

**Legislative Council Panel on Financial Affairs**

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

**Purpose**

This paper informs Members that the Securities and Futures Commission (SFC) made the Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2012 (Amendment Notice) on 23 April 2012 to update and include new additions to the lists of futures exchanges and stock exchanges in Schedule 1 to the Securities and Futures Ordinance (SFO).

**Background**

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 A**). 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).<sup>1</sup>

## **The Amendment Notice**

3. The purpose of the Amendment Notice 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 The lists are therefore outdated and amendments are needed to reflect the current names of the relevant exchanges.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 futures contracts are exempted from profits tax. Such futures contracts

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<sup>1</sup> 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.

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 is regulation- neutral. It does not affect the on-going regulatory functions of the SFC.

8. The proposed Amendment Notice is attached at **Annex B** for Members' reference.

### **Public Consultation**

9. 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.

### **Way forward**

10. We aim to publish the Amendment Notice in the Gazette on 11 May 2012, with a view to completing the negative vetting process within the current term of the Legislative Council.

**Financial Services and the Treasury Bureau**

**Securities and Futures Commission**

**April 2012**

**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

corporation<sup>2</sup> 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.

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 requirements, and in the Securities and Futures (Price Stabilizing) Rules (Cap. 571W) to determine the stabilizing period where the stock in question trades on an overseas stock exchange.

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<sup>2</sup> 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 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 Securities and Futures (Recognized Counterparty) Rules (Cap. 571B) (Recognized Counterparty Rules).

**Note for Members:** Updated exchange names are denoted with \*; while new additions are denoted with +.

## Annex B

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

Section 1

1

### 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 +

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

Section 3

2

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 <sup>+</sup>

### Part 3

#### Specified Stock Exchanges

1. ASX Limited \*
2. BSE Limited <sup>+</sup>
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 <sup>+</sup>
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<sup>2)</sup>.

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.