

L.N. 188 of 2002

Securities and Futures (Professional Investor) 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. Interpretation

In these Rules, unless the context otherwise requires---

"associate" (有聯繫者), in relation to an individual, means the spouse or any child of the individual;

"custodian" (保管人) means---

(a) a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract;
or

(b) any of the following persons---

(i) an authorized financial institution;

(ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(iii) a licensed corporation;

(iv) a person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong,

whose business includes acting as a custodian of securities or other property for another person, whether on trust or by contract;

"custodian statement" (保管人結單) means a statement of account issued by a custodian;

"portfolio" (投資組合) means a portfolio comprising any of the following---

(a) securities;

(b) a certificate of deposit issued by---

(i) an authorized financial institution; or

(ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;

(c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership;

"relevant date" (有關日期)---

(a) in the case of an advertisement, invitation or document described in section 103(3)(k) of the Ordinance, means the date on which the advertisement, invitation

or document is issued, or possessed for the purposes of issue;

(b) in the case of a call described in section 174(2)(a) of the Ordinance, means the date on which the call is made;

(c) in the case of an offer described in section 175(5)(d) of the Ordinance, means the date on which the offer is made; or

(d) in any other case which, by virtue of any rules made under the Ordinance, requires compliance with an obligation, means the date by or on which the obligation is required to be complied with;

"trust corporation" (信託法團) means---

(a) any trust company registered under Part VIII of the Trustee Ordinance (Cap. 29); or

(b) any other corporation which---

(i) carries on a business which is of a nature similar to that of a trust company referred to in paragraph (a); and

(ii) is regulated under the law of any place outside Hong Kong.

3. Persons prescribed as professional investors

For the purposes of paragraph (j) of the definition of "professional investor" 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 any provision of the Ordinance other than Schedule 5---

(a) any trust corporation having been entrusted under the trust or trusts of which it acts as a trustee with total assets of not less than \$40 million or its equivalent in any foreign currency---

(i) as stated in the most recent audited financial statement prepared---

(A) in respect of the trust corporation; and

(B) within 16 months before the relevant date;

(ii) as ascertained by referring to one or more audited financial statements, each being the most recent audited financial statement, prepared---

(A) in respect of the trust or any of the trusts; and

(B) within 16 months before the relevant date; or

(iii) as ascertained by referring to one or more custodian statements issued to the trust corporation---

(A) in respect of the trust or any of the trusts; and

(B) within 12 months before the relevant date;

(b) any individual, either alone or with any of his associates on a joint account, having a portfolio of not less than \$8 million or its equivalent in any foreign currency---

(i) as stated in a certificate issued by an auditor or a professional accountant

of the individual within 12 months before the relevant date; or

(ii) as ascertained by referring to one or more custodian statements issued to the individual (either alone or with the associate) within 12 months before the relevant date;

(c) any corporation or partnership having---

(i) a portfolio of not less than \$8 million or its equivalent in any foreign currency; or

(ii) total assets of not less than \$40 million or its equivalent in any foreign currency,

as ascertained by referring to---

(iii) the most recent audited financial statement prepared---

(A) in respect of the corporation or partnership (as the case may be); and

(B) within 16 months before the relevant date; or

(iv) one or more custodian statements issued to the corporation or partnership (as the case may be) within 12 months before the relevant date; and

(d) any corporation the sole business of which is to hold investments and which is wholly owned by an individual who, either alone or with any of his associates on a joint account, falls within the description in paragraph (b).

Andrew Len Tao SHENG

Chairman,

Securities and Futures Commission

25 November 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) for the purposes of paragraph (j) of the definition of "professional investor" in section 1 of Part 1 of Schedule 1 to the Ordinance. Persons prescribed as professional investors by these Rules are exempted in relation to certain prohibitions in the Ordinance. However, such persons are not regarded as professional investors for the purposes of Schedule 5 to the Ordinance.