

LEGISLATIVE COUNCIL BRIEF

SECURITIES AND FUTURES ORDINANCE (CAP. 571)

SECURITIES AND FUTURES (PRICE STABILIZING) (AMENDMENT)

RULES 2004

INTRODUCTION

1. Pursuant to sections 282 and 306 of the Securities and Futures Ordinance (Cap. 571) (“**SFO**”) and after consultation with the Financial Secretary, the Securities and Futures Commission (“**SFC**”) has made the Securities and Futures (Price Stabilizing) (Amendment) Rules 2004 (“**Amendment Rules**”) at the Annex.

BACKGROUND AND ARGUMENT

2. The Amendment Rules amend section 3(d)(ii)(A)(II) of the Securities and Futures (Price Stabilizing) Rules (Cap. 571W) (“**the Price Stabilizing Rules**”). The amendment arises from the proposed repeal of section 3 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32L) (“**CO Exemption Notice**”).¹

3. The Price Stabilizing Rules exclude certain price stabilizing action from the application of the market misconduct provisions in Parts XIII and XIV of the SFO. Section 3 specifies the application of the rules. Subsection 3(d)(ii)(A)(II) provides that price stabilizing action may be taken in respect of relevant securities that are offered for cash, if, among other things, the offer is one to which the exemption under section 3 of the CO Exemption Notice applies.

¹ That repeal is embodied in the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2004 which is scheduled to be gazetted and tabled before members at the same time as the Amendment Rules.

4. The exemption under section 3 of the CO Exemption Notice is basically a professional investors' exemption – it applies to offers of shares or debentures in a Hong Kong company to “*persons whose ordinary business is to buy or sell shares or debentures whether as principal or agent*”, and exempts such companies and their prospectuses from compliance with some of the prospectus-related requirements under the Companies Ordinance (“**CO**”).

5. Section 3 of the CO Exemption Notice will become redundant once Schedule 1 to the Companies (Amendment) Ordinance 2004 (Ord. No. 30 of 2004) comes into operation.² That ordinance introduces amendments to exclude 12 categories of offers (specified in Part 1 of the new Seventeenth Schedule to the CO) from the entire prospectus regime. The result is that documents relating to such offers will be exempted from all prospectus-related requirements under the CO.

6. The 12 categories include offers to “*professional investors*” within the meaning of the SFO. The SFO defines “*professional investors*” to include a wide and specific range of investors who are either in the business of buying and selling shares or debentures or hold portfolios of not less than HK\$8 million. Section 3 of the CO Exemption Notice will therefore be superseded and become redundant when the Companies (Amendment) Ordinance 2004 comes into operation.

7. The SFC has therefore made the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2004 to repeal section 3 of the CO Exemption Notice.

8. With the repeal of section 3 of the CO Exemption Notice, it is necessary to amend section 3(d)(ii)(A)(II) of the Price Stabilizing Rules so that it refers to offers to “*professional investors*” instead of offers to which the exemption under section 3 of the CO Exemption Notice applies.

² The ordinance was gazetted on 23 July 2004. The commencement notice in respect of Schedule 1 was gazetted on 8 October 2004, appointing 3 December 2004 as the date of operation of Schedule 1.

9. The amendment is technical and straightforward in that it simply aligns references to “*professional investors*” in subsidiary legislation made under the SFO with those in the CO. The Price Stabilization Rules will continue to apply to secondary market offerings to professional investors, the only difference being that the more specific definition of “*professional investors*” used in both the SFO and the CO will apply.

THE AMENDMENT RULES

10. The Amendment Rules amend section 3(d)(ii)(A)(II) of the Price Stabilizing Rules by substituting the reference there to offers to which the exemption under section 3 of the CO Exemption Notice applies with a reference to offers that fall within section 1 of Part 1 of the Seventeenth Schedule to the CO (ie offers to “*professional investors*” as defined in the SFO).

PUBLIC CONSULTATION

11. As the amendment is technical and straight forward, and involves no change of substance to the Price Stabilizing Rules, the SFC considers it unnecessary to conduct public consultation under section 398 of the SFO. The SFC conducted a public consultation on the repeal of sections 3 and 7 of the CO Exemption Notice in August 2004. It received four responses and all expressed support for the proposed repeal.

FINANCIAL AND STAFFING IMPLICATIONS

12. There are no financial or staffing implications for the Government.

COMMENCEMENT DATE

13. The Amendment Rules shall come into operation on 7 January 2005.

PUBLICITY

14. The Amendment Rules will be published in the Gazette on 12 November 2004. The SFC will issue a press release on the same day to publicise the amendment made to the Price Stabilizing Rules.

ENQUIRIES

15. For any enquiries on this brief, please contact Ms Sonia Leung, Senior Manager of the Corporate Finance Division of the SFC at 2283 6170 or Ms Lisa Chen, Counsel of the Legal Services Division of the SFC at 2283 6183.

Securities and Futures Commission

8 November 2004

**SECURITIES AND FUTURES (PRICE STABILIZING) (AMENDMENT)
RULES 2004**

(Made by the Securities and Futures Commission under sections 282 and 306 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary)


1. Commencement

These Rules shall come into operation on 7 January 2005.

2. Application

Section 3(d)(ii)(A)(II) of the Securities and Futures (Price Stabilizing) Rules (Cap. 571 sub. leg. W) is repealed and the following substituted –

“(II) as specified in section 1 of Part 1 of the Seventeenth Schedule to the Companies Ordinance (Cap. 32) as read with the other Parts of that Schedule;”.


Andrew Len Tao SHING
Chairman,
Securities and Futures Commission

8 November 2004

Explanatory Note

These Rules are made by the Securities and Futures Commission under sections 282 and 306 of the Securities and Futures Ordinance (Cap. 571). The amendment stems from the repeal of section 3 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) which is currently referred to in section 3(d)(ii)(A)(II) of the Securities and Futures (Price Stabilizing) Rules (Cap. 571 sub. leg. W) and seeks to introduce a reference to the relevant offer as specified in section 1 of Part 1 of the Seventeenth Schedule to the Companies Ordinance (Cap. 32).