

LEGISLATIVE COUNCIL BRIEF

SECURITIES AND FUTURES ORDINANCE (CAP. 571)

SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF SCHEDULE 1) NOTICE 2012

INTRODUCTION

At its meeting on 23 April 2012, pursuant to section 2(3) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) made the Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2012 (Amendment Notice) at **Annex A**. The Amendment Notice aims to update and include new additions to the lists of futures exchanges and stock exchanges in Schedule 1 to the SFO.

BACKGROUND AND JUSTIFICATIONS

2. Parts 2 and 3 of Schedule 1 to the SFO set out a list of futures exchanges (the list of “specified futures exchanges”) and a list of stock exchanges (the list of “specified stock exchanges”) respectively. In connection with the SFO and subsidiary legislation made under the SFO, one or both lists are referred to in provisions relating to licensing, recognized counterparty status, disclosure of interests and price stabilizing (technical details are set out in **Annex B**). In connection

with the Inland Revenue Ordinance (Cap. 112) (IRO), the lists help serve as one of the parameters defining those financial transactions which may fall outside the profits tax net (see paragraphs 5-6 below).¹

THE AMENDMENT NOTICE

3. The purpose of the Amendment Notice at **Annex A** is to update the names of the existing specified futures exchanges and specified stock exchanges; and to add seven futures exchanges and two stock exchanges from the emerging markets to the lists of specified futures exchanges and specified stock exchanges respectively.

Updating the Names of the Existing Exchanges

4. Since the enactment of the SFO in March 2002, a number of the exchanges included in the lists of specified futures exchanges and specified stock exchanges have changed their names or otherwise been affected by corporate reorganizations. The lists are therefore outdated and amendments are needed to reflect the current names of the relevant exchanges.

Adding Nine Exchanges from the Emerging Markets

5. Pursuant to section 20AC of the IRO, transactions conducted by a non-resident person (including an offshore fund) in

¹ One or both lists are also referred to in the Trustee Ordinance (Cap. 29), the Gambling Ordinance (Cap. 148), the Occupational Retirement Schemes Ordinance (Cap. 426) and the Mass Transit Railway Ordinance (Cap. 556). We have consulted relevant bureaux/departments on the proposed amendments and they have no objection to the amendments.

futures contracts are exempted from profits tax. Such futures contracts are defined in Schedule 16 to the IRO to include a contract or an option on a contract that is listed or traded on the Hong Kong Futures Exchange Limited or any other contract for differences that is traded on a specified futures exchange, or listed on a specified stock exchange, as specified in Parts 2 and 3 of Schedule 1 to the SFO respectively. The following nine exchanges from the emerging markets are added to the lists of specified futures exchanges and specified stock exchanges —

Futures Exchanges

- Brazil: BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
- China: China Financial Futures Exchange, Dalian Commodity Exchange, Shanghai Futures Exchange and Zhengzhou Commodity Exchange
- India: Multi Commodity Exchange of India Limited and National Commodity & Derivatives Exchange Limited

Stock Exchanges

- India: BSE Limited and National Stock Exchange of India Limited

6. The addition of the above exchanges would facilitate the development of Hong Kong as an international finance centre in general and as an asset management centre in particular, by extending the application of tax exemption for offshore funds engaged in futures trading executed on these nine exchanges. This seeks to fulfil the commitments made by the Administration in the 2010-11 Budget to strengthen the competitiveness of the asset management industry in Hong Kong.

7. According to the SFC, the addition of the nine exchanges does not affect the on-going regulatory functions of the SFC.

PUBLIC CONSULTATION

8. On 21 February 2011, the SFC published a Consultation Paper on Proposed Amendments to Specified Stock and Futures Exchanges to solicit public comments on the proposed amendments set out in paragraphs 4 and 5 above. A total of six submissions were received from professional bodies, market participants and other interested parties and all respondents supported the proposals.

FINANCIAL AND STAFFING IMPLICATIONS

9. There are no financial or staffing implications for the SFC.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows:

Publication in the Gazette	11 May 2012
Tabling in the Legislative Council	16 May 2012

COMMENCEMENT

11. The Amendment Notice will come into operation on 18 July 2012.

PUBLICITY

12. A press release will be issued by the SFC upon publication of the consultation conclusions on 11 May 2012. A SFC spokesman will be available to handle media enquiries.

ENQUIRIES

13. Any enquiries on this brief may be addressed to Mr Anthony Li, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) of the Financial Services and the Treasury Bureau (tel. no. 2810 2056), or Ms Sandra King, Senior Legal Consultant, Legal Services of the SFC (tel. no. 2283 6809).

Financial Services and the Treasury Bureau

Securities and Futures Commission

May 2012

Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2012

(Made by the Securities and Futures Commission under section 2(3) of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Notice comes into operation on 18 July 2012.

2. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in section 3.

3. Schedule 1, Parts 2 and 3 substituted

Schedule 1—

Repeal Parts 2 and 3

Substitute

“Part 2

Specified Futures Exchanges

1. ASX Limited
2. Australian Securities Exchange Limited
3. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
4. Board of Trade of the City of Chicago, Inc.
5. Chicago Board Options Exchange, Incorporated
6. Chicago Mercantile Exchange Inc.
7. China Financial Futures Exchange

8. Commodity Exchange, Inc.
9. Dalian Commodity Exchange
10. Eurex Frankfurt AG
11. Eurex Zürich AG
12. Euronext Amsterdam N.V.
13. Euronext Paris S.A.
14. Hong Kong Futures Exchange Limited
15. ICE Futures Canada, Inc.
16. ICE Futures U.S., Inc.
17. Korea Exchange, Inc.
18. LIFFE Administration and Management
19. Montréal Exchange Inc.
20. Multi Commodity Exchange of India Limited
21. National Commodity & Derivatives Exchange Limited
22. NASDAQ OMX PHLX LLC
23. NASDAQ OMX Stockholm AB
24. New York Mercantile Exchange, Inc.
25. New Zealand Futures and Options Exchange Limited
26. NYSE Arca, Inc.
27. Osaka Securities Exchange Co., Ltd.
28. Shanghai Futures Exchange
29. Singapore Exchange Derivatives Trading Limited
30. The London Metal Exchange Limited
31. Tokyo Financial Exchange Inc.
32. Tokyo Grain Exchange Inc.
33. Tokyo Stock Exchange, Inc.

34. Zhengzhou Commodity Exchange

Part 3

Specified Stock Exchanges

1. ASX Limited
2. BSE Limited
3. Borsa Italiana S.p.A.
4. Bursa Malaysia Securities Berhad
5. Deutsche Börse AG
6. Euronext Amsterdam N.V.
7. Euronext Brussels S.A./N.V.
8. Euronext Paris S.A.
9. Korea Exchange, Inc.
10. London Stock Exchange plc
11. Montréal Exchange Inc.
12. Nagoya Stock Exchange, Inc.
13. NASDAQ OMX Copenhagen A/S
14. NASDAQ OMX Helsinki Ltd
15. NASDAQ OMX Stockholm AB
16. National Stock Exchange of India Limited
17. New York Stock Exchange LLC
18. NYSE Amex LLC
19. NZX Limited
20. Osaka Securities Exchange Co., Ltd.
21. Oslo Børs ASA
22. Singapore Exchange Securities Trading Limited

23. SIX Swiss Exchange AG
24. Sociedad Rectora de la Bolsa de Valores de Madrid, S.A. (Sociedad Unipersonal)
25. Société de la Bourse de Luxembourg S.A.
26. The NASDAQ Stock Market LLC
27. The Philippine Stock Exchange, Inc.
28. The Stock Exchange of Hong Kong Limited
29. The Stock Exchange of Thailand
30. Tokyo Stock Exchange, Inc.
31. TSX Inc.
32. Wiener Börse AG".

Chief Executive Officer,
Securities and Futures Commission

2012

Explanatory Note

Parts 2 and 3 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) (*the Ordinance*) contain lists of local and overseas futures exchanges and stock exchanges which are, respectively, “specified futures exchanges” and “specified stock exchanges”. Under section 2(3) of the Ordinance, the Securities and Futures Commission may amend these Parts by notice published in the Gazette.

2. The purpose of this Notice is to repeal Parts 2 and 3 of Schedule 1 to the Ordinance and substitute new Parts 2 and 3 in order to—
 - (a) add 7 specified futures exchanges and 2 specified stock exchanges; and
 - (b) update the names of certain specified futures exchanges and specified stock exchanges.

**Regulatory work of the Securities and Futures Commission
which involves reference to the list of specified futures exchanges
and the list of specified stock exchanges in Parts 2 and 3
of Schedule 1 to the Securities and Futures Ordinance (SFO)**

I. Regulation of leveraged foreign exchange trading

Under Part 1 of Schedule 5 to the SFO, dealing in securities, dealing in futures contracts and leveraged foreign exchange trading are stipulated as Type 1, Type 2 and Type 3 regulated activities respectively.

Pursuant to Part 2 of the aforesaid Schedule, transactions executed on a **specified stock exchange** by or through a person who is licensed or registered for Type 1 regulated activity and contracts executed on a **specified futures exchange** by or through a person who is licensed or registered for Type 2 regulated activity are excluded from Type 3 regulated activity.

Pursuant to sections 3(a) and 3(b) of the Securities and Futures (Recognized Counterparty) Rules (Cap. 571B), the term “recognized counterparty” in Schedule 1 to the SFO includes a corporation licensed for Type 2 regulated activity that deals in currency futures contracts on any **specified futures exchange** and an equivalent

corporation² that deals in currency futures contracts on any **specified futures exchange**.

Under the Securities and Futures (Financial Resources) Rules (Cap. 571N) (Financial Resources Rules), certain calculations in relation to the financial resources of a corporation licensed for Type 3 regulated activity may be affected where a transaction involves a recognized counterparty. For example, in calculating its liquid assets, pursuant to section 34(1) of the Financial Resources Rules, a corporation licensed for Type 3 regulated activity must include any amount receivable from and the amount of any cash deposited with a recognized counterparty.³

In addition, in connection with a leveraged foreign exchange contract, recognized counterparties are excluded from the definition of “client” in Schedule 1 to the SFO.

II. Disclosure of interests and price stabilization period

The list of **specified stock exchanges** is used in Part XV of the SFO to determine certain disclosure of interests requirements⁴, and in the Securities and Futures (Price Stabilizing) Rules (Cap. 571W) to

² In summary, an “equivalent corporation” means a corporation with shareholders’ funds of not less than \$30,000,000 (or its equivalent in any foreign currency) that carries on a business in a specified jurisdiction (as specified in column 2 of Schedule 1 to the Securities and Futures (Recognized Counterparty) Rules (Cap. 571B) (Recognized Counterparty Rules)) in an activity which, if carried on in Hong Kong, would constitute dealing in futures contracts, under an authorization (however described) by an authority or regulatory organization in that jurisdiction. See the definition of “equivalent corporation” in section 2 of the Recognized Counterparty Rules.

³ See the definitions of “variable required liquid capital” and “aggregate gross foreign currency position” in section 2(1) and sections 51(1)(h), 58(4)(a)(iii), 6(3)(d)(iii) and 56(2)(c) of the Financial Resources Rules.

⁴ See sections 308(5) to (7) and 326(4) of Part XV of the SFO.

determine the stabilizing period where the stock in question trades on an overseas stock exchange⁵.

⁵ See the definition of “stabilizing period” in section 2(1) of the Securities and Futures (Prices Stabilizing) Rules (Cap. 571W).