

LN088-E

L. N. 88 of 2000

Securities (Miscellaneous) (Amendment) Rules 2000

(Made by the Securities and Futures Commission under section 146(1) of the Securities Ordinance (Cap. 333))

1. Commencement

These Rules shall come into operation on 12 June 2000.

2. Amounts to be deposited

Rule 3 of the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) is amended---

(a) by renumbering it as rule 3(1);

(b) in subrule (1), by repealing "The" and substituting "Subject to subrule (2), the";

(c) by adding---

"(2) In the case where the applicant intends to carry on a business of securities margin financing, the applicant (whether an individual, a partnership or a corporation) is required to lodge and maintain with the Commission a further deposit of \$2,000,000 in the form and manner satisfactory to the Commission."

3. Application of deposits by liquidators

Rule 5(1) is amended by adding "and provider of securities margin financing (where applicable)" after "securities".

4. Application of deposits forfeited under section 52(2)(c) of the Ordinance

Rule 6 is amended---

(a) in subrule (2), by adding "from the deposit made under rule 3(1)" after "compensation";

(b) by adding---

"(2A) Where a person sustains pecuniary loss because of the failure of a dealer, by reason of a default committed in the course of or in connection with the dealer's business of securities margin financing, to perform a legal obligation owed to that person in relation to any money, securities or other property---

(a) which was entrusted to or received by that dealer, or any director, partner or employee of that dealer, for or on behalf of that person; and

(b) to which that person is entitled or in which that person has a beneficial interest (whether existing or contingent),

he shall be entitled to claim compensation from the deposit made under rule 3(2) in accordance with this rule. ";

(c) in subrule (8), by adding "relevant" before "deposit" wherever it appears.

5. Rules added

The following are added---

"6A. Amount to be lodged by registered financiers as security

The amount prescribed for the purpose of section 121K(1) of the Ordinance is a sum of \$2,000,000 to be lodged as security in the form and manner satisfactory to the Commission.

6B. Keeping and investment of security lodged

(1) The Commission shall open one or more accounts at a licensed bank into which it shall pay all sums received from registered financiers by way of security under section 121K(1) of the Ordinance, and shall then ascertain what proportion of those sums ought, in its opinion, to be retained in the accounts to enable liabilities under rule 6E or 6G to be satisfied.

(2) After ascertaining the amount required to be retained under subrule (1), the Commission shall cause the balance of the sums to be invested in such manner as it thinks fit.

(3) Any document relating to the investment of money under subrule (2) may be kept in the office of the Commission or deposited by it for safe keeping with a licensed bank.

(4) Where the Commission has invested the balance of the sums under subrule (2), it shall, as soon as practicable after the end of each financial year, by notice in the Gazette---

(a) declare a rate of interest to be paid for that financial year in respect of each sum lodged under section 121K(1) of the Ordinance;

(b) specify the manner and time of payment of that interest; and

(c) specify an amount to be charged for management expenses incurred by the Commission in administering that sum lodged under section 121K(1) of the Ordinance.

(5) As soon as practicable after the publication of the notice referred to in subrule (4), the Commission shall, after deducting the appropriate amount chargeable in respect of management expenses, pay to each person who has lodged the prescribed sum under section 121K(1) of the Ordinance, or to that person's duly authorized agent or personal representative, the appropriate amount of interest due in respect of that sum for the financial year in question.

6C. Accounts of security lodged under section 121K(1) of the Ordinance

(1) The Commission shall keep proper accounts of all security lodged under section 121K(1) of the Ordinance, and shall in respect of the financial year beginning before and ending after the day on which this rule commences, and in respect of each subsequent financial year, prepare a revenue and expenditure account, and a balance sheet made up to the last day of that year.

(2) The Commission shall appoint an auditor who shall audit the accounts kept under subrule (1) and shall audit and prepare an auditor's report in respect of each revenue and expenditure account and balance sheet prepared under subrule (1) and shall submit the report to the Commission.

6D. Return of security lodged

(1) If any person who has lodged a security under section 121K(1) of the Ordinance ceases to be a registered financier and the security has not been or is not required to be disposed of under rule 6E or 6G, that person, or his duly authorized agent or personal representative, may apply to the Commission for the security to be released to him.

(2) On making an application under subrule (1), the applicant shall---

(a) satisfy the Commission by a statutory declaration---

(i) that he knows of no other person who has made or is entitled to make a claim in respect of the security;

(ii) if he is not the registered financier who lodged the security, that he is entitled to give a good discharge for the security and stating the circumstances in which he is so entitled; and

(b) provide the Commission with such information as will satisfy it that an advertisement in a form approved by it has been inserted once in a daily newspaper in the English language, and once in a daily newspaper in the Chinese language, published and circulating generally in Hong Kong.

(3) The Commission, on being so satisfied, shall cause the security to be released to the applicant.

6E. Winding up of registered financier

If a registered financier is ordered to be wound up by or under the supervision of the Court, the Commission shall pay the security lodged to the liquidator of the registered financier.

6F. Application of security of registered financier by liquidator

(1) Subject to subrule (2), where the Commission pays a security to the liquidator of a registered financier under rule 6E, the liquidator shall apply the security lodged as if the clients of the registered financier in its capacity as a registered financier were the only creditors of the registered financier.

(2) If there are no clients of the registered financier who are its creditors or if their claims against the registered financier have been fully satisfied, the liquidator may apply the security or, as the case may be, the balance of the security for the benefit of any other creditors of the registered financier.

6G. Revocation of certificate of registration of registered financier and

application
of security

(1) If the certificate of registration of a registered financier is revoked, or any director or officer of the registered financier is convicted of an offence necessarily involving a finding that he or it was guilty of a breach of trust, defalcation, fraud, or misfeasance in respect of any money or securities of a person who is a client of the registered financier, the Commission may direct that all or any part of the security be applied for the purpose of compensating persons who established claims as provided in this rule.

(2) Where a person sustains pecuniary loss because of the failure of a registered financier, by reason of a default committed in the course of or in connection with the registered financier's business of securities margin financing, to perform a legal obligation owed to that person in relation to any money, securities or other property---

(a) which was entrusted to or received by that registered financier, or any director, or employee of that registered financier, for or on behalf of that person; and
(b) to which that person is entitled or in which that person has a beneficial interest (whether existing or contingent),

he shall be entitled to claim compensation in accordance with this rule.

(3) The amount which a claimant shall be entitled to claim as compensation is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all money or other benefits received or receivable by him from any source other than the Commission in reduction of the loss.

(4) The Commission shall cause to be published in a daily newspaper in the English language and a daily newspaper in the Chinese language published and circulating generally in Hong Kong a notice in Form 3 prescribed in the Schedule specifying a date, not being earlier than 3 months after publication of the notice, on or before which claims for compensation from the security lodged by the registered financier specified in the notice may be made.

(5) A claim for compensation may be made in writing to the Commission---

(a) if a notice under subrule (4) has been published, on or before the date specified in the notice; or

(b) if no such notice has been published, within 6 months after the claimant became aware of the default.

(6) The Commission shall, subject to these rules and after such inquiry as it thinks fit---

(a) at any time after the commission of the default in respect of which the claim

arose, allow any proper claim made in accordance with subrule (5) and determine the amount payable as compensation; and

(b) disallow any other claim

(7) Where all claims made in accordance with subrule (5) have been dealt with under subrule (6), the Commission shall, as soon as practicable thereafter and subject to subrule (8), authorize payments from the relevant security, in respect of amounts determined under subrule (6), to the persons whose claims have been allowed.

(8) In authorizing payment under subrule (7), the Commission shall have regard to the following---

(a) if only one amount is determined under subrule (6) and that amount does not exceed the security, that amount is payable in full;

(b) if 2 or more amounts are so determined and those amounts together do not exceed the security, those amounts shall be payable in full;

(c) if only one amount is so determined but exceeds the security, only so much of the amount as does not exceed the security shall be payable;

(d) if 2 or more amounts are so determined and those amounts together exceed the security, the total amount payable to all claimants whose claims have been allowed under subrule (6) shall not exceed the amount of the security and each amount so determined shall be abated by the same proportion as the total amounts determined bear to the amount of the security.

(9) If all the claims against the registered financier have been fully satisfied, the Commission shall return the balance of the security to the registered financier.

6H. Prohibition on transfer or withdrawal of security

Except as provided in these rules, no person may transfer or withdraw any security lodged under section 121K(1) of the Ordinance."

6. Change of information

Rule 7 is amended---

(a) by renumbering it as rule 7(1);

(b) by adding---

"(2) The following changes of particulars are prescribed for the purposes of section 121Q(1) and (4) of the Ordinance---

(a) in the case of a registered financier---

(i) any change of business name;

(ii) any change of business address;

(iii) where there is a change in exchange participation or membership of any stock exchange in Hong Kong or elsewhere, the details of such changes;

(iv) where the registered financier becomes a plaintiff or a defendant in any civil litigation, the particulars of the litigation;

(v) where there is a change of the ultimate holding company, details of the change;

(vi) where there is a change in the nominal or issued share capital, details of the change;

(vii) where a winding-up petition is served on the registered financier, details of the petition;

(viii) where an approved director is unable to perform his function, details of the circumstances;

(b) in the case of a registered financier's representative, any change in his business address. "

7. Rule substituted

Rule 9 is repealed and the following substituted---

"9. Notice to be in form provided or approved

A notice under rules 7 and 8 shall be given in a form provided or approved by the Commission. "

8. Certificate of registration to be exhibited

Rule 10 is amended by repealing "Every registered person other than a representative shall" and substituting---

"A person who is---

(a) a registered person other than a representative; or

(b) a registered financier's representative and a director approved under section 121I of the Ordinance,
shall".

9. Schedule amended

The Schedule is amended---

(a) within the square brackets, by adding ", 6G(4)" after "rules 6(4)";

(b) in Form 1---

(i) by repealing "dealing in securities" and substituting "*dealing in securities/providing securities margin financing";

(ii) by adding "*Delete as appropriate" at the left hand bottom;

(c) by adding---

"FORM 3 [rule 6G(4)]

SECURITIES ORDINANCE

(Chapter 333)

SECURITIES (MISCELLANEOUS) RULES

NOTICE CALLING FOR CLAIMS AGAINST SECURITY LODGED

WITH THE SECURITIES AND FUTURES COMMISSION

In the matter

of
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of in Hong Kong.

1. Notice is hereby given that all persons claiming to have sustained pecuniary loss from a default committed in the course of or in connection with the business of the above-named of providing securities margin financing are required to deliver to the Securities and Futures Commission particulars of their claims in writing on or before the of

2. Claims not received by the Commission on or before the date specified in paragraph 1 above will not be admitted and no payment will be paid out of the security lodged in respect of those claims.

Dated this day of
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Chairman,
Securities and Futures Commission".

Andrew SHENG
Chairman,
Securities and Futures Commission
6 April 2000
Explanatory Note

The main objectives of these rules are---

- (a) to prescribe the amount of additional deposit that has to be lodged by an applicant as a registered dealer if he carries on a business of securities margin financing;
- (b) to prescribe the amount to be lodged by a registered financier as security;
- (c) to provide for the keeping, investment, accounting and application of the security;
- (d) to prescribe the change in particulars relating to a registered financier or a registered financier's representative that requires notification to the Securities and Futures Commission; and
- (e) to require a registered financier and an approved director to exhibit his certificate of registration.