

For discussion on  
24 October 2002

Paper No. 38/02

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

**Securities and Futures  
(Disclosure of Interests – Exclusions) Regulation**

Members considered the draft Securities and Futures (Disclosure of Interests – Exclusions) Regulation at the Subcommittee meeting on 15 July 2002. We have made some changes to the Regulation to better reflect policy intention and improve drafting. We submit at **Annex** the **revised draft** of the Regulation, 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  
18 October 2002

## REVISED DRAFT

SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS -  
EXCLUSIONS) REGULATION

(Made by the Chief Executive in Council under  
section 376(1) of the Securities and  
Futures Ordinance (~~5 of 2002~~Cap. 571))

## 1. Commencement

This Regulation shall come into operation on the day ~~on which~~  
~~Part XV~~appointed for the commencement of the Securities and  
Futures Ordinance (~~5 of 2002~~) comes into operationCap. 571<sup>1</sup>.

## 2. Interpretation

In this Regulation, unless the context otherwise requires -  
"associated corporation" (相聯法團) has the meaning assigned to it  
by section 308 of the Ordinance<sup>2</sup>;

"back-to-back contract" (背對背合約) means a contract ~~made--~~

- (a) made between an intermediary and its clientthis  
client<sup>3</sup>, pursuant to a previous agreement made  
between them<sup>4</sup>, for the sale or purchase of a stock  
futures contract or a stock options contract;

- ~~(b) pursuant to a previous agreement between the~~  
~~intermediary and the client;~~

<sup>1</sup> Drafting amendment to reflect the policy intention to commence concurrently this Regulation and the Securities and Futures Ordinance (SFO) as a whole.

<sup>2</sup> This definition has been added as section 308 gives the term a meaning for the purposes of Part XV of SFO. This Regulation is made under section 376(1) of Part XV.

<sup>3</sup> For consistency with section 323(1)(i)(i) of the SFO.

<sup>4</sup> Technical amendment, the original paragraph (b) is deleted and inserted here.

~~(e) on identical terms to (b)~~ the terms of which are identical to those of<sup>5</sup> an exchange contract entered into by the intermediary ~~for~~pursuant to the instructions of<sup>6</sup> the client; and

~~(d) with the effect that (c)~~ entered into by the intermediary -

(i) where the intermediary ~~acts as~~ is a purchaser ~~in an~~ under the corresponding exchange contract, ~~the intermediary acts as a seller under the first mentioned contract~~ as a seller; and

(ii) where the intermediary ~~acts as a seller in an~~ is a seller under the corresponding exchange contract, ~~the intermediary acts as a purchaser under the first mentioned contract~~ as a purchaser<sup>7</sup>;

"client" (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity;

"conditional offer" (有條件要約) means an offer to purchase shares in a listed corporation made by or on behalf of an offeror to the holders of all the shares or all the shares of a particular class in the listed corporation other than (in either case) shares held by or on behalf of -

(a) the offeror;

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<sup>5</sup> Fine-tuning as a result of deleting "made" in the lead clause.

(b) the offeror's holding company, the offeror's subsidiary or a subsidiary of the offeror's holding company; or

(c) any person who has agreed that no such offer is to be made in respect of the<sup>8</sup> shares he holds,

~~and the offer is~~ subject to the condition that acceptances ~~are~~have to be received in respect of such proportion of the shares for which the offer is made as specified in, or ascertained by reference to, the terms of the offer;

"exchange contract" (交易所合約) means a contract ~~made~~ entered into by an intermediary and another intermediary<sup>9</sup> for the sale or purchase of a stock futures contract or a stock options contract ~~and entered into by an intermediary with another intermediary,~~ through the trading facilities provided by, and subject to the rules of, the relevant exchange company;

"listed corporation" (上市法團) has the meaning assigned to it by section 308 of the Ordinance;

"Official Trustee" (法定受託人) means the Official Trustee appointed under , or the person acting as the Official Trustee by virtue of<sup>10</sup>, section 66 of the Trustee Ordinance (Cap. 29);

"recognized occupational retirement scheme" (認可職業退休計劃) has the meaning assigned to it by section 2(1) and (2A) of the Inland Revenue Ordinance (Cap. 112);

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<sup>6</sup> For consistency with section 3(1)(d)(i) and (2) of this Regulation.

<sup>7</sup> Technical amendment for clarity. No change in policy or meaning.

<sup>8</sup> Technical amendment for clarity.

<sup>9</sup> Technical amendment for clarity.

<sup>10</sup> Under section 66, Cap. 29, if no appointment of Official Trustee is made, the Official Solicitor acts as the Official

"relevant exchange company" (有關交易所公司), in relation to -

~~(a) dealings in a~~ (a) dealings in stock futures contracts,

means the Futures Exchange Company; or<sup>11</sup>

(b) ~~dealings in~~ dealings in stock options contracts,

means the Stock Exchange Company;

"relevant share capital" (有關股本) has the meaning assigned to it

by section 308 of the Ordinance<sup>12</sup>;

"short position" (淡倉) has the meaning assigned to it by section

308 of the Ordinance;

"stock futures contract" (股票期貨合約) means a stock futures

contract specified in column 2 of Schedule 1 to the

Securities and Futures (Contracts Limits and Reportable

Positions) Rules (L.N. of 2002);

"stock options contract" (股票期權合約) means a stock options

contract specified in column 2 of Schedule 2 to the

Securities and Futures (Contracts Limits and Reportable

Positions) Rules (L.N. of 2002);~~i~~

"trading day" (交易日) means a day other than -

(a) a public holiday;

(b) a Saturday; and

(c) a gale warning day or a black rainstorm warning day

as defined in section 71(2) of the Interpretation

and General Clauses Ordinance (Cap. 1).<sup>13</sup>

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Trustee.

<sup>11</sup> Minor drafting amendment for clarity.

<sup>12</sup> This definition has been added as section 308 gives the term a meaning for the purposes of Part XV. This Regulation is made under section 376(1) of Part XV.

<sup>13</sup> Definition of "trading day" required because the term is used in new clauses 5 and 6.

3. Prescribed interests and short positions to be disregarded for the purpose of notification ~~by~~

~~substantial shareholders~~<sup>14</sup>

(1) The following ~~interests and classes of~~<sup>15</sup> interests, and short positions, in shares comprised in the relevant share capital of a listed corporation are prescribed for the purposes of section 323 of the Ordinance -

- (a) an interest or short position of a person in his capacity as a beneficiary under a trust constituted exclusively for the purposes of a recognized occupational retirement scheme;
- (b) an interest or short position of ~~an~~<sup>16</sup> Official Trustee held in his official capacity;
- (c) an interest ~~or short position~~<sup>17</sup> acquired by the offeror as a result of the acceptance of a conditional offer by ~~either~~<sup>the</sup> shareholders ~~in~~<sup>of</sup> the listed corporation, being an interest subsisting while the condition of the offer remains unfulfilled; and
- (d) subject to subsection (2), an interest or short position ~~of which~~ an intermediary licensed or registered for Type 1 or Type 2 regulated activity

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<sup>14</sup> For consistency with the section heading of section 323.

<sup>15</sup> The reference to “classes of interests” is not necessary as no “classes” of interests are mentioned in the following paragraphs.

<sup>16</sup> The particle “the” is more appropriate as there is only one Official Trustee in such context.

<sup>17</sup> Deleted to better reflect the policy as short position would not arise in the situation.

~~where the interest or short position is acquired by  
the has by virtue of his<sup>18</sup> -  
intermediary when the intermediary~~

(i) ~~entering~~ into an exchange contract in the ordinary course of ~~it~~this business as such an intermediary, pursuant to the instructions of ~~a~~this client who is a person other than a related corporation of the intermediary; and

(ii) ~~designates~~ing the exchange contract as being entered into for the account of ~~a~~the client.

(2) ~~An~~For the purposes of subsection (1)(d), an interest or short position shall not be regarded as being prescribed for the purposes of section 323 of the Ordinance<sup>19</sup> unless the intermediary ~~shall enter~~concerned also enters into a back-to-back contract with ~~it~~this client on the same day as ~~it enters~~entering into an exchange contract ~~on~~pursuant to the instructions of the client.

#### **4. Prescribed interests and short positions to be disregarded for the purpose of notification by director and chief executive**

The following interests~~and classes of interests~~<sup>20</sup> in shares in or debentures of, and short positions~~and classes of short~~

<sup>18</sup> Technical amendment for clarity. No change in policy or meaning.

<sup>19</sup> This addition ties in better with subsection (1)(d) for clarity.

<sup>20</sup> The reference to "classes of interests" is not necessary as no "classes" of interests are mentioned in the following paragraphs.

~~positions~~<sup>21</sup> in shares in, a listed corporation or any associated corporation of the listed corporation, are prescribed for the purposes of section 346 of the Ordinance -

- (a) an interest ~~in shares or debentures,~~<sup>22</sup> or short position ~~in shares,~~ of a person in his capacity as a trustee of any trust, or as a personal representative of any estate, of which the Official Trustee is also a trustee (otherwise than as a custodian trustee) or ~~(as the case may be) a personal representative;~~

a personal representative (as the case may be);

- (b) an interest ~~in shares or debentures,~~<sup>22</sup> or short position ~~in shares,~~<sup>22</sup> of a person in his capacity as a trustee of, or as a beneficiary under, a trust constituted exclusively for the purposes of a recognized occupational retirement scheme; and
- (c) an interest ~~in shares or debentures,~~<sup>22</sup> or short position ~~in shares,~~<sup>22</sup> which a person is taken to have under section 344(3) of the Ordinance, where it is an interest or short position (as the case may be) of the corporation referred to in that section is interested in concerned<sup>23</sup> ~~those shares in or debentures of, or has those short positions in the shares of, the listed corporation or any associated~~

<sup>21</sup> The reference to “classes of short position” is not necessary as no “classes” of short position are mentioned in the following paragraphs.

<sup>22</sup> Deleted to avoid repetition as the references are already covered in the lead clause.

<sup>23</sup> Drafting amendment. No change in policy.

~~corporation of the listed corporation, in its capacity as a trustee of any such trust as is referred to in paragraph (b).~~

**5. <sup>24</sup>Exclusion from requirements for notification in certain circumstances of change in nature of interest**

A person is not required to give notification under section 324 of the Ordinance, where a duty of disclosure arises under section 310(1) of the Ordinance in the circumstances specified in section 313(1)(d) of the Ordinance because of a change in the nature of the person's interest in shares comprised in the relevant share capital of the listed corporation concerned, if the change is due to his entering into a contract for the sale of the shares so comprised in which he is interested, under which he is required to deliver the shares to the purchaser under the contract within 4 trading days after the date of the contract.

**6. <sup>25</sup>Exclusion from requirements for notification by director and chief executive in certain circumstances of change in nature of interest**

A director or chief executive of a listed corporation is not required to give notification under section 347 of the Ordinance,

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<sup>24</sup> Provision inserted to put it beyond doubt that a substantial shareholder is not required to make a disclosure when he enters into a contract for the sale of shares – if that contract is to be settled within 4 trading days. Without the exemption, a shareholder may be required to disclose his shareholding twice, once at the point of entering into a contract to sell the shares (due to a change in the nature of his interest in those shares at that point) and again when the sale is ultimately settled a few days later. The exemption will reduce the compliance burden on the part of substantial shareholders of listed corporations.

<sup>25</sup> Drafting amendment for the same reason explained in footnote (24), save the exemption is granted to a director or chief executive of a listed corporation.

where a duty of disclosure arises under section 341(1)(e) of the Ordinance because of a change in the nature of the director's or chief executive's interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, if the change is due to his entering into a contract for the sale of the shares or debentures in which he is interested, under which he is required to deliver the shares or debentures (as the case may be) to the purchaser under the contract within 4 trading days after the date of the contract.

\_\_\_\_\_ Clerk to the Executive Council

COUNCIL CHAMBER

\_\_\_\_\_2002

<sup>26</sup>**Explanatory Note**

This Regulation prescribes certain interests and short positions which are to be disregarded, in addition to the interests and short positions set out in sections 323(1) and 346(1) of thePart XV of the Securities and Futures Ordinance (5 of 2002) ("the Ordinance") empowers the Chief Executive in Council to make regulations to prescribe anything permitted by any provision of that Part. ThisRegulation prescribes certain interests and short positions which are to be disregarded, in addition to the

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<sup>26</sup> Amendments for greater clarity.

~~interests or short positions listed under sections 323(1) and 346(1) of the Cap. Ordinance 571 ("the Ordinance"), for the purpose of notification by substantial shareholders and directors or chief executives of a listed corporation.~~ listed corporations. This Regulation also excludes those persons from the requirement to give notification where they come under a duty of disclosure under section 310(1) or 341(1) of the Ordinance in certain circumstances where there are changes in the nature of their interests.

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