

**L.N. 108 of 2005****SECURITIES AND FUTURES (INVESTOR COMPENSATION—  
LEVY) (AMENDMENT) RULES 2005**

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

**1. Commencement**

These Rules shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**2. Interpretation**

(1) Section 2 of the Securities and Futures (Investor Compensation—Levy) Rules (Cap. 571 sub. leg. AB) is amended, in the definition of “stock futures contract”, by repealing the full stop and substituting a semicolon.

(2) Section 2 is amended by adding—

““exemption notice” (豁免付款公告) means a notice published under section 25(1);

“net asset value” (淨資產值), in relation to the compensation fund, means the balance after deducting the total liabilities of the compensation fund from its total assets and, for the purposes of this definition, net asset value may be a negative figure;

“termination of exemption notice” (終止豁免公告) means a notice published under section 26(1).”.

**3. Application of Part 2**

(1) Section 3 is amended by renumbering it as section 3(1).

(2) Section 3 is amended by adding—

“(2) This Part is subject to the provisions in Part 5.”.

**4. Application of Part 3**

(1) Section 8 is amended by renumbering it as section 8(1).

(2) Section 8 is amended by adding—

“(2) This Part is subject to the provisions in Part 5.”.

## 5. Report

(1) Section 20(1) is amended by repealing “The” and substituting “Subject to subsection (3), the”.

(2) Section 20 is amended by adding—

“(3) The Exchange Company is not required to furnish a report under subsection (1) in respect of any 12 month period specified in that subsection if—

(a) no person is required to pay any levy under these Rules during that period; and

(b) no refund, adjustment, collection or remittance of levy was made or has fallen due under these Rules during that period.”.

## 6. Part 5 added

The following is added—

### “PART 5

#### NO PAYMENT OF LEVY UNDER EXEMPTION NOTICE

### 24. Commission to cause financial statement to be audited

(1) Subject to subsection (3), where the latest unaudited financial statement prepared in respect of the accounts of the compensation fund and made up to (and including) the last day of any month shows that the net asset value of the compensation fund exceeds \$1,400,000,000 as at that day, the Commission shall as soon as reasonably practicable appoint an auditor to audit, and prepare an auditor’s report in respect of, the financial statement and to submit the report to the Commission.

(2) Subject to subsection (4), where the latest unaudited financial statement prepared in respect of the accounts of the compensation fund and made up to (and including) the last day of any month shows that the net asset value of the compensation fund is below \$1,000,000,000 as at that day, the Commission shall as soon as reasonably practicable appoint an auditor to audit, and prepare an auditor’s report in respect of, the financial statement and to submit the report to the Commission.

(3) Subsection (1) does not apply if at the date of receiving the latest unaudited financial statement—

(a) the Commission has published an exemption notice under section 25(1) but has not published a termination of exemption notice relating to it under section 26(1);

- (b) the Commission has received an auditor's report prepared in respect of a previous unaudited financial statement and, as a result, the Commission is required to publish an exemption notice under section 25(1);
  - (c) the Commission has appointed an auditor, and is awaiting receipt of an auditor's report to be prepared under subsection (1) in respect of a previous unaudited financial statement; or
  - (d) an unaudited financial statement made up to (and including) the last day of the month referred to in subsection (1) is required to be audited, and an auditor's report in respect of the financial statement is required to be prepared, under section 240 of the Ordinance.
- (4) Subsection (2) does not apply if at the date of receiving the latest unaudited financial statement—
- (a) the Commission has not published an exemption notice under section 25(1);
  - (b) the Commission has published an exemption notice under section 25(1) and has published a termination of exemption notice relating to it under section 26(1);
  - (c) the Commission has received an auditor's report prepared in respect of a previous unaudited financial statement and, as a result, the Commission is required to publish a termination of exemption notice under section 26(1);
  - (d) the Commission has appointed an auditor, and is awaiting receipt of an auditor's report to be prepared under subsection (2) in respect of a previous unaudited financial statement; or
  - (e) an unaudited financial statement made up to (and including) the last day of the month referred to in subsection (2) is required to be audited, and an auditor's report in respect of the financial statement is required to be prepared, under section 240 of the Ordinance.

## **25. Commission to publish exemption notice**

(1) Subject to subsections (3) and (4), where the auditor's report prepared under section 240 of the Ordinance or section 24(1) confirms (whether expressly or impliedly and whether by reference to any financial statement attached to it or otherwise) that the net asset value of the compensation fund exceeds \$1,400,000,000, the Commission shall by an exemption notice published in the Gazette declare that no person is

required to pay any levy under Part 2 or 3 in respect of a sale and purchase of securities or futures contract that takes place at any time—

- (a) on or after the date specified in the exemption notice, which date shall not be earlier than one month after the date of publication of the exemption notice in the Gazette; and
- (b) before the date to be specified by a termination of exemption notice published under section 26(1).

(2) Notwithstanding anything in these Rules, where an exemption notice is published in the Gazette, no person shall be required to pay the levy as declared to be not payable by the exemption notice.

(3) No further exemption notice shall be published if a previous exemption notice has been published by the Commission under subsection (1) but a termination of exemption notice relating to it has not been published under section 26(1).

(4) Subject to subsection (5), the Commission may, after consultation with the Financial Secretary, refrain from publishing an exemption notice under subsection (1) if it has reason to believe that the net asset value of the compensation fund will fall below \$1,000,000,000 within 6 months from the date of receiving the auditor's report.

(5) The Commission having refrained from publishing an exemption notice is required to ascertain the net asset value of the compensation fund and if the Commission subsequently reasonably considers that the net asset value of the compensation fund will not fall below \$1,000,000,000 within the 6 month period, it shall proceed to publish the exemption notice.

(6) An exemption notice is not subsidiary legislation.

## **26. Commission to publish termination of exemption notice**

(1) Subject to subsection (3), where—

- (a) the auditor's report prepared under section 240 of the Ordinance or section 24(2) confirms (whether expressly or impliedly and whether by reference to any financial statement attached to it or otherwise) that the net asset value of the compensation fund is below \$1,000,000,000; and
- (b) the Commission has published an exemption notice under section 25(1) but has not published a termination of exemption notice relating to it under this subsection,

the Commission shall by a termination of exemption notice published in the Gazette specify a termination date for the exemption notice, which

date shall not be earlier than 2 months after the date of publication of the termination of exemption notice in the Gazette.

(2) The publication of a termination of exemption notice shall not revive the obligation to pay any levy which has been declared to be not payable by the exemption notice relating to it.

(3) Subject to subsection (4), the Commission may, after consultation with the Financial Secretary, refrain from publishing a termination of exemption notice under subsection (1) if it has reason to believe that the net asset value of the compensation fund will exceed \$1,400,000,000 within 6 months from the date of receiving the auditor's report.

(4) The Commission having refrained from publishing a termination of exemption notice is required to ascertain the net asset value of the compensation fund and if the Commission subsequently reasonably considers that the net asset value of the compensation fund will not exceed \$1,400,000,000 within the 6 month period, it shall proceed to publish the termination of exemption notice.

(5) A termination of exemption notice is not subsidiary legislation.”.

LAM Chik-ting, Tony  
Clerk to the Executive Council

COUNCIL CHAMBER  
28 June 2005

### **Explanatory Note**

The object of these Rules is to amend the Securities and Futures (Investor Compensation—Levy) Rules (Cap. 571 sub. leg. AB) (“principal Rules”) in order to add a new Part 5 to the principal Rules. The new Part 5 requires the Securities and Futures Commission (“Commission”) to publish, under certain circumstances, in the Gazette an exemption notice or a termination of exemption notice, both of which are not subsidiary legislation.

2. The amended section 2 adds a number of new defined terms to the principal Rules for the purposes of the new Part 5.

3. The new section 24 requires the Commission to appoint an auditor to audit the accounts of the Investor Compensation Fund (“compensation fund”) if the net asset value of the compensation fund exceeds or is below a certain level, subject to certain exceptions.

4. The new section 25 provides that an exemption notice shall be published if the net asset value of the compensation fund exceeds \$1,400,000,000. Levy is not payable in respect of a sale and purchase of securities or futures contract taking place at any time on or after the date specified in the exemption notice, which date shall not be earlier than one month after its publication, and before the date specified in a subsequent termination of exemption notice published under the new section 26. The Commission may refrain from publishing an exemption notice after consultation with the Financial Secretary.

5. The new section 26 provides that a termination of exemption notice shall be published if the net asset value of the compensation fund is below \$1,000,000,000. The termination of exemption notice shall specify a termination date for the exemption notice, and, as a result of the specification of the termination date, levy will again be payable in respect of a sale and purchase of securities or futures contract taking place at any time from the date specified in the termination of exemption notice, which date shall not be earlier than 2 months after its publication. The Commission may refrain from publishing a termination of exemption notice after consultation with the Financial Secretary.

6. The new section 20(3) provides that the Exchange Company (that is, the Stock Exchange Company and the Futures Exchange Company) is not required to furnish a report under section 20(1) of the principal Rules in respect of any 12 month period ending on 31 March in a year if there is no transaction concerning any levy during that period.