notes, statements of account or receipts (as the case may be) in accordance with these Rules ~~to the client~~ and the intermediary has not received any objection from the client ~~and the client does not object~~; or
- (ii) an associated entity of the intermediary has notified the client in writing that unless the client objects, the associated entity will not provide to the client any receipts in accordance with these Rules and the associated entity has not received any objection from the client; or
- (b) ¹²paragraph (j) of the definition of “professional investor” in Part 1 of Schedule 1 to the Ordinance and ~~agrees~~ has agreed in writing with –
- (i) ~~the intermediary or an associated entity of the intermediary~~ not to receive from the intermediary any contract notes, statements of account or receipts (as the case may be) in accordance with these Rules ~~from the intermediary or the associated entity~~; or

¹¹ Drafting amendments involving no change in substance: clause 11(5) elaborates the requirements prescribed in clause 11(4); and clause 12 now becomes clause 13 consequential to the insertion of a new clause before it.

¹² Drafting amendments, including the amendments to subsume the part of clause 3(4) that confines the role of an associated entity of an intermediary to the provision of receipts (i.e. not permitted to provide contract notes or statements of account) under clause 3(2). Amendments are also introduced in other subsequent application provisions to avoid the wrong impression that an associated entity is permitted to provide contract notes or statements of account.

~~(ii) an associated entity not to receive from the associated entity any receipts in accordance with these Rules,~~

~~then sections 5, 8, 9, 11, or 12 or 13¹³ (as the case may be) does not apply to the intermediary or the associated entity in respect of relation to the client.~~

~~(3) (3) For the avoidance of doubt, nothing in these Rules affects any obligation of an intermediary to comply with section 19 of¹⁴ the Stamp Duty Ordinance (Cap. 117).~~

~~(4) These Rules shall apply to an associated entity of an intermediary in respect of—~~

~~(a) client assets of the intermediary that the associated entity receives or holds; and~~

~~(b) a client of the intermediary in relation to whom the associated entity receives or holds client assets of the intermediary,~~

~~provided that nothing in these Rules shall permit an associated entity of an intermediary to prepare or provide to a client of an intermediary any contract note as referred to in section 5 or statement of account as referred to in section 9.¹⁵~~

4. ¹⁶Avoidance of duplication

(1) Where –

(a) a person is a client of 2 intermediaries;

¹³ Amendment consequential to the relocation of the original clause 12 as the new clause 13.

¹⁴ Drafting amendment for clarity.

¹⁵ For the reason set out in footnote 12 with respect to the second part of the original clause 3(4) and that the first part only repeats section 152(1) of the Ordinance, the provision serves no additional purpose and is accordingly deleted.

¹⁶ Drafting amendments, including the amendments introduced for clarity by prescribing separately the “arrangement” entered into by an intermediary regarding the provision of “contract notes”, “statements of accounts” and “receipts” (in clause 4(1) and (2)) and that by an associated entity of an intermediary regarding the provision of “receipts” (in the new clause 4(3)). By way of information, an intermediary is obliged to provide “contract notes”, “statements of account” and “receipts” respectively under Divisions 1, 2 and 3 of Part 2; whereas an associated entity is only obliged under Division 3 to provide “receipts”. Please also see footnote 12.

- ~~(a) (b) an intermediary (“A”) or an associated entity of A and another intermediary (“B”) or an associated entity of B are both required to prepare and serve a contract note or statement of account in accordance with these Rules on a person who is a client of both A and B in respect of each of the intermediaries has entered into a relevant contract for a dealing in securities or a dealing in futures contracts; and~~
- ~~(b) (c) A or an associated entity of A one of the intermediaries has agreed in writing with B or an associated entity of B that B the other intermediary or an associated entity of B will to prepare and serve or provide to the client person a contract note or statement of account in accordance with these Rules in respect of the matter,~~

~~neither A nor an associated entity of A is required to prepare and serve on the client a then that other intermediary is exempt from compliance with the provisions of these Rules relating to the contract note or statement of account (as the case may be) in accordance with these Rules in respect of the matter to the extent that the contract note or statement of account (as the case may be) relates to the relevant contract.~~

(2) Where an intermediary (“A”) or an associated entity of A has an arrangement with a foreign intermediary (“C”) that is a related corporation of the intermediary A that C under which the foreign intermediary will prepare and serve or provide to a client of A the intermediary a contract note, statement of account or receipt (as the case may be) in accordance with and to the extent required by the law applicable to C in the relevant approved of the specified³ jurisdiction under which the foreign intermediary is regulated, ~~neither A nor an associated entity of A is required to prepare and serve a~~ then the intermediary is exempt from compliance with the provisions of these Rules relating to the contract note, statement of account or receipt in accordance with these Rules in respect of the same matter (as the case may be).

(3) Where an associated entity of an intermediary which receives client assets of the intermediary has an arrangement with a foreign intermediary that is a related corporation of the intermediary under which the foreign intermediary will prepare and provide to a client of the intermediary a receipt in accordance with and to the extent required by the law of the specified jurisdiction under which the foreign intermediary is regulated, then the associated entity is exempt from compliance with the provisions of these Rules relating to the receipt.

PART H2

PREPARATION AND PROVISION OF CONTRACT NOTES, STATEMENTS OF ACCOUNT AND RECEIPTS

Division 1 – Contract notes

5. Preparation and provision of contract notes

(1) ¹⁷Subject to subsection (2) and section 6, ~~where an intermediary which enters into a relevant contract with or on behalf of a client, it shall –~~

- (a) prepare a contract note in accordance with this section in respect of the relevant contract; and
- (b) ~~serve provide~~ the contract note ~~on to the client with or on whose behalf the intermediary entered into the relevant contract,~~ no later than the end of the second business day after entering into the relevant contract.

(2) Subject to section 6,¹⁸ ~~Where an intermediary enters into more than one relevant contract with or on behalf of the same client of the intermediary on the same business~~¹⁹ day –

¹⁷ Drafting amendments.

¹⁸ Amendment made to clarify the policy intention that a contract note prepared under this subsection may be consolidated with a statement of account prepared under section 6.

- (a) ²⁰~~unless the client instructs otherwise~~has given contrary instructions to the intermediary, the intermediary may prepare a single contract note which –
- (i) records all of those relevant contracts; and
 - (ii) in respect of each of those relevant contracts, includes, to the extent applicable, all of the information which, apart from this subsection, would have been required to be included in a contract note as referred to in subsection (1) under any of the provisions of subsections (3), and (4), (5) or and (6) (as the case may be) required to be included in a contract note in respect of each of those relevant contracts; and
- (b) ²¹if such a single contract note is prepared, the intermediary shall ~~serve~~provide it on~~to~~ the client no later than the end of the second business day after entering into those relevant contracts.

- (3) ²²A contract note ~~as referred to in subsection (1) shall include,~~to the extent applicable, the following information,~~where applicable~~ –
- (a) the name under which the intermediary carries on business;
 - (b) the name and account number of the client of the intermediary;
 - (c) full particulars of the relevant contract including –
 - (i) the quantity, name, description and ~~any such~~other particulars of the securities, futures contracts or leveraged foreign exchange contracts involved, as

¹⁹ The reference to “business” is deleted as the relevant transactions may be effected in other jurisdictions on days other than Hong Kong “business days”.

²⁰ Drafting amendments.

²¹ Minor drafting amendment.

²² Drafting amendments.

- are sufficient to ~~identify~~ enable them to be identified;
- (ii) ~~5 and 6~~ where the relevant contract is for a dealing in securities or a ~~dealing in~~ futures contracts, ~~whether it is for a purchase, sale, exchange or other dealing in securities or dealing in futures contracts~~ the nature of the dealing;
- (iii) the name of the market or exchange on which the relevant contract has been executed; and
- (iv) whether the relevant contract is for the opening or closing of a position;
- (d) where the relevant contract is not a leveraged foreign exchange contract and the intermediary that has entered into the relevant contract is acting as principal, a ~~statement~~ an indication that it is so acting, ~~except in the case of a leveraged foreign exchange contract~~;
- (e) the date –
- (i) ~~of~~ on which the relevant contract is entered into;
- (ii) of settlement or performance of the relevant contract; and
- (iii) on which the contract note is prepared;
- (f) the rate or amount of commission payable in ~~respect of~~ connection with the relevant contract;
- (g) the amount of stamp duty ~~or levy~~ payable in connection with the relevant contract;
- (h) the amount of levy payable in connection with the relevant contract; and
- ~~(h)~~ (i) the amount of charges payable in connection with the relevant contract or, where the relevant contract is in

respect of interests in a collective investment scheme, the basis for calculation of such charges.

(4) ²³In addition to the information ~~specified~~ inrequired to be included under subsection (3), a contract note referred to in subsection (1) in respect of a relevant contract for a dealing in⁵ securities shall include, to the extent applicable, the following information, ~~where applicable~~—

- (a) an indication that the client's account is a margin account;
- (b) subject to subsection (7), in the case of a purchase or a sale, the price per unit of the securities;
- (c) an indication where it relates to —
 - (i) a short selling ~~transaction~~ order; or
 - (ii) a borrowing or lending of securities under a securities borrowing and lending agreement; and
- (d) the amount of consideration payable under the relevant contract.

(5) ²⁴In addition to the information ~~specified~~ inrequired to be included under subsection (3), a contract note referred to in subsection (1) in respect of a relevant contract for ~~a~~ dealing in⁴ futures contracts shall include, to the extent applicable, ~~include~~ the following information, ~~where applicable~~ —

- (a) subject to subsection (7), in the case of a purchase or sale, the price per futures contract;
- (b) ~~if where~~ the futures contracts ~~has~~ have been executed by an agent in Hong Kong, the name of the agent; and
- (c) ~~if where~~ the futures contracts ~~has~~ have been cleared by ~~another person~~ any clearing agent other than the intermediary, the name of that ~~person~~ clearing agent.

²³ Drafting amendments.

²⁴ Drafting amendments.

(6) ²⁵In addition to the information ~~specified in~~ required to be included under subsection (3), a contract note referred to in subsection (1) in respect of a relevant contract ~~for that is~~ a leveraged foreign exchange contract shall include, to the extent applicable, include the following information, ~~where applicable~~ –

- (a) where the intermediary is acting as agent, ~~a statement~~ an indication that it is so acting and the name of the person for whom it is acting;
- (b) the date and time –
 - (i) of receipt of the client’s order; and
 - (ii) of execution of the leveraged foreign exchange contract;
- (c) ~~particulars of the leveraged foreign exchange contract specifying~~ any currency to which the leveraged foreign exchange contract relates, and in relation to each such currency, particulars of –
 - (i) the amount involved;
 - (ii) whether it is a sale or a purchase;
 - (iii) the price at which it is executed; and
 - (iv) the interest rate; and
- (d) the amount of margin deposit required.

(7) ²⁶~~Where An an~~ intermediary ~~that~~ has entered into a relevant contract with or on behalf of a client in respect of a purchase or a sale of securities or ~~a futures contracts~~, it may, at the request of the client, include in the contract note referred to in subsection (1) in respect of the relevant contract –

- (a) in the case of a purchase or sale of securities, the average price per unit ~~or contract (as the case may be)~~ for the purchase or sale (as the case may be) of the same

²⁵ Drafting amendments.

²⁶ Drafting amendments, including the amendments to prescribe the requirements under paragraphs (a) and (b) respectively in terms of “securities” and “futures contracts” . instead of “purchase” and “sale” as in the previous version, for clarity.

~~description of securities, or futures contract instead of the price per unit as referred to in subsection (4)(b); or~~

- (b) ~~in the case of a purchase or sale of futures contracts, the average price per unit or contract (as the case may be) for the purchase or sale (as the case may be) of the same description of securities or futures contracts, instead of the price per contract as referred to in subsection (5)(a);.~~

~~instead of the price per unit or contract as referred to in subsection (4)(b) or (5)(a) (as the case may be).~~

~~(8)²⁷ (8) _____~~ Where an intermediary ~~that has entered into a relevant contract~~ has included in a contract note referred to in subsection (1) an average price as referred to in subsection (7) and the client ~~with or on whose behalf the intermediary entered into the relevant contract~~ in question requests an analysis of such average price within 2 years ~~of after~~ the date ~~of on which~~ the relevant contract is entered into, the intermediary shall –

- ~~(a) prepare a detailed analysis of each underlying purchase or sale of securities or futures contracts (as the case may be); and~~
~~(b) serve the analysis on~~ provide to the client no later than the end of the fifth business day after receiving the request ~~is received~~, the price per unit as referred to in subsection (4)(b) or the price per contract as referred to in subsection (5)(a) (as the case may be).

6. Consolidation of contract notes with daily statements of account

²⁷ Drafting amendments, including the amendments introduced for clarifying the exact information requirements as envisaged by the “detailed analysis of each purchase or sale of securities or futures contracts” under the previous version.

²⁸~~An intermediary may, Instead instead of preparing and serving providing~~ to a client ~~one or more than one~~ contract notes ~~in accordance with under~~ section 5, ~~an intermediary may consolidate the contract notes~~ in respect of one or more than one relevant contracts entered into ~~during on~~ the same business¹⁹ day, ~~consolidate the contract note into the~~with any statement of account it is required to prepares and serves on provide to the client ~~with or on whose behalf the intermediary entered into those relevant contracts under section 8 or 9 (or any consolidation of such statements of account under section 10)~~ in respect of ~~that~~ the same day.

Division 2 – Statements of account

7. ²⁹Information required in all statements of account

~~Each statement of account referred to in this Division~~Where an intermediary is required to prepare a statement of account under section 8, 9, 11 or 12, it shall include the following information in the statement of account –

- (a) the name under which the intermediary ~~or the associated entity (as the case may be)~~ carries on business;
- (b) the name, address and account number of the client ~~or the~~ to whom the intermediary is required to provide the statement of account; and
- (c) the date on which the statement of account is prepared; and
- (d) where client assets of the client to whom the intermediary is required to provide the statement of account are held for the account of the client by an associated entity (other than

²⁸ Drafting amendments, including the amendment to clarify the policy intention to allow consolidation of contract notes with statements of account either prepared in accordance with clauses 8 and 9 individually or their consolidated version as permitted under clause 10.

²⁹ Drafting amendments.

an authorized financial institution) of the intermediary, the name under which the associated entity carries on business.

8. Preparation and provision of daily statements of account by ~~intermediaries providing relating to financial accommodation and their associated entities~~³⁰

(1) Subject to section 10, ~~Where~~ where an intermediary provides financial accommodation to a client of the intermediary and any event referred to specified in subsection (3) takes place in relation to the client, it shall –

~~(a) the intermediary; or~~

~~(b) an associated entity of the intermediary;~~

~~shall~~¹²–

~~(c) (a) prepare a statement of account in respect of the client in accordance with subsection (2); and~~

~~(d) (b) serve provide the statement of account ~~on~~ to the client no later than the end of the second business day after the event takes place, or in the case of an event specified in subsection (3)(a)(iii) or (b)(iii), after the intermediary becomes aware that the event has taken place~~³¹.

(2) ~~The~~ A statement of account ~~as~~ referred to in subsection (1) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client on the day on which the event takes place, where applicable–

(a) the outstanding balance of that account as at the beginning and as at the end of that day and details of all movements in the balance of that account during that day;

³⁰ Drafting amendments.

³¹ The amendments are introduced in consideration of the fact that deposits or withdrawals of client assets with or from a person other than the intermediary or associated entity might not immediately come to the attention of the intermediary.

- (b) the quantity, and, in so far as readily ascertainable, the, market price and market value, ~~where such price or value is readily ascertainable~~, of each description of client securities and collateral held for that account as at the end of that day;
- (c) the margin ratio and margin value of each description of securities collateral held for that account as at the end of that day;
- (d) details of all movements of client securities and collateral held for that account during that day, including the quantity of each description of client securities and collateral deposited ~~to~~ in or withdrawn from that account during that day;
- (e) details of all disposals initiated by the intermediary of client securities and collateral held for that account during that day and what happened to the proceeds of those disposals;
- (f) details of ~~the~~ all income credited to and charges levied against that account during that day; and
- (g) details of ~~the~~ all financial accommodation provided to the client during that day, including the nature, credit limit and expiry date of the accommodation and the basis for calculation of interest charges thereon.

(3) The following events are specified ~~For~~ for the purposes of subsections (1) and (2), ~~the events are as follows –~~

- (a) a deposit of client assets by or on behalf of ~~a~~ the client of ~~an~~ the intermediary with –
 - (i) the intermediary;
 - (ii) an associated entity of the intermediary; or
 - (iii) any other person;

~~to facilitate the provision of financial accommodation to the client by the intermediary³²;~~

- (b) a withdrawal of client assets by or on behalf of ~~a~~the client of ~~an~~the intermediary from –
- (i) the intermediary;
 - (ii) an associated entity of the intermediary; or
 - (iii) any other person;

~~to facilitate the provision of financial accommodation to the client by the intermediary³²;~~

- (c) a disposal initiated by ~~an~~the intermediary ~~that provides financial accommodation to a client of the intermediary of~~ any client securities and collateral ~~of that~~held for the account of the client; or
- (d) an adjustment by ~~an~~the intermediary to the account of a ~~the~~client of the intermediary to whom the intermediary provides financial accommodation comprising –
- (i) ~~an extension or reduction~~adjustment of the amount of financial accommodation;
 - (ii) ~~a credit to the account~~, including ~~any~~crediting to the account of income except as a result of accrual of interest paid by the intermediary or an associated entity of the intermediary; or
 - (iii) a debit from the account, including any deduction of charges from the ~~client's~~ account except as a result of accrual of interest charged by the intermediary or an associated entity of the intermediary.

³² Amendments made in the light of the comment of the LegCo Legal Adviser as set out in his letters of 4 and 14 June 2002, to reflect the policy intention that any deposit or withdrawal of client assets requires preparation of statements of account, regardless of the purposes of such movements.

9. ³³Preparation and provision of daily statements of account by intermediaries in relation relating to margined transactions

(1) Subject to section 10, where ~~An~~ an intermediary enters into margined transactions with or on behalf of a client and any event specified in subsection (3) takes place in relation to the client, it shall –

- (a) prepare a statement of account in respect of the client in accordance with subsection (2) ~~in respect of –~~
- ~~(i) each margined transaction entered into by the intermediary;~~
 - ~~(ii) each margined transaction that is closed; or~~
 - ~~(iii) where more than one margined transaction is entered into by the intermediary or closed on the same business day in respect of the same client, all the margined transactions in respect of that client entered into or closed on that day; and~~
- (b) serve provide the statement of account on to the client of the intermediary with or on whose behalf the intermediary entered into or closed the margined transaction no later than the end of the second business day after the event takes place ~~centering into or closing the margined transaction (as the case may be).~~

(2) The ~~A~~ statement of account as referred to in subsection (1) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client of the intermediary on the day on which the margined transaction was entered into or closed ~~event takes place, where applicable. –~~

³³ Drafting amendments, including the amendments to present the original clause 9(1)(a)(i) to (iii) under the new clause 9(3) expressly as events the occurrence of which requires preparation of statements of account for clarity.

- (a) the outstanding balance of that account as at the beginning and as at the end of that day and details of all movements in the balance of that account during that day;
- (b) the quantity, and, in so far as readily ascertainable, the market price and market value, ~~where such price or value is readily ascertainable,~~ of each description of security provided by or on behalf of the client in relation to ~~a~~ each margined transaction, ~~which is held~~ for that account as at the end of that day, and details of all movements of any such security during that day;
- (c) ~~closed contract details of each margined transaction that is closed during that day,~~ including the contract price at which it is closed, charges levied ~~against the contract in respect of it,~~ and the net amount of realized profit or loss in respect of the contract, and an indicating indication which closed contracts where the closure -was have been initiated by the intermediary during that day;
- (d) details of ~~the~~ all income credited to and charges levied against that account during that day;
- (e) all floating profits and floating losses in respect of open positions held for that account as calculated as at the end of that day and the prices used for such purposes;
- (f) the net equity in that account as at the end of that day;
- (g) a list of all open positions held for that account as at the end of that day;
- (h) the minimum margin requirement for all open positions held for that account as at the end of that day;
- (i) the amount of margin excess or margin shortfall in that account as at end of that day;

- (j) the amount of option premium receivable or payable in respect of that account as at the end of that day;
- (k) ~~in the case~~ in respect of an open position in a leveraged foreign exchange contract, details of all interest income and expenses accrued in respect of that position as at the end of that day and the interest rates used for such purposes; and
- (l) in respect of the arrangement between the intermediary and the client under which ~~the each~~ margined transaction was entered into or closed (as the case may be) on that day, the client's position limit ~~or and~~ trading limits and the expiry date of the arrangement.

(3) The following events are specified for the purpose of subsections (1) and (2) –

- (a) the intermediary enters into one or more than one margined transaction with or on behalf of the client; or
- (b) one or more than one margined transaction in respect of the client is closed.

10. Consolidation of daily statements of account³⁴

Without prejudice to section 6²⁸, An an intermediary may, instead of preparing and providing to a client consolidate a statement of account required to be prepared for a client of the intermediary in accordance with under section 8 in respect of any day, consolidate with a statement that statement of account with any statement of account it is required to be prepared and provide to the client in accordance with under section 9 for the same client in respect of the same business¹⁹ day.

³⁴ Drafting amendments.

11. Preparation and provision of monthly statements of account³⁵

- (1) In this section, “monthly accounting period” () means –
- (a) in relation to the first statement of account required to be prepared and ~~served on~~ provided to a client of an intermediary in accordance with subsection (2) or (54) (as the case may be), a period not exceeding 1 month ~~in duration~~ ending on a date selected by the intermediary ~~or associated entity of the intermediary (as the case may be);~~ and
 - (b) ~~thereafter, successive~~ in relation to any subsequent statement of account, a period the duration of which shall be not less than 4 weeks ~~but~~ and not exceed 1 month, commencing on the day after the date on which the previous monthly accounting period ended, and ending on a date selected by the intermediary.

(2) Subject to subsection (54), ~~in~~ where any of the circumstances specified in subsection (36) apply in respect of a client of an intermediary in respect of a monthly accounting period, the intermediary or an associated entity of the intermediary¹² shall –

- (a) prepare a statement of account in respect of ~~a~~ the client ~~of the intermediary~~ in accordance with subsection (43); and
- (b) ~~serve~~ provide the statement of account ~~on~~ to the client ~~within~~ no later than the end of the seventh⁷ business days ~~of~~ after the end of ~~each~~ the monthly accounting period.

~~(3) A statement of account as referred to in subsection (2) is required where—~~

³⁵ Drafting amendments, including the amendments to present the original clause 11(3) under the new clause 11(6) expressly as events the occurrence of which require preparation of statements of account for clarity and the consequential update of cross-references.

- ~~(a) the intermediary or the associated entity was required to prepare and serve on the client during that monthly accounting period—~~
- ~~(i) a contract note in accordance with section 5;~~
 - ~~(ii) a statement of account in accordance with section 8 or 9; or~~
 - ~~(iii) a receipt in accordance with section 12;~~
- ~~(b) the client's account has a balance during that monthly accounting period that is not nil;~~
- ~~(c) the client has an open position as at the end of that monthly accounting period; or~~
- ~~(d) the intermediary or the associated entity holds on behalf of the client during that monthly accounting period any—~~
- ~~(i) client securities and collateral; or~~
 - ~~(ii) security provided by or on behalf of the client in relation to a margined transaction.~~

~~(4) (3) The A statement of account as referred to in subsection (2) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client, where applicable—~~

- ~~(a) the address of the principal place of business in Hong Kong of the intermediary ~~or the associated entity~~¹²;~~
- ~~(b) the outstanding balance of and the net equity in ~~the client's~~that account as at the beginning and as at the end of that monthly accounting period and details of all movements in the balance of that account during that period;~~
- ~~(c) details of all relevant contracts entered into by the intermediary with or on behalf of the client during that~~

- monthly accounting period, indicating those initiated by the intermediary;
- (d) details of all events ~~as referred to~~ specified in section 8(3) which have ~~occurred~~ taken place during that monthly accounting period, including what happened to the proceeds of any disposals initiated by the intermediary during that period of any client securities and collateral of the client held for that account ~~during that period~~;
- (e) details of all movements during that monthly accounting period of any –
- (i) client securities and collateral of the client; ~~or~~ and
 - (ii) security provided by or on behalf of the client in relation to a margined transaction,
- held for that account;
- (f) the quantity, and, in so far as readily ascertainable, the market price and market value, ~~where such price or value is readily ascertainable~~, of each description of –
- (i) client securities and collateral of the client; ~~or~~ and
 - (ii) security provided by or on behalf of the client in relation to a margined transaction,
- held for that account as at the end of that monthly accounting period;
- (g) the margin ratio and margin value of each description of securities collateral held for that account as at the end of that monthly accounting period;
- (h) details of ~~the~~ all income credited to and charges levied against that account during that monthly accounting period;
- (i) all floating profits and floating losses in respect of open positions held for that account as calculated as at the end

of that monthly accounting period and the prices used for such purposes;

- (j) a list of all open positions held for that account as at the end of that monthly accounting period;
- (k) the minimum margin requirement for all open positions held for that account as at the end of that monthly accounting period;
- (l) the amount of margin excess or margin shortfall in that account as at the end of that monthly accounting period;
- (m) the amount of option premium receivable or payable in respect of that account as at the end of that monthly accounting period; and
- (n) ~~in where the case of an account held with an intermediary~~ is for dealing in securities, whether an indication that the client's account ~~is a cash account or a margin account.~~

~~(5) (4)~~ Where an intermediary is licensed or registered for asset management and, in relation to the conduct by the intermediary of asset management (other than the management of a collective investment scheme), any of the circumstances specified in subsection (6) apply in respect of a client of the intermediary in respect of a monthly accounting period, –

~~(a) the intermediary; or~~

~~(b) an associated entity of the intermediary;¹²~~

~~shall, in relation to the conduct by the intermediary of asset management other than management of a collective investment scheme –~~

~~(c) (a)~~ prepare a statement of account in respect of a the client of the intermediary in accordance with subsection (65);
and

~~(d)(b)~~ serve provide the statement of account ~~on to~~ the client ~~within 10~~ no later than the end of the tenth business days ~~of day after~~ the end of ~~each the~~ monthly accounting period.

~~(6)~~ (5) ~~The A~~ statement of account as referred to in subsection ~~(54)~~ shall include the information required to be included under section 7 and, to the extent applicable, the following information, where applicable relating to the account of the client –

- (a) the address of the principal place of business in Hong Kong of the intermediary ~~or the associated entity~~¹²;
- (b) a valuation of the client's portfolio as at the end of ~~that the~~ monthly accounting period providing –
 - (i) details of the quantity, market price, purchase cost and market value of each description of securities held for that account as at the end of that period;
 - (ii) details of all open positions as at the end of that period;
 - (iii) the money balance held for that account as at the end of that period; and
 - (iv) the amount of accounts payable and receivable in respect of that account as at the end of that period;
- (c) details of ~~the all~~ income credited to and charges levied against that account during ~~that the~~ monthly accounting period; and
- (d) a list of all ~~relevant~~ contracts entered into in Hong Kong by the intermediary with or on behalf of the client during ~~that the~~ monthly accounting period for dealing in securities and futures contracts and that are leveraged foreign exchange contracts.

(6) The circumstances specified for the purposes of subsections (2) and (5) are –

- (a) during a monthly accounting period, the intermediary is required to prepare and provide to the client –
 - (i) a contract note in accordance with section 5;
 - (ii) a statement of account in accordance with section 8 or 9; or
 - (iii) a receipt in accordance with section 13;
- (b) during a monthly accounting period, an associated entity of the intermediary is required to prepare and provide to the client a receipt in accordance with section 13;
- (c) at any time during a monthly accounting period, the client has an account balance that is not nil;
- (d) the client has an open position as at the end of a monthly accounting period; or
- (e) at any time during a monthly accounting period –
 - (i) any client securities and collateral; or
 - (ii) any security provided in relation to a margined transaction,

are held for the account of the client.

Division 3 – Receipts

12. ³⁶Duty to provide statement of account upon request

- (1) Where an intermediary receives a request from a client for a statement of account as of the date of request, it shall -
 - (a) prepare a statement of account in respect of the client in accordance with subsection (2); and
 - (b) provide the statement of account to the client as soon as practicable after the date of the request.

³⁶ Drafting amendments, to relocate the original clause 13(1)(c) here for better structure.

(3) A statement of account referred to in subsection (1) shall include the information required to be included under section 7 and, to the extent applicable, the following information relating to the account of the client as of the date of the request –

- (a) the outstanding balance of and the net equity in that account;
- (b) the quantity, and, in so far as readily ascertainable, the market price and market value of each description of–
 - (i) client securities and collateral of the client; and
 - (ii) security provided by or on behalf of the client in relation to a margined transaction, held for that account;
- (c) the margin ratio and margin value of each description of securities collateral held for that account;
- (d) all floating profits and floating losses in respect of open positions held for that account, as calculated as at the end of that day and the prices used for such purposes;
- (e) a list of all open positions held for that account as at the end of that day; and
- (f) the amount of margin excess or margin shortfall in that account as at the end of that day.

Division 3 – Receipts

12.13. Preparation and provision of receipts³⁷

- (1) Subject to subsection (2), on each occasion that –
 - (a) an intermediary ~~the~~ receives any –

³⁷ Drafting amendments, including the amendments to clause 13(1) to clarify that the clause applies to, consistent with section 152(1)(b) of the Ordinance, an associated entity only in respect of client assets received by it, and to clarify the fact that security provided in relation to a margined transaction may comprise client assets.

~~(a)(i)~~ client assets; or

~~(b)(ii)~~ security provided in relation to a margined transaction (to the extent that such security is not client assets); or

~~(b)~~ an associated entity of an intermediary receives any client assets.

from or ~~for the account~~ on behalf of a client of the intermediary, the intermediary or ~~the~~ associated entity (as the case may be) shall –

(c) prepare a receipt in accordance with subsection (3); and

(d) ~~serve provide~~ the receipt on to the client no later than the end of the second business day after ~~the day~~ receiving the client assets or security ~~as referred to in paragraph (b) were received by the intermediary or the associated entity.~~

(2) ~~No receipt is required from the intermediary or the associated entity (as the case may be) where~~ This section does not apply in any of the following circumstances –

(a) where client money is received by –

(i) an intermediary that is a registered institution; or

(ii) an associated entity that is an authorized financial institution;

(b) ~~where the intermediary is a licensed corporation and~~ client money is ~~paid deposited~~ directly into –

(i) the intermediary's bank account of a licensed corporation³⁸; or

(ii) the bank account of an associated entity of the intermediary that is not an authorized financial institution,

³⁸ Amendments made to reflect the design that client money received by registered institutions is subject to the regulatory regime under the Banking Ordinance, not the Securities and Futures Ordinance.

by the client of the intermediary, ~~or on behalf of the client~~
~~except where the payment is made by~~ or on behalf of the
client by any person other than the intermediary or ~~the~~
 associated entity;

- (c) ~~where a contract note as referred to in~~ that is provided to
the client under section 5, or a statement of account as
~~referred to in that is provided to the client under~~ section 8
 or 9 ~~(or any consolidated document that is provided to the~~
client under section 6 or 10), ~~served on the client~~ expressly
 states that it also serves as a receipt and includes the
 information specified in subsection (3)(d)(i) and (ii);
- (d) where scrip is deposited directly with the scrip custodian
 of –
- (i) ~~the~~ an intermediary; or
- (ii) an associated entity of ~~the~~ an intermediary,
 by ~~or on behalf of the~~ client of the intermediary or on
behalf of the client by any person other than the
intermediary or associated entity, and the scrip custodian
 has issued a receipt to the client; or
- (e) where securities in a scripless form are transferred to ~~the~~
an account maintained with ~~the~~ a custodian of –
- (i) ~~the~~ an intermediary; or
- (ii) an associated entity of ~~the~~ an intermediary,
 by or on behalf of the client.

(3) ~~The A~~ receipt as referred to in subsection (1) shall include the
 following information –

- (a) the name under which the intermediary or ~~the~~ associated
 entity (as the case may be) carries on business;
- (b) the date on which the receipt is prepared;

- (c) the name and account number of the client ~~of the intermediary~~; and
- (d) in respect of the client assets or security received as referred to in subsection (1)—
 - (i) the quantity, description and ~~any such~~ other particulars of the client assets or security as are sufficient to identify enable them to be identified;
 - (ii) the account into which they have been deposited; and
 - (iii) the date on which they were received.

PART III

MISCELLANEOUS

13.14. ³⁹Duty to provide copies of certain documents

(1) Where an intermediary, or an associated entity of an intermediary, receives a request from a client of an intermediary for a copy of any of the following documents, An intermediary or an associated entity of the intermediary it shall comply, as soon as practicable with a after receiving the request, from a client of the intermediary for a copy of provide the copy to the client—

- (a) any particular contract note ~~kept by the~~that the intermediary was required to provide relating to the client in accordance with section 5;
- (b) any particular statement of account ~~kept by that the intermediary or an associated entity of the intermediary~~¹²

³⁹ Drafting amendments.

~~in respect of was required to provide to the client in accordance with section 8, 9, 11 or 12;~~

~~(c) a statement of account as of the date of the request stating the balance of and net equity in the client's account and, where applicable—~~

~~(i) details of any—~~

~~(A) client securities and collateral; or~~

~~(B) security provided by or on behalf of the client in relation to a margined transaction, held for that account and, in the case of securities collateral, its market value and margin value;~~

~~(ii) a list of all open positions;~~

~~(iii) floating profits or floating losses on open positions;~~

~~and~~

~~(iv) the amount of margin excess or margin shortfall; or³⁶~~

~~(d)(c) _____ any particular receipt kept by that the intermediary or an associated entity (as the case may be) of the intermediary in respect of was required to provide to the client in accordance with section 13.~~

(2) If, on an application made by a client of an intermediary, the Commission so directs, the intermediary or an associated entity of the intermediary (as the case may be) shall make available for inspection by the client during the ordinary hours of business of the intermediary or ~~the~~ associated entity (as the case may be) any copy of any contract note, statement of account or receipt as referred to in subsection (1).

(3) This section does not require an intermediary or an associated entity of ~~the~~ an intermediary –

~~(a) to serve~~ provide, or make available for inspection, any copy of –

~~(i) a contract note as referred to in section 5; or~~

~~(ii) a statement of account as referred to in section 8 or 9, that relates to a matter transacted more than 2 years before the date of the relevant request;~~

~~(b) to serve, or make available for inspection, a copy of a statement of account as referred to in section 11 that relates to a matter transacted more than 7 years before the date of the relevant request;~~

~~(c) to serve, or make available for inspection, a copy of a receipt as referred to in section 12 that relates to an occasion more than 2 years before the date of the relevant request~~any contract note, statement of account or receipt after the expiration of the period for which the intermediary or associated entity is required to retain the copy of that document under section 16.

~~(4)~~ (4) An intermediary or an associated entity of ~~the~~ an intermediary may impose a reasonable charge for a copy of a document provided by it under subsection (1).

14.15. Language of documents⁴⁰

Where an intermediary, or an associated entity of an intermediary, is required to prepare ~~Any~~ contract note, statement of account or receipt required to be served in accordance with ~~under~~ these Rules, it shall be ~~prepare the contract note, statement of account or receipt in an official~~ the Chinese or English language.

15.16. ^{12 and 41}Retention of copies

⁴⁰ Drafting amendments to make clear that the obligation to prepare the specified documents in compliance with the language requirement rests with the relevant intermediaries and associated entities.

⁴¹ Drafting amendments.

~~(1) An intermediary or an associated entity that serves a contract note, statement of account or receipt in accordance with these Rules shall retain in its records –~~

- ~~(a) for at least a period of not less than 2 years, a copy of every –

 - ~~(i) contract note as referred to prepared in accordance with section 5;~~
 - ~~(ii) statement of account as referred to prepared in accordance with section 8, or 9 or 12; and~~
 - ~~(iii) receipt as referred to prepared in accordance with section 1213; and~~~~
- ~~(b) for at least a period of not less than 7 years, a copy of every statement of account as referred to prepared in accordance with section 11.~~

~~(2) An associated entity of an intermediary shall retain for a period of not less than 2 years, a copy of every receipt prepared in accordance with section 13.~~

17. Provision of documents to clients

Any contract note, statement of account or receipt (or any copy of any such document) required to be provided to a client of an intermediary under these Rules shall for all purposes be regarded as duly provided to the client if it is served on –

- (a) the client; or
- (b) any other person (except an officer or employee of the intermediary or the associated entity of the intermediary, (as the case may be), that is required to provide the document to the client) designated by the client for the purposes of this paragraph by notice in writing to the intermediary or the associated entity of the intermediary

(as the case may be) that is required to provide the document to the client.

16.18. Reporting of non-compliance with certain provisions of the Rules⁴²

If An an intermediary, or an associated entity of an intermediary, to which these Rules apply which becomes aware that it is does not in compliance comply with any of the provisions of Part H 2 or section 13, 14, or 15 or 16 that applies to it, it shall notify give written notice⁴³ of that fact to the Commission within one business day thereafter.

17.19. Penalty Penalties⁴⁴

(1) An intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes a requirement any provision of these Rules applicable that applies to it, –

(a) without reasonable excuse, commits an offence and is liable on conviction to a fine at level 4, or

(2) An intermediary, or an associated entity of an intermediary, which, (b) with intent to defraud, contravenes any provision of these Rules that applies to it, commits an offence and is liable –

(i)(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

(ii)(b) on summary conviction, to a fine of \$500,000 and to imprisonment for 1 year.

SCHEDULE 1

[s.2]

⁴² Drafting amendments, including the amendments to update the cross-references consequential to the renumbering of certain provisions and to clarify that the notification is required to be in writing.

⁴⁴ Drafting amendments for consistency with sections 152(3) and (4) of the Ordinance, which are the enabling provisions.

~~APPROVED SPECIFIED~~³ JURISDICTIONS

1. United Kingdom
2. United States of America

Chairman,
Securities and Futures
Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 152(1) of the Securities and Futures Ordinance (~~5 of 2002~~Cap. 571). They prescribe the manner and circumstances in which contract notes, statements of account and receipts shall be prepared ~~by and served on~~provided to clients by or intermediaries or their associated entities and other matters relating to those documents.⁴⁵

⁴⁵ Drafting amendments.