

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571) Banking (Amendment) Ordinance 2002 (6 of 2002)

SECURITIES AND FUTURES ORDINANCE (Cap.571) (COMMENCEMENT) NOTICE 2003

SECURITIES AND FUTURES ORDINANCE (Cap.571) (APPOINTMENT OF DAY – REPEAL OF ORDINANCES) NOTICE

SECURITIES AND FUTURES ORDINANCE (Cap.571) (APPOINTED DAY – UNIFIED EXCHANGE COMPENSATION FUND) NOTICE

SECURITIES AND FUTURES ORDINANCE (Cap.571) (APPOINTED DAY – FUTURES EXCHANGE COMPENSATION FUND) NOTICE

BANKING (AMENDMENT) ORDINANCE 2002 (6 of 2002) (COMMENCEMENT) NOTICE 2003

INTRODUCTION

The Secretary for Financial Services and the Treasury (SFST) has made the following notices –

- (a) Securities and Futures Ordinance (Cap.571) (Commencement) Notice 2003 at **Annex A**, pursuant to section 1(2) of the Securities and Futures Ordinance (Cap.571) (SFO) (the First Notice);
- (b) Securities and Futures Ordinance (Cap.571) (Appointment of Day – Repeal of Ordinances) Notice at **Annex B**, pursuant to section 406(1) of the SFO (the Second Notice);
- (c) Securities and Futures Ordinance (Cap.571) (Appointed Day – Unified Exchange Compensation Fund) Notice at **Annex C**, pursuant to section 74(13) of Part 1 of Schedule 10 to the SFO (the Third Notice);
- (d) Securities and Futures Ordinance (Cap.571) (Appointed Day – Futures Exchange Compensation Fund) Notice at **Annex D**, pursuant to section 75(13) of Part 1 of Schedule 10 to the SFO (the Fourth Notice); and

- (e) Banking (Amendment) Ordinance 2002 (6 of 2002) (Commencement) Notice 2003 at **Annex E**, pursuant to section 1(2) of the Banking (Amendment) Ordinance 2002 (6 of 2002) (BAO) (the Fifth Notice).

BACKGROUND

The SFO

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the Securities and Futures Commission (SFC) to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation. There are a total of 38 sets of subsidiary legislation necessary for commencing the SFO which have all been gazetted, in batches on 29 November 2002, 6 December 2002, 13 December 2002, and 17 January 2003.

The BAO

3. The amendments introduced under the BAO are to supplement the SFO for regulating the regulated activities¹ carried out by banks and their staff.

THE NOTICES

4. The SFST has made the five notices for the purposes of bringing the new regime introduced under the SFO and the BAO into full operation on 1 April 2003. Brief descriptions of them are as follows –

- (a) the First Notice appoints 1 April 2003 as the day on which the SFO shall come into operation²;

¹ There are nine types of regulated activities and they are listed in Part 1 of Schedule 5 to the SFO, seven of which are applicable to banks.

² All the 38 sets of subsidiary legislation shall commence when the SFO commences operation.

- (b) the Second Notice appoints 1 April 2003 as the day on which the existing ten ordinances³ (including the subsidiary legislation made thereunder) consolidated under the SFO shall be repealed;
- (c) the Third and Fourth Notices appoint 1 April 2003 as the appointed day - when the new investor compensation arrangements under the SFO shall replace the existing arrangements in respect of compensation claims arising from relevant defaults committed on or after that day, and when the process to wind up the existing Unified Exchange Compensation Fund and Futures Exchange Compensation Fund begins; and
- (d) the Fifth Notice appoints 1 April 2003 as the day on which the BAO shall come into operation.

JUSTIFICATIONS

Benefits brought about by the new regime

5. The new regime should commence as soon as possible as there are major improvements, mainly in the following areas –

- (a) enhanced regulation of market intermediaries and leveling the playing field between brokers and banks in their conduct of regulated activities;
- (b) facilitating market innovation;
- (c) greater efficiency and effectiveness in combating market misconduct;
- (d) greater market transparency;
- (e) enhanced investor compensation arrangements; and

³ They are the Securities and Futures Commission Ordinance (Cap.24), the Commodities Trading Ordinance (Cap.250), the Securities Ordinance (Cap.333), the Protection of Investors Ordinance (Cap.335), the Stock Exchanges Unification Ordinance (Cap.361), the Securities (Insider Dealing) Ordinance (Cap.395), the Securities (Disclosure of Interests) Ordinance (Cap.396), the Securities and Futures (Clearing Houses) Ordinance (Cap.420), the Leveraged Foreign Exchange Trading Ordinance (Cap.451), and the Exchanges and Clearing Houses (Merger) Ordinance (Cap.555).

- (f) greater accountability of the SFC.

Readiness of stakeholders for the new regime

The regulators

6. The SFC and the Hong Kong Monetary Authority (HKMA) have in the past year trained their staff and modified their systems such that they can work hand in hand with the industry to implement the new legislation. Moreover, to ensure the smooth cooperation between them in regulating the regulated activities carried out by banks, the SFC and the HKMA signed a new Memorandum of Understanding (MOU) on 12 December 2002. The revised MOU between the SFC and the Hong Kong Exchange Company to implement the new regime will also be signed by end January 2003.

Market participants

7. We have throughout this legislative reform exercise engaged the public for their attention and inputs, such as through conducting public consultation to invite comments on the various legislative proposals, organising seminars and workshops to exchange views with the regulatees, issuing press releases and posting on the website of the Bureau and the SFC relevant information, including developments of the reform exercise and highlights of major new elements.

8. Since the enactment of the SFO, the SFC has organized or taken part in 37 seminars/training sessions on the SFO for more than 7,900 intermediaries and other market participants. The HKMA is also involved where the seminars are targeted on banks. More seminars/training sessions will be arranged to familiarize the industry with the subsidiary legislation made under the SFO. All the subsidiary legislation has now been published in the gazette.

9. The SFC and the HKMA have been issuing specific guidance to their respective regulatees since the enactment of the SFO and the BAO. In the next couple of months, the SFC and the HKMA will issue codes and guidelines to explain in more detail how they will administer the new regime, and the SFC will prescribe various non-legislative forms to further facilitate compliance with the new regime. Both the SFC and the HKMA stand ready to give guidance to individual market participants and help them overcome genuine compliance difficulties.

PUBLICITY

10. On 13 December 2002, we announced 1 April 2003 as the target commencement date. The five notices will be published in the Gazette on 17 January 2003. We will issue a press release on the same day.

ENQUIRIES

11. For enquiries on this Brief, please contact Miss Emmy Wong of the Financial Services and the Treasury Bureau at 2529 2379.

Financial Services Branch
Financial Services and the Treasury Bureau
17 January 2003

**SECURITIES AND FUTURES ORDINANCE (CAP. 571)
(COMMENCEMENT) NOTICE 2003**

Under section 1(2) of the Securities and Futures Ordinance, I appoint 1 April 2003 as the day on which the Ordinance shall come into operation.



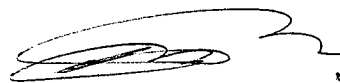
Secretary for Financial Services and the
Treasury

13 January 2003

**SECURITIES AND FUTURES ORDINANCE (CAP. 571)
(APPOINTMENT OF DAY - REPEAL OF ORDINANCES)
NOTICE**

Under section 406(1) of the Securities and Futures Ordinance, I appoint 1 April 2003 as the day from which each of the following (and its subsidiary legislation) shall be repealed –

- (a) the Securities and Futures Commission Ordinance (Cap. 24);
- (b) the Commodities Trading Ordinance (Cap. 250);
- (c) the Securities Ordinance (Cap. 333);
- (d) the Protection of Investors Ordinance (Cap. 335);
- (e) the Stock Exchanges Unification Ordinance (Cap. 361);
- (f) the Securities (Insider Dealing) Ordinance (Cap. 395);
- (g) the Securities (Disclosure of Interests) Ordinance (Cap. 396);
- (h) the Securities and Futures (Clearing Houses) Ordinance (Cap. 420);
- (i) the Leveraged Foreign Exchange Trading Ordinance (Cap. 451);
- (j) the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555).



Secretary for Financial Services and the
Treasury

13 January 2003

**SECURITIES AND FUTURES ORDINANCE (CAP. 571)
(APPOINTED DAY – UNIFIED EXCHANGE
COMPENSATION FUND) NOTICE**

Under section 74(13) of Part 1 of Schedule 10 to the Securities and Futures Ordinance, I appoint 1 April 2003 as the appointed day for the purposes of section 74 of that Part.

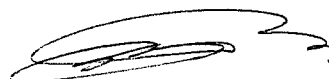


Secretary for Financial Services and
the Treasury

13 January 2003

**SECURITIES AND FUTURES ORDINANCE (CAP. 571)
(APPOINTED DAY – FUTURES EXCHANGE
COMPENSATION FUND) NOTICE**

Under section 75(13) of Part 1 of Schedule 10 to the Securities and Futures Ordinance, I appoint 1 April 2003 as the appointed day for the purposes of section 75 of that Part.



Secretary for Financial Services and
the Treasury

13 January 2003

**BANKING (AMENDMENT) ORDINANCE 2002 (6 OF 2002)
(COMMENCEMENT) NOTICE 2003**

Under section 1(2) of the Banking (Amendment) Ordinance 2002, I appoint 1 April 2003 as the day on which the Ordinance shall come into operation.



Secretary for Financial Services and the
Treasury

13 January 2003