

立法會
Legislative Council

LC Paper No. LS32/02-03

**Paper for the House Committee Meeting
on 3 January 2003**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 December 2002**

Date of Tabling in LegCo : 18 December 2002

Amendment to be made by : 15 January 2003 (or 12 February 2003 if
extended by resolution)

**PART I SUBSIDIARY LEGISLATION MADE UNDER SECURITIES
AND FUTURES ORDINANCE (CAP 571)**

Securities and Futures Ordinance (Cap. 571)

- Securities and Futures (Financial Resources) Rules (L.N. 209)**
- Securities and Futures (Keeping of Records) Rules (L.N. 210)**
- Securities and Futures (Accounts and Audit) Rules (L.N. 211)**
- Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (L.N. 212)**
- Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (L.N. 213)**
- Securities and Futures (Licensing and Registration) (Information) Rules (L.N. 214)**
- Securities and Futures (Investor Compensation - Claims) Rules (L.N. 215)**
- Securities and Futures (Miscellaneous) Rules (L.N. 216)**
- Securities and Futures (Stock Market Listing) Rules (L.N. 217)**
- Securities and Futures (Price Stabilizing) Rules (L.N. 218)**
- Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. 219)**
- Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. 220)**
- Securities and Futures (Levy) Order (L.N. 221)**
- Securities and Futures (Levy) Rules (L.N. 222)**
- Securities and Futures (Investor Compensation - Levy) Rules (L.N. 223)**

Securities and Futures (Investor Compensation - Compensation Limits) Rules (L.N. 224)
Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (L.N. 225)
Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 (L.N. 226)
Securities and Futures (Transfer of Functions - Stock Exchange Company) Order (L.N. 227)
Securities and Futures (Fees) Rules (L.N. 228)
Securities and Futures (Disclosure of Interests - Exclusions) Regulation (L.N. 229)
Securities and Futures (Offences and Penalties) Regulation (L.N. 230)
Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 (L.N. 231)

Introductory

These 23 sets of subsidiary legislation are the third batch of subsidiary legislation made under the Securities and Futures Ordinance (Cap. 571) (the Ordinance). The Ordinance was enacted in March 2002 but has not yet commenced operation. One of the reasons for not commencing is that the provisions of the Ordinance have merely provided for the legal framework of the regulatory regime for the financial markets in Hong Kong, leaving detailed rules and regulations necessary for the functioning of the regime to be made by way of subsidiary legislation. The Administration has identified 37 sets of subsidiary legislation that are required to be made before the Ordinance may come into operation. The first and second batches, each consisted of seven sets of subsidiary legislation, had been considered by the House Committee on 6 December and 13 December 2002 respectively.

2. Members may recall that on 22 February 2002, the House Committee decided to establish the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance (the Subcommittee) to study the drafts of the subsidiary legislation in advance of their gazettal.

3. These 23 sets of subsidiary legislation described in the following paragraphs have been studied by the Subcommittee. Members may wish to refer to the relevant paragraphs in the Report of the Subcommittee to the House Committee (Ref: CB(1) 434/02-03) for further information on matters and issues considered by the Subcommittee. (*References to the relevant paragraphs of the Report are provided below in square brackets after the title of each set of subsidiary legislation.*) Members may also refer to the relevant LegCo Brief (referred to in paragraph 67 below) issued by the Securities and Futures Commission (SFC) for further and background information.

4. Prior to the scrutiny by the Subcommittee, public consultation has been conducted in respect of each set of the subsidiary legislation in its draft form, except

the Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 which is considered by the SFC as not involving any policy issue. The conclusions of such public consultations have been published with the written responses of the SFC to the comments received (if any) set out in table form attached as an annex. The SFC has taken into account such comments where it considers appropriate when revising the drafts.

5. The expressions used in the subsidiary legislation are either defined in the relevant subsidiary legislation or in Part 1 of Schedule 1 to the Ordinance.

Securities and Futures (Financial Resources) Rules (L.N. 209) [Para. 55-59]

6. These Rules are made by the SFC under sections 145 and 397 of the Ordinance incorporating the existing Financial Resources Rules (Cap. 24 sub. leg.) and Leveraged Foreign Exchange Trading (Financial Resources) Rules (Cap. 451 sub. leg.). The Rules apply to all licensed corporations conducting one or more types of regulated activities.

7. A licensed corporation must maintain financial resources of the amount required under the Rules. Such financial resources comprise of paid-up share capital and liquid capital. The amount of paid-up share capital required to be maintained by a licensed corporation in respect of each type of regulated activities is specified in Table 1 of Schedule 1 to the Rules. If it engages in more than one regulated activity, then the higher or the highest amount specified in respect of the relevant regulated activities will apply. The amount of liquid capital required to be maintained by a licensed corporation (required liquid capital) in respect of a regulated activity is specified in column 2 of Table 2 of Schedule 1 to the Rules. Where the licensed corporation is engaged in more than one regulated activity, the higher or highest amount specified in respect of the relevant regulated activities will apply. Liquid capital means the amount by which the liquid assets of a licensed corporation exceed its ranking liabilities. The existing net tangible asset requirement applicable specifically to investment advisers is not continued under the new Rules.

8. Liquid capital and required liquid capital are calculated according to sections 8 to 16. Liquid assets are calculated with reference to sections 17 to 35. Ranking liabilities are computed according to sections 36 to 53. The existing requirement of grouping "related securities" in calculating concentration discount factor is not continued under the new Rules. The inclusion of Hang Seng Hong Kong LargeCap Index and Hang Seng Hong Kong MidCap Index in the stratification of shares results in the reduction of haircut percentages for constituent shares of those indices. Client money held in a segregated account with an approved bank incorporated outside Hong Kong is excluded when computing ranking liabilities.

9. A licensed corporation must now report to the SFC within one business day upon becoming aware of the occurrence of any of the events specified in section 55. The new requirement to submit to the SFC quarterly an analysis of (a) a licensed

corporation's clientele; (b) a licensed corporation's proprietary derivative positions; (c) the recognized counterparties of a corporation licensed for type 3 regulated activity, and (d) assets under the management of a corporation licensed for type 9 regulated activity subsumes the existing requirements to make monthly returns on an analysis of margin clients and a monthly report on proprietary derivative positions. For persons deemed to be a licensed corporation under section 25(b) of Part 1 of Schedule 10 of the Ordinance, a transitional period of 6 months is provided.

Securities and Futures (Keeping of Records) Rules (L.N. 210) [Para. 68-73]

10. These Rules are made by the SFC under section 151 of the Ordinance. They incorporate provisions in the existing legislation and extend the application to registered institutions and associated entities of intermediaries.

11. Each intermediary is required to keep accounting, trading and other records relating to its business that constitutes a regulated activity for which it is licensed or registered. In addition to records enabling an intermediary to prepare the profit and loss account and balance sheets, to explain its financial position and business operation, and to account for and trace all movements of client assets that it receives or holds, the Rules also require sufficient records be kept to enable it to reconcile monthly any differences in its balances or positions with its associated entities, recognized exchanges companies, clearing houses, other intermediaries, custodians and banks respectively, and to show how such differences are resolved. Furthermore, sufficient records must be kept to demonstrate the compliance with specified provisions in the Securities and Futures (Client Securities) Rules (L.N. 201 of 2002) and Securities and Futures (Client Money) Rules (L.N. 202 of 2002) and the existence of systems of control to ensure such compliance. Entries in the records must be made in accordance with generally accepted accounting principles.

12. Associated entities are subject to the same requirements except those provisions relating to their financial position and the preparation of financial statements. Particular record keeping requirements are imposed on intermediaries engaged in securities dealing, leveraged foreign exchange trading, asset management, margined transactions and providing financial accommodation .

13. All records must be kept in a manner allowing them to be readily accessible and readily convertible into written form in the Chinese or English language. Unless otherwise specifically stipulated in the Ordinance, the record retention period is generally seven years except that for orders or instructions concerning securities, futures contracts or leveraged foreign exchange contracts, which is two years. Contravention of the Rules may attract criminal penalties.

Securities and Futures (Accounts and Audit) Rules (L.N. 211) [Para.78-79]

14. These Rules made by the SFC incorporate the existing Securities (Accounts and Audit) Rules (Cap. 333 sub. leg.), Commodities Trading (Accounts and

Audit) Rules (Cap. 250 sub. leg.) and Leveraged Foreign Exchange Trading (Accounts and Audit) Rules (Cap. 451 sub. leg.). They prescribe the financial statements and other documents required to be submitted by a licensed corporation and an associated entity of an intermediary to the SFC under the provisions of section 156 of the Ordinance.

15. A licensed corporation is required to submit to the SFC computations, a summary of financial accommodation, and analyses of different clients and assets all made up to the end of the last day of a financial year as specified in the Rules, as well as a business and risk management questionnaire. An associated entity is required to submit its financial statements, an analysis of client assets at the end of a financial year and a business and risk management questionnaire. Upon cessation of carrying on a regulated activity, a licensed corporation is required to submit to the SFC a set of financial statements and a computation of its liquid capital. An associated entity upon ceasing to be such entity must submit to the SFC a set of financial statements and an analysis of client assets.

16. The Rules also specify the matters upon which an auditor is required to give his opinion, and statement of such opinion must be contained in the auditor's report required to be submitted by a licensed corporation or an associated entity of an intermediary to the SFC under section 156 of the Ordinance. An auditor must now assess whether during the financial year in question the licensed corporation or the associated entity had systems of control in place that were adequate to ensure compliance with the specified provisions of the Securities and Futures (Client Securities) Rules (L.N. 201 of 2002) and the Securities and Futures (Client Money) Rules (L.N. 202 of 2002).

Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (L.N. 212) [Para. 74-77]

17. These Rules are made under section 152 of the Ordinance by the SFC incorporating sections 75, 75A and 121Z of the Securities Ordinance (Cap.333) (SO), section 47 of the Commodities Trading Ordinance (Cap. 250), section 4 of the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules (Cap. 451 sub. leg) and provisions in the existing Codes of Conduct for Persons Registered with the SFC and for Fund Managers. The Rules prescribe the manner and circumstances in which contract notes, statements of account and receipts are to be prepared and provided by intermediaries and their associated entities to their clients. An intermediary or associated entity must give written notice to the SFC of any failure to comply with the Rules within one business day of its becoming aware of that fact.

18. The Rules apply to all intermediaries and their associated entities except an intermediary licensed or registered for asset management and its associated entity. Where a client of an intermediary or an associated entity is a professional investor as defined in section 1 of Part 1 of Schedule 1 of the Ordinance, the intermediary or

associated entity is allowed not to provide contract notes, statements of account or receipts to such a client in accordance with the Rules unless the client objects in writing. To reduce compliance costs, an intermediary is allowed to consolidate several contract notes or several statements of account into one single document. Also it is allowed to consolidate contract notes with statements of account into one single document. The time limit for providing a contract note to a client is extended to two business days after the relevant contract is made. At the request of a client, an intermediary is allowed to state only the average price per unit of securities or, for futures contracts, average price per contract in a contract note.

19. To avoid duplication, where two intermediaries are involved in the same contract for a dealing in securities or futures contracts on behalf of the same client, they may by agreement in writing arrange that one of them shall provide all the necessary contract notes or statements of account required under the Rules. The other is then exempted from the compliance with the provision of the Rules. Exemption is also applicable to an intermediary that has arranged with a foreign intermediary which is a related corporation of it to prepare and provide the client of the intermediary notes, statements of account or receipts in accordance with and to the extent required by law of the jurisdiction specified in the Schedule to the Rules under which the foreign intermediary is regulated.

Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (L.N. 213) [Para. 80-83]

20. These Rules are made by the SFC under sections 397 and 398 of the Ordinance. They prescribe for the purpose of section 170(3)(e) of the Ordinance the classes of transactions exempted from the prohibition of short selling under section 170(1) of the Ordinance. They specify the respective circumstances in which section 171(1), (3) or (5) does not apply. They also specify record keeping obligations of a lender under a securities borrowing and lending agreement in respect of any blanket assurance or hold that he has given or any borrow that he has entered into.

21. The exemption from the prohibition against short selling is now extended to all categories of market makers registered with the Stock Exchange of Hong Kong Limited or the Futures Exchange Limited for the purpose of hedging previously acquired risks in securities or futures contracts.

22. The Rules provide exemption from the requirements under section 171(1), (3) and (5) of the Ordinance in respect of short selling order within the meaning of paragraph (a)(i) of the definition of the term in section 1 of Part 1 of Schedule 1 when the following conditions are satisfied:-

- (a) The person making the order is selling as a principal and has borrowed the securities to be sold under a securities lending and borrowing agreement;
- (b) That person has provided his agent with an oral assurance that the counterparty to the agreement has the securities available to lend to him;

- and
- (c) the requisite oral assurance has been :-
- (i) recorded by him or his agent in the form of a time-stamped record of the assurance with prescribed particulars;
 - (ii) recorded by him or his agent in the form of a tape-recording of the assurance; or
 - (iii) confirmed by him in the form of a documentary confirmation of the assurance delivered to his agent by the end of the day on which the assurance is given.

In addition, such records must be kept for not less than one year from the date of making such recording and be produced to the Commission upon request at any time within that period.

Securities and Futures (Licensing and Registration) (Information) Rules (L.N. 214)
[Para. 39-49]

23. These Rules are made by the SFC under sections 128 and 397(1) of the Ordinance. Since the new licensing regime under the Ordinance has abolished the categories of exempted dealer and exempted investment adviser under SO, banks are required to be registered as registered institutions before they may carry on any regulated activities. They are therefore also subject to the Rules.

24. The Rules prescribe -
- (a) the information that an applicant for a licence or registration or any modification, waiver or approval under Part V of the Ordinance is required to provide to the SFC to enable it to consider the application;
 - (b) the matters and changes that are required to be notified to the SFC by the licensed corporations, their substantial shareholders, licensed representatives and registered institutions;
 - (c) the information to be contained in annual returns required to be submitted by persons licensed under section 116 or 120(1) of the Ordinance; and
 - (d) the particulars envisaged under section 136(2)(e) to be entered in the register of licensed persons and registered institutions to be maintained by SFC under section 136(1) of the Ordinance.

The particulars to be entered in the register include each finalized public disciplinary action taken by the SFC against the licensed person or registered institution in Hong Kong. Such record will be kept in the register for five years from the date when the relevant disciplinary action takes effect.

Securities and Futures (Investor Compensation - Claims) Rules (L.N. 215)
[Para. 100-107]

25. These Rules are made under section 244(2) of the Ordinance by the SFC to facilitate the operation of the investor compensation fund (ICF) established under Part XII of the Ordinance. The ICF will replace the existing United Exchange

Compensation Fund and the Futures Exchange Compensation Fund on a date to be appointed by the SFC. It is meant to provide a measure of compensation to clients of intermediaries who have sustained loss by reason of a default of such intermediaries or any of its associated persons in connection with securities or futures contracts listed or traded on a recognized stock market or recognized futures market. The implementation of this new compensation regime also requires the following pieces of subsidiary legislation which have been gazetted as part of this batch:-

- (a) the Securities and Futures (Investor Compensation - Levy) Rules (L.N. 223 of 2002);
- (b) the Securities and Futures (Investor Compensation - Compensation Limits) Rules (L.N. 224 of 2002);
- (c) the Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (L.N. 225 of 2002); and
- (d) the Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 (L.N. 231 of 2002).

26. The Rules delimit and specify the coverage of the ICF by defining or further specifying some of the key terms necessary for the application of the provisions in Part XII of the Ordinance, such as "default", "specified person", "associated person", "qualified client", "related assets" and "specified securities and futures contracts".

27. The Rules prescribe who may make a claim, the manner in which a claim must be made, and how a claim is to be processed and compensation is to be paid. Provisions have also been made for the contingency that the ICF does not have sufficient funds to pay the total compensation payable to the claimants.

Securities and Futures (Miscellaneous) Rules (L.N. 216) [Para. 135-137]

28. These Rules are made by the SFC under section 397(1) of the Ordinance. They prescribe -

- (a) the service of documents on the SFC under the Ordinance generally;
- (b) the requirement for an intermediary to exhibit its licence or certificate of registration in a prominent place at its principal place of business ;
- (c) the obligation of an intermediary or a licensed representative to return his licence or certificate of registration for amendment or cancellation, if the intermediary or licensed representative ceases to carry on the regulated activity for which he is licensed or registered for a period exceeding one month or such longer period as the SFC may approve in writing; and
- (d) for the purposes of section 179 of the Ordinance, three categories of persons to be within the definition of "auditor" in section 1 of Part 1 of Schedule 1 to the Ordinance.

Securities and Futures (Stock Market Listing) Rules (L.N. 217) [Para. 11-16]

29. These Rules are made by the SFC under section 36(1) of the Ordinance after consultation with the Financial Secretary and the Stock Exchange of Hong Kong Limited. They incorporate the existing Securities (Stock Exchange Listing) Rules (Cap. 333 sub. leg.) and Securities (Stock Exchange Listing)(Approved Share Registrar) Rules (Cap. 333 sub. leg.) and include the new provisions described below.

30. The Rules now require an applicant to file a copy of its application for the listing of securities with the SFC within one business day after it has submitted the application to a recognized exchange company. The SFC may, by notice served on the applicant within ten business days of the filing of the application, request further information as it may reasonably require to be supplied. The SFC is also empowered to object to the listing or impose such conditions as it may think fit within 10 business days of the filing of the relevant application or from the receipt of the further information requested.

31. The Rules further prescribe that an issuer of listed securities must file with the SFC a copy of any announcement, statement, circular or other document made or issued by it or on its behalf to the public, or persons comprising members of the public, pursuant to any rules and requirements of a recognized stock exchange company or any applicable statutory provision, or according to any terms of any listing agreement. A person governed by any codes made under section 399(2)(a) and (b) of the Ordinance has the same filing obligation in respect of any announcement, statement, circular or other document issued or made pursuant to the requirement of any such codes. The requisite filing must be done within one business day after the relevant document has been made or issued.

Securities and Futures (Price Stabilizing) Rules (L.N. 218) [Para. 110-114]

32. These Rules are made by the SFC under sections 282 and 306 of the Ordinance after consultation with the Financial Secretary. Sections 282(1) and 306(1) respectively provide that any conduct that is done according to the rules made by the SFC under subsection (2) of that section is not to be regarded as market misconduct. The Rules seek to prescribe a "safe harbour" for price stabilizing actions. Price stabilization actions are transactions made with the sole purpose of maintaining the price of securities at a certain level despite the natural supply and demand of the securities in the market. Unless they are within the Rules, price stabilizing actions would be market misconduct because they are manipulative and distort the market price.

33. The Rules only permit price stabilizing actions in respect of securities or debt securities or the depository receipts of them (the relevant securities) which are the subject of an public offer for cash of a value not less than \$100 million (or its equivalent in foreign currency) at a price payable in Hong Kong dollars or a foreign currency. There are other conditions to be satisfied, including:-

- (a) the relevant securities must be traded or admitted to trading on a recognized stock market or by means of authorized automated trading services (authorized ATS) or an application for such trading has been made in respect of them ; and
- (b) unless specifically exempted under the Companies Ordinance, the offer must be contained in a prospectus or a document authorized by the SFC.

34. The Rules envisage that one single stabilizing manager is appointed to be responsible for all matters relating to the stabilizing actions and for the compliance with the requirements of the Rules. He may appoint an agent but both are prohibited from entering into transactions as principals with each another. The period within which stabilizing actions may be taken is limited to that beginning on the earlier of the commencement of trading of the relevant securities on a recognized stock market or by means of authorized ATS or on a specified stock exchange outside Hong Kong and ending on earlier of the 30th day after the closing date or the commencement of trading on a recognized stock market.

35. The Rules require disclosure of price stabilizing actions before as well as after such actions are taken. They also prescribe the circumstances under which price stabilizing actions are not allowed and set limits for prices of equity securities that may be supported by a stabilizing action. All actions taken must be recorded with details of each transaction in a register that must be kept in Hong Kong for not less than seven years and be available for inspection by the SFC at any time or any offeror upon notice within three months after the end of the stabilizing period.

36. The Rules further permit price stabilizing actions to be taken overseas for the stabilizing of the price of the relevant securities on overseas markets in accordance with the stabilizing rules in jurisdictions specified in Schedule 4 to the Rules. The SFC has yet to specify the overseas jurisdictions under that Schedule.

Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. 219) [Para. 118-121]

37. These Rules are made by the SFC under section 377 of the Ordinance after consultation with the Financial Secretary. Under Part XV of the Ordinance, persons having notifiable interests, directors and chief executives of listed corporations are required to disclose their interests in shares of listed corporations. As a result, persons engaged in securities borrowing and lending (SBL) business are obliged to make large number of disclosures arising from the frequent lending and return of shares of listed corporations. The Rules seek to limit the disclosure requirements in respect of specified SBL transactions.

38. The Rules exempt a person from duty of disclosure under Part XV of the Ordinance in respect of shares transferred or delivered by him to an approved lending agent (ALA) for no other purpose than the holding of such shares for lending as his

agent under a SBL agreement containing the listed requisite provisions. These requisite provisions are: (a) the borrower of shares must deliver to the lender collateral of a value exceeding the market value of the shares lent as security for their return; (b) the borrower has to provide additional collateral if the value of the collateral is less than the market value of the shares lent (both values are marked to market on a daily basis); and (c) the lender can require the return of the shares lent at any time. An ALA is also exempted from the duty of disclosure under Part XV of the Ordinance regarding all SBL transactions in respect of such shares. It is further exempted from the need to notify the person for whom it acts as agent in respect of any lending or return of his shares.

39. The Rules empower the SFC to approve a corporation as an ALA for the purposes of the Rules. An ALA is required to keep records of every SBL transaction including the cessation of its subsisting right to require the return of the shares lent, the delivery or transfer of shares to it for lending as ALA, and the return of such shares to the person authorizing it to act as his agent. Such records must be kept for not less than three years and be provided to the SFC within five business days of its request.

40. Section 323 of the Ordinance provides, inter alia, that interests or class of interests or short positions or class of short positions prescribed by the Rules made under section 377 of the Ordinance may be disregarded for the purposes of Divisions 2 to 4 of Part XV of the Ordinance. The Rules prescribe a regulated person's interest or short position in any shares arising from a borrowing or return under a SBL agreement (containing the requisite provisions described in paragraph 38 above) for the sole purpose of lending or return within 5 business day as interest or short position to be disregarded pursuant to the provisions of section 323 of the Ordinance. A regulated person must keep record of every such borrowing and return as well as the subsequent use or non-use of the shares borrowed or returned. Such records must be made within three business days of the occurrence of the event and be kept for not less than three years. The SFC may request such records to be provided to it at any time within the three year period.

Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. 220)
[Para. 19-21]

41. These Rules are made by the SFC under section 35(1) of the Ordinance and the Financial Secretary has been consulted on those of the Rules made under section 35(1)(e). They incorporate the existing Securities (Exchange - Traded Stock Options) Rules (Cap. 333 sub. leg.) and the Commodities Trading (Trading Limits and Position Limits) Rules (Cap. 250 sub. leg.). No new policy has been introduced.

42. The Rules have increased the reportable positions prescribed for the Hang Seng Index and Mini-Hang Seng Index futures and options contracts from 250 to 500 and from 1250 to 2500 respectively. The other prescribed position limits and reportable positions remain unchanged.

Securities and Futures (Levy) Order (L.N. 221) [Para. 122]

43. This Order is made by the Chief Executive (CE) in Council under section 394 of the Ordinance. It incorporate the existing Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 sub. leg.) and Securities and Futures Commission (Levy) (Futures Contracts) Order (Cap. 24 sub. leg.). The levy is payable to SFC by sellers and purchasers of securities and futures contracts to meet the SFC's operational expenses.

44. The Order sets out the rate of levy applicable to the sale and purchase of securities recorded on a recognized stock market or notified to a recognized exchange company (including stock options, pilot programme securities and exchange traded funds) or futures contracts traded on a recognized futures market (including stock futures contracts, new futures contracts, currency futures contracts, Mini-Hang Seng Index Futures Contracts and Mini-Hang Seng Index Options Contracts). The levy for the last mentioned new product is specified for the first time and is set at \$0.20 per contract for each of the seller and purchaser.

Securities and Futures (Levy) Rules (L.N. 222) [Para.123-125]

45. These Rules are made by the CE in Council under section 394 of the Ordinance and largely replicate the existing Securities and Futures Commission (Levy) Rules (Cap. 24 sub. leg.). They prescribe the manner in which payment of levies must be made and impose charges for late payment of such levies. They also provide for the keeping, examination and audit of accounts of recognized exchange companies relating to the collection and payment of such levies. There is no change in policy.

Securities and Futures (Investor Compensation - Levy) Rules (L.N. 223) [Para. 94-97]

46. These Rules are made by the CE in Council under section 244(1) of the Ordinance and are entirely new. The levy is for the funding of the ICF established under section 236 of the Ordinance. It will replace the existing rates of levy subsumed in the levy respectively imposed under the Securities and Futures Commission (Levy) (Securities) Order (Cap. 24 sub. leg.) and Securities and Futures Commission (Levy) (Futures Contracts) Order (Cap. 24 sub. leg.).

47. The Rules prescribe the following rates of levy:-

for a sale and purchase of	levy to be paid by seller	levy to be paid by purchaser	levy to be paid by market maker
securities	0.002% of consideration	0.002% of consideration	Not applicable
a stock option	Nil	Nil	Nil
pilot programme securities	0.002% of consideration	0.002% of consideration	0%

exchange traded funds	0.002% of consideration	0.002% of consideration	0%
a futures contract	\$0.50	\$0.50	Not applicable
a Mini-Hang Seng Index Futures Contract or a Mini-Hang Seng Index Options Contract	\$0.10	\$0.10	Not applicable
a stock futures contract or an option on such contract	\$0.10	\$0.10	Not applicable

48. The levy is to be paid to the Stock Exchange Company or, as the case may be, the Futures Exchange Company on behalf of the SFC. The Exchange Companies shall remit the amount of levy collected to the SFC on the 15th day of each month. Pending the remittance, the amount collected shall be deposited with a bank within the meaning of the Banking Ordinance (Cap. 155). The Exchange Companies has to keep proper accounts and make returns in respect of each remittance. For each period of 12 months ending on 31 March each year, each of the Exchange Companies has to make a report to the SFC certifying that all its returns and remittances during the period were made in accordance with the Rules.

49. The Rules also provide for incidental matters such as refund of levy paid, the SFC's right to recover unpaid levy as a civil debt and to request by written notice information relating to the collection, deposit and remittance of levies.

Securities and Futures (Investor Compensation - Compensation Limits) Rules (L.N. 224) [Para. 98-99]

50. These Rules are made by the CE in Council under section 244(1) of the Ordinance and are entirely new. They set the upper limits of compensation payable under the new ICF established under section 236 of the Ordinance.

51. The Rules prescribe the following limits:-

for loss sustained in relation to	total amount payable
securities listed or traded, or to be listed or traded, on a recognized stock market and related assets of such securities	\$150,000
any futures contracts traded on a recognized futures market and related assets of such futures contracts	\$150,000

The two amounts are not mutually exclusive. Hence, the effective highest amount of compensation payable under the new investor compensation scheme will be \$300,000.

Securities and Futures (Transfer of Functions - Investor Compensation Company) Order (L.N. 225) [Para. 108-109]

52. This Order is made by the CE in Council at the request of the SFC under section 80 of the Ordinance and is entirely new. Section 80 empowers the CE in Council to make order at the SFC's request to transfer such functions to a recognized investor compensation company (ICC) as the SFC is satisfied that the recognized ICC is willing and able to perform.

53. The Order transfers to the Investor Compensation Company Limited the functions of the SFC specified in the Schedule to the Order, including the management and administration of the ICF and the management and processing of claims made under the Securities and Futures (Investor Compensation - Claims) Rules (L.N. 215 of 2002). The transfer is subject to restrictions stipulate in the Order.

Securities and Futures Ordinance (Amendment of Schedule 10) Order 2002 (L.N. 226) [Para. 144-146]

54. This order is made by the CE in Council at the request of the SFC under section 409 of the Ordinance and is entirely new. Section 409 of the Ordinance empowers the CE in Council to amend, by order published in the Gazette, Schedule 10 to the Ordinance. The Order amends Part 2 of Schedule 10 which stipulates the consequential amendments to other ordinances and subsidiary legislation necessitated by the enactment of the Ordinance.

55. The Order adds as item 18A in Part 2 of Schedule 10 two amendments to the Prevention of Bribery Ordinance (Cap. 201) (POBO). They are, namely, the adding of a reference to a company recognized as an investor compensation company under section 79(1) of the Ordinance as item 99 in Schedule 1 to the POBO, and the adding of the same reference in Schedule 2 as item 7. The effect is that a recognized investor compensation company is specified as a public body for the purposes of the POBO so that the ordinance applies to it.

Securities and Futures (Transfer of Functions - Stock Exchange Company) Order (L.N. 227) [Para. 17-18]

56. This Order is made by the CE in Council at the request of the SFC under section 25 of the Ordinance. It replicates the existing Securities and Futures Commission (Transfer of Functions) Order (Cap. 24 sub. leg.) except that the reference to "mutual fund corporation" is replaced by "collective investment scheme" in conformity with the terminology used in the Ordinance. There is no change in policy.

**Securities and Futures (Fees) Rules (L.N. 228) [Para. 126-134]*

57. These Rules are made by the CE in Council under section 395 of the Ordinance after consultation with the SFC. They provide for payment of fees to the SFC in respect of:-

- (a) an application to the SFC under or pursuant to any provisions of the Ordinance; and
- (b) other functions performed by the SFC, whether through a committee set up under section 8 of the Ordinance or otherwise, under the Ordinance.

Provisions, excepting the amounts of fees, contained in the existing Securities and Futures Commission (Fees) Rules (Cap. 24 sub. leg.) and the Leverage Foreign Exchange Trading (Fees) Rules (Cap. 451 sub. leg.) are incorporated where appropriate.

58. Since the Ordinance inaugurates a new licensing scheme under which each of the licensed corporations and licensed representatives will have one single licence for different types of regulated activities and each authorized institution will have to be registered, the fees structure has been revamped. A number of new fees have been introduced. Otherwise there is no significant change of policy. Members may wish to refer to Annex M to the LegCo Brief on L.N. 221 to L.N. 231 (issued by the SFC and dated 13 December 2002) for a comparison of the fees prescribed under the Rules and the existing fees set out in table form.

Securities and Futures (Disclosure of Interests - Exclusions) Regulation (L.N. 230 [Para. 115-117])

59. This Regulation is made by the Chief Executive in Council under section 376(1) of the Ordinance. It prescribes for sections 323(1)(j) and 346(1)(e) of the Ordinance interests or class of interests, and short positions or class of short positions that shall be disregarded for the purposes of Divisions 2 to 4 of Part XV of the Ordinance. That means that such interests and short positions will not be included in determining the interests or the level of holding or any change in such level or nature of interests in any listed shares or debentures that otherwise would give rise to an obligation to disclose under Part XV.

60. The Regulation has absorbed the existing Securities (Disclosure of Interests)(Exclusions) Regulations (Cap. 396 sub. leg.). Since the new disclosure regime under Part XV covers short positions and changes in the nature of interests in shares or debentures held by persons having a notifiable interest, directors and executives, the scope of exclusions is extended to such change in the nature of interests and short positions. The exclusion is also extended to interests and short positions that an intermediary licensed or registered for dealings in securities or dealings in futures contracts has by virtue of its entering into an exchange contract on behalf of its client and in respect of such exchange contract it has entered into a back

* Prescription of new fees

to back contract on identical terms with its client.

61. When a person, other than a director or a chief executive of a listed corporation, who has notifiable interest in the shares of the relevant share capital of a listed corporation, has entered into a contract to sell shares comprised in such interests but has not yet completed the sale, there is a change in the nature of his interests in shares and he is required to disclose such change. The Regulation now excludes such person from the disclosure requirement if he is required under the contract to deliver the shares sold to the purchaser within four trading days after the date of the contract.

Securities and Futures (Offences and Penalties) Regulation (L.N. 230) [Para. 138-140]

62. This Regulation is made by the CE in Council under section 398(6) of the Ordinance and is entirely new. Section 398(6) empowers the CE in Council to make regulation to specify the contravention of any rules made by the SFC to be an offence and to provide for the applicable penalties.

63. The Regulation specifies the contravention, without reasonable excuse, of each of the sections 3(1) (to exhibit the certificate of licence or registration), 4(1) (to return the certificate of licence or registration to the SFC for amendment or cancellation) , 4(2) (to return the certificate of licence or registration to the SFC for amendment after variation of regulated activity specified) and 4(3) (to return the certificate of licence or registration to the SFC for amendment within 7 business days after the date of the notice requiring the return) of the Securities and Futures (Miscellaneous) Rules (L.N. 216 of 2002) as an offence. The applicable penalty is a fine at level 5 for contravening section 3(1) and a fine at level 6 for the other offences.

Securities and Futures Ordinance (Amendment of Schedule 8) Order 2002 (L.N. 231) [Para. 141-143]

64. This Order is made by the CE in Council under section 234 of the Ordinance and is entirely new. Section 234 of the Ordinance empowers the CE in Council to amend Parts 2 and 3 of Schedule 8 to the Ordinance. Division 1 of Part 2 of the Schedule 8 lists the specified decisions made by the SFC from which appeal lies to the Securities and Futures Appeals Tribunal (SFAT). Division 3 lists specified decisions made by the SFC or recognized ICC from which appeal lies to the SFAT. As a result of subsidiary legislation made under the Ordinance, it is necessary to specify by this Order certain decisions made by the SFC or the ICC as appealable to the SFAT.

65. The Order adds the following items to Part 2 of the Schedule 8:-

in	as item	Provision	Description of Decision
Division 1	73	Section 6(2) of the Securities and Futures (Stock Market Listing) Rules (L.N. 217 Of 2002)	Objection to a listing of securities
Ditto	74	Section 6(3)(b) of the above Rules	Imposition of any condition
Ditto	75	Section 8(3) of the Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. 219 of 2002)	Refusal to approve a corporation as an approved lending agent
Ditto	76	Section 8(4) of the above Rules	Imposition of any condition
Ditto	77	Section 8(6) of the above Rules	Withdrawal of an approval
Ditto	78	Section 4(4)(c) of the Securities and Futures (Contract Limits and Reportable Positions) Rules (L.N. 220 of 2002)	Refusal to give notice
Division 3	1	Section 4(4) of the Securities and Futures (Investor Compensation - Claims) Rules (L.N. 215 of 2002)	Refusal to determine that a claim which is lodged within the time limit provided in section 4(3) of the Rules described in the adjacent column is not barred.
Ditto	2	Section 7(1)(a), (b), or (c) of the above Rules	Determination of existence of default, date of default or the claimant's entitlement to compensation
Ditto	3	Section 7(2) of the above Rules	Determination of a provisional amount of compensation
Ditto	4	Section 9(3) of the above Rules	Aggregation of separate claims or parts of those claims

66. Some of the above decisions will take effect immediately notwithstanding any pending appeals. They are added by the Order Part 3 of the Schedule 8:-

in	as item	Description of decision	Provision
Division 5	16	A specific decision set out in item 73 of Division 1 of Part 2	Section 6(5) of the Securities and Futures (Stock Market Listing) Rules (L.N. 217 of 2002)
Ditto	17	A specific decision set out in item 74 of Division 1 of Part 2	Ditto

LegCo Briefs

67. The SFC has issued a LegCo Brief in respect of each item of the above subsidiary legislation, all dated 13 December 2002. Members may wish to refer to them for further information.

Commencement

68. All the above subsidiary legislation will only come into operation upon the commencement of the Ordinance. The Administration has announced that the Ordinance will come into operation on 1 April 2003.

Conclusion

69. Both the contents of and the underlying policies reflected in the above Rules have the support of the Subcommittee. The Legal Service Division has made some observations and recommendations on the drafting of the Chinese text. The Administration is still considering our recommendations. A further report will be made in due course.

PART II COMMENCEMENT NOTICES

**Public Health and Municipal Services Ordinance (Cap. 132)
Harmful Substances in Food (Amendment) Regulation 2001 (L.N.148 of 2001)
(Commencement) Notice 2002 (L.N. 232)**

**Public Health (Animals and Birds) Ordinance (Cap. 139)
Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139
sub. leg.) (Commencement) Notice 2002 (L.N. 233)**

70. By L.N. 232, the Director of Food and Environmental Hygiene appoints 31 January 2003 as the day on which section 6 (insofar as it relates to the substitution of items 6, 13, 14, 20, 21, 24, 27, 33 and 37 of the new First Schedule) of the Harmful

Substances in Food (Amendment) Regulation 2001 (L.N.148 of 2001) shall come into operation.

71. The effect of L.N. 232 is that the control of the nine agricultural and veterinary chemicals prescribed in the new First Schedule will commence operation. A person who imports, consigns, delivers, manufacturers or sells, for human consumption, the food specified in that Schedule which contains any of the nine chemicals in greater concentration than is specified in that Schedule commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

72. By L.N. 233, the Secretary for Health, Welfare and Food appoints 31 January 2003 as the day on which the Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139 sub. leg.) shall come into operation insofar as it relates to -

- (a) items 5, 12, 13, 18, 19, 22, 25, 31 and 35 of Schedule 2; and
- (b) items 10, 18 and 21 of Schedule 3.

The items in Schedules 2 and 3 that would take effect are the same agricultural and veterinary chemicals referred to in L.N. 232. A food animal farmer or a food animal trader who supplies food animals or milk containing these chemicals exceeding the maximum residue limits specified in the Schedules commits an offence.

73. Members may refer to the LegCo Brief (File Ref.: HWF(F)6/12/17) issued by the Health, Welfare and Food Bureau in December 2002 for details. This is the second phase implementation of the two Regulations. The first phase implementation of the control over the use of 17 chemicals came into effect on 31 December 2001. According to the LegCo Brief, the Administration needs more time to arrange for the necessary technical support and it is intended that the control of the remaining 18 chemicals will commence in 2003.

Prepared by
KAU Kin-wah (Legal Notices No. 209 to No. 231)
HO Ying-chu Anita (Legal Notices No. 232 to No.233)
Assistant Legal Advisers
Legislative Council Secretariat
31 December 2002