

# **LEGISLATIVE COUNCIL BRIEF**

## **Securities and Futures Ordinance (Cap. 571)**

### **SECURITIES AND FUTURES (MISCELLANEOUS) RULES**

#### **INTRODUCTION**

Pursuant to section 397(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) has made the Securities and Futures (Miscellaneous) Rules (the Rules) at the **Annex**.

#### **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 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.

3. On 22 February 2002, the House Committee of the Legislative Council has established the Subcommittee on Draft Subsidiary Legislation to be made under the SFO (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of draft subsidiary legislation, including the vires to make them.

## THE PROPOSALS

### Major policy considerations

4. The Miscellaneous Rules contain a range of provisions that do not readily fit into other subsidiary legislation made under the SFO. They -

- (a) provide for the service of documents on the SFC under the SFO generally;
- (b) supplement the regulatory regime in Part V of the SFO, requiring an intermediary to –
  - (i) exhibit its licence or certificate of registration in a prominent place at its places of business; and
  - (ii) return its licence or certificate for cancellation or amendment in certain circumstances; and
- (c) supplement Part VIII of the SFO by defining the category of persons within the definition of “auditors” in Part 1 of Schedule 1 to the SFO for the purposes of section 179 of the SFO<sup>1</sup>.

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

6. The Rules should be read in conjunction with the Securities and Futures (Offences and Penalties) Regulation made by the Chief Executive in Council (which will be published in the Gazette on 13 December 2002). The Regulation provides that a person who, without reasonable excuse, contravenes sections 3(1), 4(1), 4(2) or 4(3) of the Rules (i.e. failure to exhibit or return a licence/certificate as required) commits an offence and is liable to the penalties specified in the Regulation.

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<sup>1</sup> The term “auditor” is defined in Part 1 of Schedule 1 to the SFO to be a person registered under the Professional Accountants Ordinance (Cap. 50), who holds a practising certificate, or a person specified in rules made by the SFC under section 397. Section 179 in Part VIII of the SFO provides for the powers of the SFC to conduct a preliminary inquiry into suspected crimes or misconduct in a listed corporation. In the course of such an inquiry, an authorized person may ask an “auditor” under section 179(1)(iv) to produce documents in the nature of “audit working papers” as defined in section 178 and ask for explanation of the documents produced.

## **THE RULES**

7. Section 2 of the Rules prescribes the manner in which documents may be served on the SFC and the manner in which they are to be signed, executed and authenticated. The provision allows electronic service of documents.

8. Section 3 provides that an intermediary shall exhibit its licence or certificate of registration in a prominent place at its principal place of business and, if it has more than one place of business, a certified copy of such document at each of its other places of business. An intermediary shall exhibit a copy of its licence or certificate of registration in lieu of the original where the latter is returned to the SFC for amendment under section 4.

9. Section 4 provides that an intermediary and a licensed representative must return his licence or certificate of registration to the SFC for amendment or cancellation if –

- (a) he ceases to carry on all or any of the regulated activities for which he is licensed or registered for more than one month or such longer period as the SFC may approve in writing;
- (b) the regulated activities for which he is licensed or registered are varied under section 127 of the SFO; or
- (c) it appears to the SFC that an error exists in the licence or certificate of registration and on the request of the SFC.

10. Section 5 prescribes the definition of “auditor” in Part 1 of Schedule 1 to the SFO, for the purposes of section 179 of the SFO, to include a professional accountant or a “practice unit” within the meaning of the Professional Accountants Ordinance (Cap. 50) or a foreign auditor providing services to a corporation the subject of exercising power under section 179 of the SFO.

## **PUBLIC CONSULTATION**

11. Sections 2, 3 and 4 of the Rules were adopted from the draft Securities and Futures (Licensed Persons and Registered Institutions) Rules (LPRI Rules). The SFC released a consultation document and an exposure

draft of the LPRI Rules on 16 November 2001 for comment by the public. The LPRI Rules were considered by the Subcommittee at its meeting on 29 April 2002. Subsequent to the meeting, the SFC decided that the above three provisions should be relocated in the Rules. Other provisions of the LPRI Rules were moved to the Securities and Futures (Licensing and Registration) (Information) Rules (which will be published in the Gazette on 13 December 2002).

12. The SFC released a consultation document and an exposure draft of the Securities and Futures (Miscellaneous) Rules on 2 July 2002 for comment by the public. A total of 11 submissions were received. The SFC has considered all the comments received and revised the Rules as appropriate.

13. A draft of the Rules was considered by the Subcommittee at its meeting on 16 September 2002. No major concerns were expressed by Members of the Subcommittee at the meeting.

## **FINANCIAL AND STAFFING IMPLICATIONS**

14. There are no financial or staffing implications for the Government.

## **COMMENCEMENT DATE**

15. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the target commencement date by the end of 2002.

## **PUBLICITY**

16. The Rules will be published in the Gazette on 13 December 2002. The SFC will issue a press release on the same day.

## **ENQUIRIES**

17. For any enquiries on this brief, please contact Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.

The Securities and Futures Commission  
13 December 2002

**SECURITIES AND FUTURES (MISCELLANEOUS) RULES**

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

**1. Commencement**

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

**2. Service of documents on Commission**

(1) Except as otherwise provided in the Ordinance, where any document is required for the purposes of any provision of the Ordinance to be served (however described) on the Commission, it shall -

(a) in the case of a document other than in electronic form, be -

- (i) delivered by hand;
- (ii) sent by post; or
- (iii) sent by facsimile transmission to such facsimile number as may be specified by the Commission on the contact details page of the Commission's web site; or

(b) in the case of a document in electronic form, be -

- (i) sent by means of such electronic transmission as may be approved by the Commission; or

(ii) sent by electronic mail transmission, to such electronic reception facility as may be specified by the Commission on the contact details page of the Commission's web site.

(2) Except as otherwise provided in the Ordinance, where any document is required for the purposes of any provision of the Ordinance to be served (however described) on the Commission -

(a) in the case of a document in respect of which a form has been specified under section 402 of the Ordinance, it shall, subject to subsection (3), be signed, executed and authenticated in the manner specified in such directions and instructions as are included in the form; or

(b) in the case of a document in respect of which no form has been specified under section 402 of the Ordinance, it shall, subject to subsection (3), be signed, executed and authenticated by the person by whom the document is served or by such other person as is authorized by the first-mentioned person to act in that behalf.

(3) For the purposes of subsection (2), if a document is in electronic form, the signature shall, unless otherwise specified by the Commission, be in the form of a digital signature within the meaning of section 2(1) of the Electronic Transactions Ordinance (Cap. 553) that fulfils the requirements of section 6(1) of that Ordinance.

(4) On an application by any person to the Commission, the Commission may, where it is satisfied that an applicant has substantial practical difficulties in serving (however described) any document within the time provided under the Ordinance, in its discretion by notice in writing extend the time for such period and upon such terms as it may direct.

**3. Licence or certificate of registration to be exhibited**

(1) Subject to subsection (2), an intermediary shall exhibit its licence or certificate of registration (as the case may be) in a prominent place at its principal place of business and, if it has more than one place of business, a certified copy of such licence or certificate of registration (as the case may be) in lieu of its original copy shall be exhibited in a prominent place at each of its other places of business.

(2) At any time when the original copy of the licence or certificate of registration (as the case may be) of an intermediary is returned to the Commission for amendment under section 4, the requirement of subsection (1) shall be regarded as having been complied with if the intermediary exhibits a certified copy of such licence or certificate of registration (as the case may be) in lieu of its original copy until the original copy of its licence or certificate of registration (as the case may be) as amended is returned to it by the Commission.



**4. Return of licence or certificate of registration**

(1) If an intermediary or licensed representative ceases to carry on all or any of the regulated activities for which he is licensed or registered for a period exceeding -

(a) subject to paragraph (b), one month after the date of such cessation; or

(b) such longer period as the Commission may approve in writing,

he shall return his licence or certificate of registration (as the case may be) to the Commission for cancellation or amendment (as the case may be) -

(c) in the case of paragraph (a), within 37 days after the date of the cessation; or

(d) in the case of paragraph (b), within 7 days after the end of the longer period referred to in that paragraph.

(2) If any regulated activity specified in the licence or certificate of registration (as the case may be) of an intermediary or licensed representative is varied under section 127 of the Ordinance, the intermediary or licensed representative shall return the licence or certificate of registration (as the case may be) to the Commission for amendment within 7 business days after the regulated activity is so varied.

(3) Where it appears to the Commission that an error exists in a licence or certificate of registration, it may by notice in writing require any person whom it reasonably believes to be in


possession of the licence or certificate of registration (as the case may be) to return it to the Commission and the person shall return the licence or certificate of registration (as the case may be) to the Commission for amendment within 7 business days after the date of the notice.

**5. Persons prescribed as auditors for purposes of section 179 of Ordinance**

(1) For the purposes of the definition of "auditor" in section 1 of Part 1 of Schedule 1 to the Ordinance, the following persons are prescribed as within the meaning of that definition for the purposes of section 179 of the Ordinance -

- (a) a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50) who provides, or provided, services to a relevant corporation;
- (b) any practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50) that provides, or provided, services to a relevant corporation;
- (c) a person appointed (whether or not he remains so appointed) to be an auditor of a relevant corporation for the purposes of any enactment of a place outside Hong Kong which imposes on such person responsibilities comparable to those imposed on an auditor by the Companies Ordinance (Cap. 32).

(2) In subsection (1), "relevant corporation" (相關法團) means a corporation to which any direction has been or may be given under section 179(1)(i) or (ii) of the Ordinance.

  
Andrew Len Tao SHENG

Chairman,  
Securities and Futures Commission

9<sup>th</sup> December, 2002

#### **Explanatory Note**

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (Cap. 571). They prescribe the general requirements for documents that are required to be served on the Commission (including the manner of service and execution) (section 2). They require the display of licences or certificates of registration (section 3). The Rules further prescribe the circumstances under which licences or certificates of registration need to be returned to the Commission for cancellation or amendment (section 4). They also prescribe, for the purposes of the definition of "auditor" in section 1 of Part 1 of Schedule 1 to the Ordinance, certain persons as within the meaning of that definition for the purposes of section 179 of the Ordinance (section 5).