

L.N. 11 of 2003

Securities and Futures (Insurance) Rules

(Made by the Securities and Futures Commission under section 116(5)
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. Interpretation

(1) In these Rules, unless the context otherwise requires---

"dealing in futures contracts" (期貨合約交易) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

"dealing in securities" (證券交易) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

"insurer" (保險人) means a person---

(a) carrying on insurance business in or from Hong Kong in compliance with section 6(1) of the Insurance Companies Ordinance (Cap. 41); or

(b) carrying on insurance business in or from any place outside Hong Kong under the law of that place;

"period of insurance" (保險期) means a period covered by a policy of insurance approved by the Commission under section 5(1) or (2)(a) or (b);

"specified amount" (指明款額) means the insured amount (if any) specified in Schedule 2 per period of insurance;

"specified credit rating" (指明信貸評級) means any one of the credit ratings specified in Schedule 3;

"specified licensed corporation" (指明持牌法團) means a corporation to which these Rules apply by virtue of section 3;

"specified risks" (指明風險) means the risks specified in Schedule 1.

(2) In these Rules, a reference to a deductible amount, in relation to a policy of insurance, means the amount of any loss or claim that an insured must himself bear under that policy and the insurer's liability will only arise when the insured's loss or claim exceeds such amount.

3. Application

These Rules apply to a corporation that is granted a licence under section 116(1) of the Ordinance to carry on any regulated activity other than such a corporation that---

(a) is not an exchange participant of the Stock Exchange Company or of the Futures Exchange Company; and

(b) is granted a licence under section 116(1) of the Ordinance to carry on any

regulated activity subject to a condition that the corporation shall not hold client assets.

4. Duty of specified licensed corporations to take out and maintain insurance

(1) Where the Commission has approved a master policy of insurance under section 5(1) in respect of a period of insurance for a regulated activity, a specified licensed corporation licensed for that regulated activity shall take out and maintain insurance for that regulated activity in relation to the specified risks for not less than the specified amount during that period of insurance under---

(a) that master policy of insurance approved by the Commission; or

(b) any other policy of insurance with one or more insurer that---

(i) is not a related corporation of the specified licensed corporation; and

(ii) has a specified credit rating on the date of commencement of the policy of insurance.

(2) Where the Commission has approved a master policy of insurance under section 5(2)(a) in respect of a period of insurance for the regulated activity of dealing in securities, a specified licensed corporation that is an exchange participant of the Stock Exchange Company licensed for that regulated activity shall, in addition to an insurance (if any) that it is required to take out and maintain under other provisions of this section, take out and maintain insurance for that regulated activity in relation to the specified risks for not less than the specified amount during that period of insurance under that master policy of insurance.

(3) Where the Commission has approved a master policy of insurance under section 5(2)(b) in respect of a period of insurance for the regulated activity of dealing in futures contracts, a specified licensed corporation that is an exchange participant of the Futures Exchange Company licensed for that regulated activity shall, in addition to an insurance (if any) that it is required to take out and maintain under other provisions of this section, take out and maintain insurance for that regulated activity in relation to the specified risks for not less than the specified amount during that period of insurance under that master policy of insurance.

(4) Each master policy of insurance approved by the Commission under section 5 and the policy of insurance referred to in subsection (1)(b) may specify a deductible amount not exceeding \$3,000,000.

(5) For the avoidance of doubt, a specified licensed corporation shall not be required to take out and maintain insurance in relation to a regulated activity under subsection (1) where that specified licensed corporation is required to take out and maintain insurance for that regulated activity under subsection (2) or (3).

5. Commission may approve master policy of insurance

(1) With the exception of the policies of insurance that may be approved under subsection (2), the Commission may, in respect of any period of insurance, approve one policy of insurance in respect of a regulated activity to be the master policy of insurance for all specified licensed corporations licensed for that regulated activity.

(2) The Commission may, in respect of any period of insurance---

(a) approve one policy of insurance in respect of the regulated activity of dealing in securities to be the master policy of insurance for all specified licensed corporations that are exchange participants of the Stock Exchange Company licensed for that regulated activity; and

(b) approve one policy of insurance in respect of the regulated activity of dealing in futures contracts to be the master policy of insurance for all specified licensed corporations that are exchange participants of the Futures Exchange Company licensed for that regulated activity.

(3) The Commission shall not approve a master policy of insurance under this section unless the insurer of the master policy of insurance (or, if the master policy of insurance is jointly undertaken by more than one insurer, each insurer) has the specified credit rating on the date of the approval.

Schedule 1 [s. 2]

Specified Risks

1. The risks in relation to which a specified licensed corporation shall take out and maintain insurance under these Rules are the risks of loss arising out of the loss of client assets that are received or held by the specified licensed corporation (including client assets that are received or held by an associated entity of the specified licensed corporation) in relation to its carrying on in Hong Kong of a regulated activity, attributable to---

(a) fraudulent or dishonest conduct by employees of the specified licensed corporation (or its associated entity or service bureau);

(b) robbery or theft while the client assets are in the custody of the specified licensed corporation (or its associated entity);

(c) forgery or fraudulent alteration of a cheque or other negotiable instrument;

(d) fraudulent use of an information system; and

(e) forged or fraudulent instructions relating to the client assets.

2. For the purposes of this Schedule---

"employee" (僱員), in relation to a specified licensed corporation (or its associated entity or service bureau), includes an individual who is or has been an employee, officer or licensed representative of, or who is or has been engaged whether under a contract of service or otherwise by, the specified licensed corporation (or its

associated entity or service bureau);

"service bureau" (服務單位), in relation to a specified licensed corporation, means a person to whom the specified licensed corporation has delegated the duty to perform certain functions that are ancillary to the carrying on by the specified licensed corporation of any regulated activity.

SCHEDULE 2 [s. 2]

Specified Amount

PART 1

Regulated Activities Carried on in Hong Kong

1. Where a specified licensed corporation is licensed to carry on in Hong Kong one regulated activity, the insured amount in respect of a period of insurance for the specified risks arising out of that regulated activity shall be the amount specified in column 2 of Part 2 opposite to that regulated activity which it is licensed to carry on in Hong Kong.

2. Where a specified licensed corporation is licensed to carry on in Hong Kong more than one regulated activity---

(a) if it takes out and maintains a single policy of insurance for the specified risks arising out of all those regulated activities, the insured amount in respect of a period of insurance for all those regulated activities which it is licensed to carry on in Hong Kong shall be \$25,000,000;

(b) if it takes out and maintains a separate policy of insurance for the specified risks arising out of each of those regulated activities, the insured amount in respect of a period of insurance for each relevant regulated activity shall be the amount specified in column 2 of Part 2 opposite to that relevant regulated activity which it is licensed to carry on in Hong Kong.

3. The insured amount referred to in sections 1 and 2 is the amount of insurance to be maintained in respect of the aggregate of all claims that may be made during any period of insurance and, subject to those sections, there shall be no limit on the amount of each claim.

PART 2

Insured Amount

Regulated activity	Insured amount
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|---------------------------------------|------------|
| 1. Dealing in securities | 15,000,000 |
| 2. Dealing in futures contracts | 15,000,000 |
| 3. Leveraged foreign exchange trading | Nil |
| 4. Advising on securities | Nil |

5. Advising on futures contracts Nil
6. Advising on corporate finance Nil
7. Providing automated trading services Nil
8. Securities margin financing 15,000,000
9. Asset management Nil

Each of the regulated activities specified in column 1 of this Part shall have the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance.

SCHEDULE 3 [s. 2]

Specified Credit Ratings

1. A Moody's Investors Service rating of A or above for Long-Term Insurance Financial Strength.
2. A Standard & Poor's Corporation rating of A or above for Insurer Financial Strength.
3. A Fitch Ratings Limited rating of A or above for Insurer Financial Strength.

Andrew Len Tao SHENG

Chairman,

Securities and Futures Commission

14 January 2003

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 116(5) of the Securities and Futures Ordinance (Cap. 571). They require corporations to which the Commission has granted licences under section 116(1) of the Ordinance to carry on specified regulated activities to take out and maintain insurance in respect of specified risks and for specified amounts. They also deal with other matters relating to the insurance.