

SFO And You

What is the SFO?

The Securities and Futures Ordinance (SFO) consolidates and modernises the 10 previous ordinances regulating the securities and futures markets in Hong Kong. Coming into effect on 1 April 2003, the SFO and the subsidiary legislation made under it provide Hong Kong with a clear and user-friendly regulatory framework for a fair, efficient and transparent market.

Representing the culmination of nearly a decade of hard work, the SFO ensures Hong Kong's market regulation is on par with international best practice, affording appropriate protection for investors on the one hand and leaving enough room for market development on the other.

What does the SFO mean to you as an investor?

The SFO and the subsidiary legislation made under it introduce a number of significant changes to the existing regulation of the securities and futures markets. A number of key initiatives are introduced to protect your interests and defend your rights. Here, we explain some of these changes and how they may affect you.

[New and improved investor compensation arrangements](#)

The new investor compensation scheme enhances the previous investor compensation arrangements and provides you with an added level of confidence and security.

What were the previous arrangements?

There were two compensation schemes – the Unified Exchange Compensation Fund (UECF) and the Commodity Exchange Compensation Fund (CECF). Both covered exchange participants only and provided a maximum level of compensation for each brokerage (HK\$8 million per stock brokerage and HK\$2 million per futures brokerage). This per-brokerage limit applied regardless of the size of the losses or the number of investors claiming compensation in respect of the default, giving an uncertain level of investor protection.

What are the new arrangements under the SFO?

A new single Investor Compensation Fund replaces the UECF and CECF. It is based on a per-investor compensation limit of HK\$150,000 for trading securities and futures contracts respectively. This enables more transparency and allows you to know precisely what level of compensation will be available to you should your intermediary fail. The new regime applies for defaults occurring on or after 1 April 2003.

Coverage is now extended to a much broader range of intermediaries, including both exchange and non-exchange participants, banks and securities margin financiers. Presently, the compensation fund covers only exchange-traded products in Hong

Kong. An independent Investor Compensation Company, recognized by the SFC under the SFO, will administer the scheme.

How does the per-investor compensation limit work?

Example 1: If Mr A holds shares of HK\$250,000 with Blue Company and has deposited HK\$100,000 with the firm for trading futures contracts, what is the compensation limit for Mr A if Blue Company defaults?

Based on the per-investor compensation limit of HK\$150,000 for trading securities and futures contracts respectively, the maximum payments for Mr A's claim would be HK\$150,000 for shares and HK\$100,000 for futures contracts, totalling HK\$250,000.

Example 2: If Ms B has two accounts with White Company holding shares of HK\$120,000 and HK\$140,000 respectively, what is the maximum compensation for Ms B if White Company defaults?

Ms B would be entitled to a maximum payment of HK\$150,000 as the compensation limit is applied on a per-investor basis regardless of how many accounts a person has at the defaulting brokerage.

Example 3: If Mr and Mrs C have a joint account with Red Company holding shares of HK\$1 million, what is the maximum compensation for each of them if Red Company defaults?

Mr and Mrs C could each claim a maximum of HK\$150,000 compensation as the compensation limit is applied on a per-investor, rather than per-account, basis.

Example 4: If Ms X has submitted a claim against the UECF arising out of a default by her brokerage before 1 April 2003 and is still waiting for the notice of determination after 1 April 2003, will the per-investor or per-brokerage compensation limit apply in her claim?

The deciding factor is the date of the default. If the date of default is before 1 April 2003, the old scheme based on a per-brokerage compensation limit will apply, while the new scheme based on a per-investor compensation limit will apply to cases where default occurs on or after 1 April 2003.

Where does the money for compensation come from?

The initial funding came from a transfer of assets in the UECF and the CECF leaving sufficient funds behind to cover outstanding claims. A 0.002% transaction levy on each side of securities transactions, and HK\$0.5 per side of a futures contract (HK\$0.1 per side of a mini-futures contract) will be paid into the new Investor Compensation Fund until it has reached an appropriate size.

More transparent market disclosure

You may hold shares in a listed company or be considering investing in shares in a listed company. It is your right to have timely access to information to enable you to identify the persons who control, or who are in a position to control, interests in shares in a listed company.

What were the previous disclosure of interests requirements?

Anyone who had an interest of 10% or more of the voting shares of a listed company was required to disclose that interest within 5 days of acquiring or disposing of the interest. Directors and chief executives of listed companies were required to disclose any acquisition or disposal of their company's shares, irrespective of the percentage they held.

What are the new disclosure requirements under the SFO?

These are contained in Part XV of the SFO and an outline giving guidance on these new disclosure requirements can be found on the SFC website. Here, we explain some of the more important changes to the disclosure of interests regime.

The notification period for those with a notifiable interest is reduced from 5 days to 3 business days. The disclosure threshold for substantial shareholders is reduced from 10% to 5%. Further movements which take their interests through a whole percentage level (e.g. 6%, 7%) are also discloseable.

Example 5: Where the holding of a substantial shareholder increases from 5.9% to 6.2%, notification will be required as the change results in the interest crossing over a whole percentage number i.e. 6%. But where the interest increases from 6.1% to 6.9%, no disclosure will be necessary as the holding does not cross over a whole percentage number.

Substantial shareholders must disclose short positions and long positions separately and these cannot be netted off. A person with a short position will first be required to make a disclosure if the percentage level of his short position reaches 1% or more. Thereafter, as with long positions, a disclosure is only prompted by a change that results in the short position crossing over a whole percentage number which is above 1%, or by the substantial shareholder ceasing to have a short position of at least 1%.

Example 6: Where a substantial shareholder takes a short position of 1.2%, disclosure will be required as it is above 1%. Where the short position increases from 1.2% to 1.9%, no disclosure will be prompted. But where the short position reaches 2.1%, disclosure will be required as the change results in the short position crossing over a whole percentage number i.e. 2%. Disclosure will also be prompted where the short position is closed out.

Directors and chief executives of listed companies must disclose interests or short positions in shares and debentures of their company and any associated company of that company. There is no disclosure threshold for them and all dealings must be notified.

In addition, there are new requirements for the disclosure of interests in shares arising under all types of derivatives, and for disclosure of changes in the nature of an interest in shares (e.g. on exercise of an option). Such interests must be included when calculating the percentage level of a person's interest. All these requirements will enable you to have a more complete picture of dealings by substantial shareholders and directors.

What is the reporting procedure?

One of 6 standard disclosure of interests forms must be completed and sent to both the Stock Exchange of Hong Kong (SEHK) and the listed company concerned. There are notes on choosing the appropriate form. The forms can be downloaded from the SFC website or the HKEx website.

Where can I get the information on disclosure of interests?

You can access the information disclosed to SEHK on the HKEx website (www.hkex.com.hk).

Combating market misconduct

Market misconduct damages market integrity and, therefore, the interests of investors. There must be appropriate laws to combat such misconduct.

What was the previous position?

Market manipulation was a criminal offence which had to be proved beyond reasonable doubt. Sophisticated market practices had, however, made it increasingly difficult for us to prove beyond reasonable doubt that market manipulation had taken place. By contrast, insider dealing was not a criminal offence and was dealt with through civil proceedings before the Insider Dealing Tribunal (IDT).

What has changed under the SFO?

Parallel civil and criminal regimes will enable us more effectively to combat market misconduct. A Market Misconduct Tribunal (MMT) has been set up to build on the

work of the IDT by handling civil cases of all forms of market misconduct in addition to insider dealing, including market manipulation, price rigging and related abuses and the dissemination of false and misleading information about securities or futures contracts. The MMT will decide cases on the lower civil standard of proof and can impose a range of civil sanctions such as ordering the disgorgement of profits, “cease and desist” and “cold shoulder” orders, and disqualifying a person from directorship or management of a company.

As an alternative to civil proceedings, all forms of market misconduct (including insider dealing) are subject to criminal prosecution which, if successful, may result in more severe penalties on conviction, including up to 10 years’ imprisonment or a fine of up to HK\$10 million.

Will a case of suspected market misconduct be the subject of civil proceedings before the MMT or criminal prosecution?

The SFC can refer a report of suspected market misconduct after an investigation to either the Financial Secretary to consider the institution of proceedings before the MMT or to the Department of Justice to consider criminal proceedings on indictment. The decision to choose either the criminal or civil route will be made in accordance with the Department of Justice’s Prosecution Policy.

An SFC report to either the Financial Secretary or the Secretary for Justice will contain the SFC’s observations on the sufficiency of evidence in the matter, its view of the seriousness of the matter and the regulatory impact, and its recommendations as to whether the matter would be more appropriately dealt with by the MMT or by a court. The SFC can also prosecute less serious market misconduct cases itself summarily in the Magistrates’ Court.

[Dual filing system to ensure better corporate disclosure](#)

As an investor, you need complete and accurate information about companies to make well-informed investment decisions. It is important to have statutory rules that crack down on persons who lie to or mislead the public in company prospectuses or announcements.

What was the previous regulatory regime for corporate information disclosure?

The previous regulatory framework for corporate information disclosure was largely based on the non-statutory Listing Rules of the Stock Exchange and the listing agreement between a listed company and the Exchange which provided the Exchange with a limited range of sanctions against companies that had broken the rules. However, many believe that some kind of statutory support for the disclosure regime for listing applicants and listed companies is necessary.

What is the new regime under the SFO?

The introduction of the “dual filing” system establishes the SFC as the statutory regulator of corporate disclosure. Listing applicants and listed companies are required

to file their disclosure and listing application materials, not only with the Exchange, but also with the SFC as a statutory filing.

To facilitate compliance and avoid additional costs, companies and applicants can just file the listing application and disclosure materials with the Exchange, provided that they have pre-authorized the Exchange to forward the documents to the SFC. The vetting of the listing application by the SFC will not cause any delay to the process as it will run concurrently with Exchange's consideration of the listing application under its own rules. Public disclosure made by a listed company will not be subject to pre-vetting by the SFC and therefore there will be no delay in disseminating the information.

These changes to the existing filing arrangements will assist us in using our investigatory powers and where appropriate, to prosecute those who intentionally or recklessly provide false or misleading information.

What are the respective roles of the SFC and the Exchange?

These are set out in the Memorandum of Understanding Governing Listing Matters between the SFC and the Stock Exchange.

The Exchange remains the frontline regulator of all listing-related matters. It is the primary point of contact for listing applicants and listed companies, and continues to be solely responsible for pre-vetting the disclosure materials.

The SFC can exercise its investigatory and prosecution powers against persons filing false or misleading information. The SFC is also able to comment on the draft listing documents and related disclosure materials and may require further information to be supplied. If the information provided in these documents is insufficient or misleading, the SFC has a reserve power to object to the company's listing application.

How about handling of complaints against listed companies?

To avoid administrative duplication and facilitate communications with the public, the Exchange, as the frontline regulator of all listing-related matters, has primary responsibility for handling any complaint of suspected misconduct that involves issues in respect of the Listing Rules. You should first approach the Exchange to make a complaint against a listed company, except in relation to takeovers and mergers which are governed by codes administered by the SFC.

[Redress through civil courts for market misconduct](#)

A new private right of civil action can assist investors to obtain damages for loss suffered as a result of market misconduct. The threat of potential civil liability should also serve as an added deterrent against market misconduct.

What was the previous position?

If you had suffered loss as a result of market misconduct, seeking redress through the civil courts was more difficult as you had to establish a cause of action in law first against those responsible for the misconduct.

What has changed under the SFO?

You have new statutory rights of action through the civil courts if you have suffered financial loss caused by any form of market misconduct. Findings of the MMT in relation to market misconduct will be admissible in evidence in a private civil action. In order to succeed in such a claim, the court has to be satisfied that it is “fair, just and reasonable” that compensation should be paid in the circumstances of the case.

Are criminal convictions for market misconduct admissible in evidence?

Convictions are admissible in evidence for the purpose of proving that an offence was committed, but only where relevant to the issues in the private civil action. The courts tend to judge relevance strictly. A conviction for market misconduct would usually be relevant to a private action by an investor if it related to the same event.

When can I institute proceedings for compensation for loss caused by market misconduct? Is there any time limit for exercising my right?

You can institute proceedings at any time after the event that resulted in your loss. It is not necessary to wait for the findings of the MMT or a court – though it would help your case if there were a finding of market misconduct by the MMT or a court.

You have to exercise your private right of civil action within 6 years from the date on which the act of market misconduct occurred.

Is the private right of civil action retrospective for market misconduct occurring before commencement of the SFO?

No. It is only effective in respect of market misconduct occurring after commencement of the SFO.

Who can be sued in such proceedings?

The following persons could be liable to pay compensation for loss resulting from market misconduct:

- any person who has committed a relevant act in relation to the commission of market misconduct;
- directors of a company which has committed market misconduct with their consent or connivance; or
- other persons who have assisted or connived with another person in committing market misconduct, with the knowledge that the conduct was market misconduct.

The individual types of market misconduct would have to be examined to determine the degree of involvement which would expose a person to civil liability. For example, any person who actually discloses or authorises the disclosure of false or misleading information may be guilty of disclosure of false or misleading information inducing transactions under the SFO if he knows or is negligent or reckless as to whether the information is false or misleading (unless one of the statutory defences applies).

How can I take civil action? Do I need a lawyer?

Suing a person for market misconduct would be complex and you should seek legal advice first.

What if I can't afford the expense of court proceedings? Is it possible to seek legal aid?

It is open to you to apply for legal aid, provided that you are eligible for legal aid (i.e. your financial resources do not exceed the statutory amount and the proceedings are within the scope of the Legal Aid Ordinance.) It is a matter for the Legal Aid Department to decide according to the law whether an applicant is eligible for legal aid, judging each case on its own merits. You must have a reasonable case in order to be granted legal aid. For more information, please refer to the website of the Legal Aid Department (www.info.gov.hk/lad/).

Can the SFC help investors to take civil action?

It is not appropriate for the SFC to intervene in such private legal proceedings. The SFC cannot help investors get legal aid.

What should I consider before taking civil action?

Think about it carefully before incurring the expense of court proceedings. Any prospective litigant should take into account the factors which are relevant in any court proceedings, such as the strength of the case, evidence, cost of court proceedings, likelihood and level of an award of damages, and financial position of defendant (i.e. whether the defendant has the means to pay damages.).

[Private action for false public communication](#)

The investing public is entitled to expect that persons responsible for issuing information to them about securities and futures contracts such as prospectuses and other disclosures exercise all due care and diligence.

What was the previous position?

A person who had suffered loss as a result of relying on a false or misleading statement might have a cause of action under the common law and must prove that he had relied on the misstatement and that the loss he had suffered was reasonably foreseeable.

What has changed under the SFO?

Investors suffering loss as a result of false or misleading public statements concerning securities (or affecting the price of securities) made fraudulently or negligently have a clear statutory right of action against those involved in issuing such statements. Therefore those persons who are responsible for issuing false or misleading information concerning securities knowing that it is untrue or being reckless or negligent (i.e. careless) as to its truth may be liable to those who suffer financial loss as a result of relying on such information.

That said, it is recognised that certain persons (e.g. printers, live broadcasters or certain Internet service providers) may not be “culpable” even though technically they may have played a role in disseminating the information. To address this, defences are expanded to include exemption for those acting in good faith as mere conduits of information provided they have not altered the information they were given to disseminate.

How can I take legal action? What should I consider?

Please refer to the previous section on “Redress through civil courts for market misconduct”.

[A new single licensing regime](#)

The new streamlined licensing system results in reduced costs for market operators without compromising investor protection.

What was the previous licensing system?

Licensees needed to apply separately to be registered for each type of activity in which they wished to engage. You had to check whether an intermediary was licensed for each type of service that was being offered. For example, anyone who dealt in, and advised on, securities and futures contracts needed four separate licences.

What is the new regime under the SFO?

There is a universally applicable single licensing system, with one licence which covers all of the regulated activities which a person is permitted to undertake. You only have to find out what regulated activities a licensee is eligible to conduct:

Type 1: dealing in securities (including stocks, bonds, stock options and funds)

Type 2: dealing in futures contracts (including futures and index options)

Type 3: leveraged foreign exchange trading

Type 4: advising on securities

Type 5: advising on futures contracts

Type 6: advising on corporate finance

Type 7: providing automated trading services

Type 8: securities margin financing

Type 9: asset management

You can check the licence status of individuals and companies on the “Public Register of Licensed Persons” on the SFC website. Find out from the register what types of regulated activities they are licensed to carry on.

The register contains a wide array of information on the status of licensees, including their names, contact details and conditions attached to each licence. It also contains names of the responsible officer supervising the company’s regulated activities and the firm’s representatives who carry on this business.

In addition, licensed corporations are required to provide us with contact information of their complaints officers. This information is available in the public register, facilitating investors to lodge their complaints where necessary with the licensee concerned.

We are also empowered to include 5-year disciplinary history of the licensed persons (i.e. licensed corporations and their representatives) in the register. You may therefore access to the licensees’ past disciplinary track records in an easy and organised manner. It serves to increase transparency and enhance confidence in the market.

The new regime allows only corporations and their individual representatives to be licensed. Sole proprietors and partnerships are no longer able to apply for licences. Existing registered sole proprietors and partnerships are allowed two years to migrate to the new regime, following commencement of the SFO.

Certain licensed corporations are required to take out and maintain fidelity insurance. This would increase the possibility and amount the investors may be compensated by those licensed corporations in relation to losses caused by fraudulent acts. This also serves as the first tier of investor protection in addition to the Investor Compensation Fund.

The licensing regime is extended to cater for companies providing automated trading services. Different procedures will apply depending on the nature of the services. Where they resemble stockbroking, the licensing regime will apply; and where they are more like a stock exchange, a separate authorisation regime will apply.

To ensure a level playing field, banks are required to be registered with the SFC as registered institutions in order to carry on securities and futures business. The Hong Kong Monetary Authority (HKMA) remains the frontline regulator of banks’ securities and futures operations. It maintains a register of the banks’ frontline and supervisory staff who are involved in the securities and futures business. The SFC’s public register, in addition to listing the names of registered institutions and their executive officers, it also includes information such as contact details of their complaints officers and the 5-year disciplinary history of the registered institutions concerned.

[Improving the regulation of intermediaries](#)

Proportionate disciplinary sanctions are an important deterrent to improper conduct by intermediaries and, therefore, crucial to investor protection.

What was the previous position?

We might impose a number of sanctions, including private or public reprimands and suspension or revocation of registration, on a registered person who had engaged in improper conduct. Such a limited range of sanctions was not flexible enough and not applicable to banks' securities businesses.

What additional sanctions are available under the SFO?

We are empowered to fine up to HK\$10 million, or three times the amount gained or loss avoided, whichever is higher. We can also suspend or revoke a licence in respect of only part of a licensee's business. This results in greater flexibility in tailoring appropriate sanctions which are proportionate to the severity of the misconduct. We are able to prohibit a person from applying to be licensed or registered or to be involved in the licensed or registered business for a specified period.

The concept of "management liability" is strengthened. Those involved in the management of a corporation are also criminally liable for an offence by the corporation under the SFO if the commission of the offence has been "aided, abetted, counselled, procured or induced by" or is otherwise attributable to them.

To ensure a level playing field, banks engaging in securities and futures activities are also governed by the same rules, codes and guidelines as SFC licensed corporations. Banks' securities and futures businesses, their frontline and supervisory staff and others involved in management are equally subject to sanctions under the SFO.

Enhancing SFC's inspection and investigatory powers

Our powers of inquiry, inspection, surveillance and investigation are vital tools in maintaining market integrity and protecting investors' interests

What was the previous position?

Our power to inquire into possible misconduct of listed companies only enabled us to obtain documents from the listed company under inquiry and its group companies. Our supervisory powers only enabled us to inspect licensees to ensure that they complied with regulatory requirements.

What has changed under the SFO?

Our power to obtain documents and explanations from listed companies is now extended to the parties most closely connected with the listed company. These parties include a listed company's auditors, banks and transaction counterparties. We are able to look at the company auditor's working papers. Such enhanced power, with adequate checks and balances, serves as a more effective tool for conducting inquiries into misconduct of listed companies which may have prejudiced the interests of shareholders.

Auditors of listed companies who report to us any suspected fraud or misconduct in the management of a listed company are provided with statutory immunity from civil liability, if such reports are made in good faith. This should encourage auditors who may identify possible fraud or irregularity in conducting an audit of a listed company to protect the public interest by reporting their concerns to us.

Our supervisory power is extended to associated entities of intermediaries (e.g. nominee companies). With certain exceptions and limitations, these associated entities are subject to the same set of rules as an intermediary. The regulatory intention is for the associated entities to match the standards to be expected from the intermediaries, thereby giving a greater degree of protection to investors.

Modernised operational requirements on intermediaries

Once an intermediary is licensed or registered, it is subject to ongoing operational requirements, which may have direct or indirect impact on you as the client of the intermediary. These requirements have been modernised to improve investor protection and ease compliance.

What are the major changes which may affect the dealing of intermediaries with their clients?

Contract notes: Previously, after a transaction had been executed, your intermediary had to issue you with a contract note by the next trading day after the transaction day, i.e. T+1.

The time limit for issuing a contract note is now changed to the second trading day after the transaction day, i.e. T+2. The requirement to provide contract notes does not apply in relation to the conduct of asset management.

Daily statements: In the past, only firms conducting share margin financing or leveraged foreign exchange business were required, when certain specified event takes place, to issue you with daily statements of account by T+1.

Now the requirement to provide daily statements is also applicable to any firm entering into margined transactions (e.g. futures and options) except in the course of conducting asset management. The time limit is extended to T+2.

Monthly statements: Previously, your intermediary had to issue you with a regular account statement at least once a month, unless there had been no transactions and there was a zero cash balance or no stocks in your account. The time allowed for issuing a monthly statement is 7 days for firms conducting share margin financing or leveraged foreign exchange business; but not specified for other firms.

Under the new law, the requirement to provide monthly statements is applicable to all firms except in relation to the management of a collective investment scheme. The time allowed is 10 days for asset managers and 7 days for other firms.

Receipts: In the past, only securities dealers were required to provide receipts for or stock certificates received for their clients. The time allowed for issuing a receipt was not specified.

Now the requirement to provide receipts is applicable to any firm including any associated entity receiving client assets. A receipt should be issued in 2 days.

Segregation of client money: Previously, your intermediary had to put your money into a segregated trust account within 4 days from the date of receipt.

The time limit for segregation of client money is now reduced to 1 day from the date of receipt, subject to cheque is only counted as received upon clearance.

Client standing authority: An intermediary can get a written standing authority from its client to deal with client securities or securities collateral in one or more specified ways (e.g. to re-pledge a margin client's securities to borrow money from a bank, or to apply a client's securities pursuant to a securities borrowing and lending agreement). In the past, such a standing authority had to be renewed in writing every year. There were no specific requirements for renewal of standing authority in relation to client money.

Under the new law, unless an investor qualifies as a professional investor¹, a standing authority has still to be renewed every year. Alternatively, the firm can be "deemed" to have renewed a standing authority as long as the firm reminds the client of the impending expiry in writing at least 14 days in advance, the client does not object, and the firm issues a written confirmation within one week after the date of expiry. The requirements for renewal of standing authority in relation to client money are similar to that in relation to client securities.

Given that existing arrangements may need to be formalized and standing authority fine-tuned under the new law, investors may be requested by their intermediaries to sign new standing authority. While some of these changes are indeed mandatory, others are not. For example, the law allows payment of client money directly to a client without the need for any written direction or standing authority from that client. However, some intermediaries still request their clients to give written authorization for withdrawal of their own money. Although this is not a new requirement as claimed by some intermediaries, this is good internal control and can minimize the risk of disputes in the future.

Some intermediaries have also been requesting their clients to sign new client agreements. While the new Code of Conduct introduces a risk disclosure statement in relation to client assets received or held outside Hong Kong and amends the existing risk disclosure statement in relation to repledging of securities collateral, it is not mandatory for existing clients to sign new client agreements. It will be acceptable if intermediaries issue a circular to existing clients and put them on notice. However, intermediaries may well want to update their client agreements to reflect the change in

¹ If you qualify as a professional investor and would like to be treated as such, you would need to provide financial proof (such as financial statement or custodian statements etc) to your intermediary to establish that you are so qualified.

terminologies etc. under the SFO. This again is good practice and should not be discouraged.

Under the law, an intermediary is, with an agreement in writing, able to dispose of a cash client's or a margin client's securities if the client fails to settle his or her liabilities. Hence, it is in the interest of the intermediaries to provide for this in their client agreements if they have not already done so. While the law provides for such right of disposal, investors are not required by law to grant this right to their intermediaries.

In all, investors are urged to scrutinize any standing authority or client agreement that they have been asked to sign to ensure that they fully understand and accept all the terms. It will be too risky to simply accept the intermediaries' words that all new or amended terms are required under the new law.

Record keeping: Previously, all securities dealers and securities margin financiers were required to keep business records of not less than 6 years in general; and all commodity dealers and leveraged foreign exchange traders were required to keep records of not less than 7 years in general. The retention period for contract notes and daily statements was not less than 2 years.

Under the new law, unless otherwise stated in the SFO or any of its subsidiary legislations, all intermediaries have to keep records for not less than 7 years in general; and keep records showing particulars of orders for not less than 2 years.

[Greater accountability of the SFC](#)

We are responsible to the public for the performance of our functions. There should be certain checks and balances to reflect this accountability.

What are the existing checks and balances?

We are subject to a number of checks and balances. The non-executive directors provide a first level of oversight. In addition to this, we are subject to the scrutiny of the Ombudsman if there is a complaint in relation to our procedures. The independent, non-statutory Process Review Panel has the power to review our procedures and audit our actions.

We also report regularly to the Financial Secretary, through the Financial Services and the Treasury Bureau. Our accounts are tabled before the Legislative Council for scrutiny.

In the past, persons could appeal against some of our decisions concerning licensing and discipline to the part-time Securities and Futures Appeals Panel.

What are the new checks and balances under the SFO?

The checks and balances on the SFC are now further enhanced. These include the establishment of the Securities and Futures Appeals Tribunal (SFAT), an independent full-time appeals tribunal chaired by a judge. A wide range of our decisions,

primarily relating to licensing and registration issues, discipline and intervention, are appealable to the SFAT.

Can an investor make any appeals to the SFAT?

The right of appeal under the SFAT is primarily for those regulatees aggrieved by decisions made in respect of them. However, an investor may appeal to the SFAT in relation to the amount of his or her claim on the Investor Compensation Fund as assessed by the Investor Compensation Company.

For more details, please visit the section of “Securities and Futures Ordinance” on the SFC website (www.hksfc.org.hk).

If you have any questions on the SFO, please email to: enquiry@hksfc.org.hk.

This publication is intended to provide the reader with a broad overview of certain aspects of the Securities and Futures Ordinance and the information provided is of a general nature and is not based on a consideration of specific circumstances. Accordingly, it should not be regarded as a substitute for seeking detailed legal advice on any specific case.