

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF SCHEDULE 5) NOTICE 2005

INTRODUCTION

According to section 142 of the Securities and Futures Ordinance (“SFO”), the Financial Secretary may by notice published in the Gazette, amend Schedule 5 of the SFO. The Securities and Futures Ordinance (Amendment of Schedule 5) Notice 2005 (“Amendment Notice”) made by the Financial Secretary (at **Annex**) will be published in the Gazette on 11 November 2005.

JUSTIFICATIONS

2. The Amendment Notice seeks to amend the definitions of some of the regulated activities under Part 2 of Schedule 5 to the SFO in order to keep up with the development of the securities and futures industry and to address market concerns.

THE AMENDMENT NOTICE

3. Schedule 5 to the SFO sets out nine types of activities¹ regulated by the Securities and Futures Commission (“SFC”) and the related definitions concerning the licensing and registration matters of those regulated activities. Under the Amendment Notice -

- (a) **Clause 2(a) and (b) amends the definitions of “advising on futures contracts” and “advising on securities” so that the giving of advice by a person who is licensed or registered for Type 9 regulated activity, solely for the purposes of carrying on securities or futures contracts management under a collective**

¹ The nine types of regulated activities are (1) dealing in securities, (2) dealing in futures contracts, (3) leveraged foreign exchange trading, (4) advising on securities, (5) advising on futures contracts, (6) advising on corporate finance, (7) providing automated trading services, (8) securities margin financing, and (9) asset management.

investment scheme² (“CIS”) is to be excluded from the definitions.

The objective of this proposed amendment is to exempt the incidental advice of fund managers that manage their own CIS, if the advisory activities are conducted solely for the purpose of carrying on Type 9 regulated activity and are in relation to their managed CIS. This is because such fund managers will already be well versed in the characteristics and risk aspects of the CIS under their management. Thus, it is not necessary to additionally require these licensees of Type 9 regulated activity to be licensed for Types 4 and 5 regulated activities.

- (b) Clause 2(d) amends the definition of “dealing in securities” so that in a case where all parties to the dealing concerned are authorized financial institutions and the dealing is by an approved money broker who represents each of the parties concerned, the dealing is to be excluded from the definition.**

Currently, dealings in securities by approved money brokers are subject to the regulation by the Hong Kong Monetary Authority and supervision under the Banking Ordinance (Cap. 155). The proposed amendment will remove approved money brokers from being regulated under the SFO, if their dealings in securities are conducted for authorized financial institutions.

- (c) Clause 2(c) and (f) amends the definition of “asset management” to become “securities or futures contracts management” and introduces a new definition of “real estate investment scheme management”. These two kinds of investment management constitute the newly defined “asset management”.**

The present definition of “asset management” does not explicitly specify real estate investment scheme management. The proposed amendment aims at keeping pace with the latest industry development, namely the introduction of Real Estate Investment Trusts (“REITs”). Under the proposed amendment, fund managers of authorized REITs will explicitly be required to be licensed by the SFC for Type 9 regulated activity.

² The term “collective investment scheme” is defined under Part 1 of Schedule 1 to the SFO.

LEGISLATIVE TIMETABLE

4. The legislative timetable is as follows –

Publication in the Gazette	11 November 2005
Tabling at Legislative Council	16 November 2005
Commencement of the Amendment Notice	6 January 2006

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

5. There are no financial and civil service implications to the Government as the SFC, which is responsible for administering the licensing regime under the SFO, is an independent statutory body financed by transaction levies, fees and charges on services rendered to market operators and participants as provided in the SFO.

Other implications

6. The proposed amendments will allow the regulatory regime to keep pace with the latest developments in the securities and futures industry, and hence will be conducive to the growth of the industry. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the existing provisions of the SFO and its subsidiary legislation. It has no environmental or sustainability implications.

PUBLIC CONSULTATION

7. In February 2005, the SFC conducted a public consultation, and the majority of the respondents were supportive of the proposed amendments.

PUBLICITY

8. A press release will be issued today (9 November 2005). A spokesman will be available to handle enquiries.

ENQUIRIES

9. Enquiries on this brief should be addressed to Miss Alice Cheung, Principal Assistant Secretary for Financial Services and the Treasury (telephone number: 2528 9161) or Mr Chung Hing Hing, Associate Director of Licensing of the Securities and Futures Commission (telephone number: 2842 7679).

Financial Services Branch
Financial Services and the Treasury Bureau
9 November 2005

**SECURITIES AND FUTURES ORDINANCE (AMENDMENT OF
SCHEDULE 5) NOTICE 2005**

(Made by the Financial Secretary under section 142 of the
Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Notice shall come into operation on 6 January 2006.

2. Regulated activities

Part 2 of Schedule 5 to the Securities and Futures Ordinance
(Cap. 571) is amended -

(a) in the definition of "advising on futures
contracts", by adding -

"(iva) a person -

(A) who is licensed or registered for
Type 9 regulated activity;

(B) who provides a service of managing
a portfolio of futures contracts
under a collective investment
scheme for another person; and

(C) who gives such advice or issues
such analyses or reports solely
for the purposes of providing the
service described in subparagraph
(B);";

(b) in the definition of "advising on securities", by
adding -

"(iva) a person -

- (A) who is licensed or registered for Type 9 regulated activity;
- (B) who provides a service of managing a portfolio of securities under a collective investment scheme for another person; and
- (C) who gives such advice or issues such analyses or reports solely for the purposes of providing the service described in subparagraph (B);”;

(c) in the definition of “asset management” -

- (i) by repealing ““asset management” (資產管理)” and substituting ““securities or futures contracts management” (證券或期貨合約管理)”;
- (ii) in paragraph (h), by repealing the semicolon and substituting a full stop;

(d) in the definition of “dealing in securities” -

- (i) in paragraph (xiii), by repealing “or” at the end;
- (ii) in paragraph (xiv), by adding “or” at the end;
- (iii) by adding -
 - “(xv) in any case where each of the parties to the transaction or proposed transaction under

which securities are or will be acquired, disposed of, subscribed for or underwritten as described in paragraph (a) is an authorized financial institution, is an approved money broker within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) and performs the act for each of the parties to the transaction or proposed transaction;”;

(e) in the definition of “securities margin financing”, in paragraph (vii), by repealing the full stop and substituting a semicolon;

(f) by adding -

““asset management” (資產管理) means -

(a) real estate investment scheme management; or

(b) securities or futures contracts management;

“real estate investment scheme management” (房

地產投資計劃管理), in relation to a person, means providing a service of operating a collective investment scheme for another person by the person, where -

(a) the property that is being

- managed under the scheme
- consists primarily of
- immovable property; and
- (b) the scheme is authorized under
- section 104 of this Ordinance;”.

Financial Secretary

3 November 2005

Explanatory Note

This Notice amends Part 2 of Schedule 5 to the Securities and Futures Ordinance (Cap. 571) as follows –

- (a) the definitions of “advising on futures contracts” and “advising on securities” are amended so that the giving of advice by a person, who is licensed or registered for Type 9 regulated activity, solely for the purposes of carrying on securities or futures contracts management, as the case may be, under a collective investment scheme is to be excluded from the definitions;
- (b) the definition of “asset management” is amended to become “securities or futures contracts management” and a new definition of “real estate investment scheme management” is introduced. These 2 kinds of

investment management then constitute the newly defined "asset management"; and

- (c) the definition of "dealing in securities" is amended so that in a case where all parties to the dealing concerned are authorized financial institutions and the dealing is by an approved money broker who represents each of the parties concerned, the dealing is to be excluded from the definition.