

Securities And Futures (Investor Compensation
---Levy) Rules

(Made by the Chief Executive in Council under
section 244(1) of the Securities and
Futures Ordinance (Cap. 571))

PART 1

Preliminary

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---

"Exchange Company" (交易所)---

(a) in relation to a levy payable under Part 2, means the Stock Exchange Company;

(b) in relation to a levy payable under Part 3, means the Futures Exchange Company;

"exchange traded fund" (交易所買賣基金) means a collective investment scheme that---

(a) holds portfolios of securities;

(b) is designed generally to correspond to the price and yield performance of the underlying portfolios of securities with in kind creation and redemption facilities; and

(c) is listed or traded on a recognized stock market operated by the Stock Exchange Company as a single security;

"exchange traded funds market maker" (交易所買賣基金莊家) means any person who is registered as an exchange traded funds market maker by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company;

"levy" (徵費) means a levy payable under Part 2 or Part 3;

"Mini-Hang Seng Index Futures Contract" (小型滙生指數期貨合約) means a futures contract entitled "Mini-Hang Seng Index Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company;

"Mini-Hang Seng Index Options Contract" (小型滙生指數期權合約) means a futures contract entitled "Mini-Hang Seng Index Options Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company;

"pilot programme" (試驗計劃) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme market maker" (試驗計劃莊家) has the meaning assigned to it by the rules of the Stock Exchange Company;

"pilot programme securities" (試驗計劃證券) means securities that are traded on a recognized stock market operated by the Stock Exchange Company under the pilot

programme;

"remittance" (轉付) means a payment, by way of remittance, by the Exchange Company to the Commission under section 13;

"stock futures contract" (股票期貨合約) means a futures contract entitled "Stock Futures Contract" for which the contract specifications are set out in the rules of the Futures Exchange Company.

PART 2

Levy Payable in Respect of Sale and Purchase of Securities

3. Application of Part 2

This Part does not apply in relation to a sale and purchase of securities unless it is recorded on a recognized stock market or notified to a recognized exchange company under its rules.

4. Securities

Subject to sections 5, 6 and 7, for the purposes of the compensation fund, a levy for a sale and purchase of securities shall be payable to the Commission---

(a) by the seller at the rate of 0.002% of the consideration for the sale; and

(b) by the purchaser at the rate of 0.002% of the consideration for the purchase.

5. No levy on stock options

For the purposes of the compensation fund, no levy for a sale and purchase of a stock option shall be payable to the Commission.

6. Pilot programme securities

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of pilot programme securities is---

(a) in the case of the seller---

(i) subject to subparagraph (ii), at the rate of 0.002% of the consideration for the sale;

(ii) where the seller is a pilot programme market maker, at the rate of 0% of the consideration for the sale; or

(b) in the case of the purchaser---

(i) subject to subparagraph (ii), at the rate of 0.002% of the consideration for the purchase;

(ii) where the purchaser is a pilot programme market maker, at the rate of 0% of the consideration for the purchase.

7. Exchange traded funds

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of an exchange traded fund is---

(a) in the case of the seller---

(i) subject to subparagraph (ii), at the rate of 0.002% of the consideration for the sale;

(ii) where the seller is an exchange traded funds market maker, at the rate of 0% of the consideration for the sale; or

(b) in the case of the purchaser---

(i) subject to subparagraph (ii), at the rate of 0.002% of the consideration for the purchase;

(ii) where the purchaser is an exchange traded funds market maker, at the rate of 0% of the consideration for the purchase.

PART 3

Levy Payable in Respect of Sale and Purchase of Futures Contracts

8. Application of Part 3

This Part does not apply in relation to a sale and purchase of a futures contract unless it is traded on a recognized futures market.

9. Futures contracts

Subject to sections 10 and 11, for the purposes of the compensation fund, a levy for a sale and purchase of a futures contract shall be payable to the Commission---

(a) by the seller in the amount of \$0.50; and

(b) by the purchaser in the amount of \$0.50.

10. Mini-Hang Seng Index Futures Contracts and Mini-Hang Seng Index Options

Contracts

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of a Mini-Hang Seng Index Futures Contract or a Mini-Hang Seng Index Options Contract is---

(a) in the case of the seller, in the amount of \$0.10; or

(b) in the case of the purchaser, in the amount of \$0.10.

11. Stock futures contracts

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of a stock futures contract or an option on such a contract is---

(a) in the case of the seller, in the amount of \$0.10; or

(b) in the case of the purchaser, in the amount of \$0.10.

PART 4

Manner of Payment and Incidental Matters

12. Payment of levies

(1) A person who is liable to pay a levy under these Rules shall pay the levy

to the Exchange Company on behalf of the Commission in such manner as may be specified from time to time in the rules of the Exchange Company.

(2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

13. Exchange Company to collect and remit levy

The Exchange Company shall---

(a) collect any levy paid to it under section 12; and

(b) subject to section 21, pay the levy by way of remittance to the Commission by paying it into such bank account as may be specified by the Commission, on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a business day, on the next business day.

14. Exchange Company to deposit levies in bank pending remittance

Pending remittance to the Commission of any levy in accordance with section 13, the Exchange Company shall---

(a) hold the levy on behalf of the Commission; and

(b) deposit the levy in a bank within the meaning of the Banking Ordinance (Cap. 155) as soon as reasonably practicable after collection of the levy.

15. Returns relating to remittance

(1) Within 7 days after the date of each remittance, the Exchange Company shall furnish to the Commission a return relating to the remittance.

(2) A return furnished under subsection (1) shall---

(a) be in such form as may be specified by the Commission;

(b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and

(c) contain such information as may be specified by the Commission.

16. Adjustment of remittance and returns

A return or the amount of remittance to which it relates may be adjusted by the Exchange Company to reflect any error in a previous return or remittance (as the case may be).

17. Late remittance charge

(1) If the Exchange Company fails to remit any levy when required under these Rules, it shall pay to the Commission a late remittance charge of 2% above the average of the best lending rate respectively quoted by each note-issuing bank within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65), on the amount of the levy, calculated on a daily basis commencing on the date of default until the remittance of the levy is made.

(2) The late remittance charge payable under subsection (1) and the amount of the levy referred to in subsection (1) are recoverable as a civil debt due to the Commission.

(3) The Commission shall pay the late remittance charge paid to it under subsection (1) into the compensation fund.

18. Accounts

The Exchange Company shall keep proper accounts in respect of all transactions relating to the collection and remittance of levies.

19. Inspection of accounts

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of a copy of the authorization, inspect and make copies of the accounts kept under section 18.

20. Report

(1) The Exchange Company shall, within one month after 31 March in each year or such longer period as may be specified by the Commission either generally or in a particular case, furnish to the Commission a report certifying that the returns furnished under section 15 and relating to all remittances made in the 12 months ending on 31 March in that year are correct and comply with these Rules, and that the levies to which the remittances relate have been paid in accordance with these Rules.

(2) The report furnished under subsection (1) shall be---

- (a) in such form as may be specified by the Commission; and
- (b) prepared and certified, at the expense of the Exchange Company, by an auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 32).

21. Refund of levy

(1) Where a person has paid a levy, he may apply to the Commission for the refund of such levy on the ground that---

- (a) he was in fact not liable to pay the levy; or
- (b) he subsequently became not liable to pay the levy.

(2) An application under subsection (1) shall be---

- (a) in writing; and
- (b) accompanied by all relevant information.

(3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it shall refund the levy to the applicant.

22. Notification of failure to pay levy

Where the Exchange Company is aware that any person has failed to pay a levy payable by him, it shall as soon as reasonably practicable notify the Commission in writing of the failure.

23. Provision of information

(1) The Commission may by notice in writing require the Exchange Company to provide information specified in the notice relating to the collection, deposit and remittance of levies.

(2) Where a notice is given under subsection (1), the Exchange Company shall as soon as reasonably practicable provide the information specified in the notice.

CHENG Mei-sze, Maisie

Clerk to the Executive Council

Council Chamber

10 December 2002

Explanatory Note

These Rules are made by the Chief Executive in Council under section 244(1) of the Securities and Futures Ordinance (Cap. 571) ("the Ordinance"). They prescribe---

(a) the means of funding the compensation fund established under section 236 of the Ordinance by providing that a levy is payable on certain securities and futures contracts;

(b) the manner in which payment of levies must be made and impose charges for late payment of such levies; and

(c) matters relating to the keeping, examination and audit of the accounts of recognized exchange companies relating to the collection and payment of such levies to the Securities and Futures Commission.