



**SECURITIES AND FUTURES COMMISSION** 證券及期貨事務監察委員會

12th Floor, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong

香港中環皇后大道中十五號置地廣場公爵大廈十二樓

Our ref: 250/LC/24

22 January 2003

To: Registered Securities Dealers,  
Registered Investment Advisers,  
Registered Commodity Dealers,  
Registered Commodity Trading Advisers,  
Exempt Dealers &  
Exempt Investment Advisers  
who are not authorised financial institutions

Dear Sirs,

**Licensing matters pertaining to the Securities and Futures Ordinance ('SFO')**

In view of the impending target commencement of the Securities and Futures Ordinance in April this year, we would like to draw your attention to the following matters concerning your licence under the SFO.

**Migration application**

When the SFO commences, all existing registrants and exempt persons which are not authorized financial institutions ("non-AI exempt persons") will be deemed to be licensed to carry on certain regulated activity(ies) for a period of 2 years ("transitional period"). Your deemed licence will expire at the end of the transitional period. If you wish to continue carrying on any regulated activity thereafter, you must apply with the SFC for a new licence under the SFO during the transitional period.

In this regard, the SFC has designed simplified application forms to facilitate existing registrants and exempt persons to migrate to the new regime<sup>1</sup>. You will only be required to provide certain essential information in those forms, and it is not necessary for you to complete the full application form as a new entrant.

The SFC will send you a set of migration application forms for your firm and accredited individuals when it issues the reminder letter on your annual fee and annual return

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<sup>1</sup> Please note that the migration application forms are not applicable to new entities succeeding the business of sole-proprietors or partnerships. They are also not suitable for individuals currently engaged by a non-AI exempt person, but not registered with the SFC.



submission during the transitional period. You may also download the forms from the SFC's website [www.hksfc.org.hk](http://www.hksfc.org.hk) shortly.

Please submit the applications of yourself and your representatives and responsible officers **in one single batch** at the time when you lodge your annual submission.

For details of the transitional arrangements and the type(s) of regulated activity that you will be deemed licensed when the SFO commences, please refer to the *Guidelines on Transitional Arrangements* which will soon be made available.

### **Submit information to the SFC**

Prior to the commencement of the SFO, you are required to provide certain information to the SFC for the purpose of your deemed licence. Please complete and return the attached *Information Sheet* to the Licensing Department **on or before 14 February 2003**. If there is any subsequent change in the information provided, you must notify the SFC immediately. For administrative purpose, any change in the information pertaining to individuals engaged by non-AI exempt persons to perform any regulated activity must be submitted to the SFC before 28 February 2003.

### **Specified licensing condition on advisers**

As you are aware, an adviser whose licence is subject to the specified licensing condition<sup>2</sup> is required to comply with less stringent financial resources requirement in terms of the level of required liquid capital, paid-up share capital and the filing of financial return. In this regard, we refer you to our circular 'Securities and Futures (Financial Resources) Rules' ("FRR") dated 6 November 2002.

If your current registration is subject to any one of the following conditions or any other condition which bears similar meaning, the SFC regards such conditions as the specified licensing condition for the purposes of FRR. In addition, the SFC considers the word 'handle' or 'control' in these conditions has the same meaning of "hold" as defined in Part 1 of Schedule 1 to the SFO (extracted at Appendix).

- (a) The registrant shall not handle client monies or assets whether directly or indirectly through an "associate" of the registrant, except with the prior approval from the Commission.
- (b) The registrant shall not handle clients' funds and assets.
- (c) The registrant is not permitted to hold or control clients' funds and assets.

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<sup>2</sup> As defined under the Securities and Futures (Financial Resources) Rules, "specified licensing condition", in relation to a licensed corporation licensed for Type 4, Type 5, Type 6 or Type 9 regulated activity, means a licensing condition that the licensed corporation shall not hold client assets.



The intention of the condition is that you should not hold client assets either on your own or through other entities. The definition of 'hold' under the SFO includes the situation whereby a person is in a position to transfer the property to himself or otherwise receive the benefit of the property under various circumstances. We ask that you reassess your ability to comply with the licensing condition having regard to the definition of "hold" under the SFO. If you have any questions, please discuss with your Intermediaries Relationship Manager of the Licensing Department.

If your current registration/exemption is not subject to any of the above licensing condition or the like and you are not holding and you do not intend to hold client assets, you may complete and return to us the attached *Reply Slip*. The SFC will impose the specified licensing condition on your licence under the SFO on receipt of such notification.

Whilst you may return the *Reply Slip* to us anytime, we suggest that you submit it before 1 September 2003 in order that you may qualify for the lower financial resources requirements when they come into operation on 1 October 2003.

### **Enquiry**

Should you have any queries regarding the FRR, please contact Ms Lorraine Chan of the Intermediaries Supervision Department at 2842-7751. For licensing matters, please contact your responsible Intermediaries Relationship Manager of the Licensing Department.

Yours faithfully,

***Licensing Department***

Encl



## Appendix 1 – Definition of ‘hold’ under the SFO

"hold", in relation to any property, includes -

- (a) possession of the property;
- (b) being registered or otherwise recorded, as having title to or being entitled to receive the property, in any register or other record (however compiled or stored) which is established or created for the purpose of identifying persons having title to or being entitled to receive any property; and
- (c) in the case of a person carrying on business, the person being in a position to transfer the property to himself or otherwise receive the benefit of the property-
  - (i) whether another person has a legal or equitable interest in the property;
  - (ii) where there is a connection between the property and the business which is carried on by the person; and
  - (iii) regardless of whether it would be lawful or unlawful for the person to transfer the property to himself or otherwise receive the benefit of the property,

but does not include, in the case of a cheque or other order made payable to any person, the possession of the cheque or other order during the course of despatching or delivering it to that person or any other person on behalf of that person.



## Reply Slip

To : Licensing Department

From : \_\_\_\_\_  
Name of Corporation

CE No : \_\_\_\_\_

Date : \_\_\_\_\_

Please be advised that we do not hold any client assets and we agree to the SFC imposing the following condition to our licence under the SFO:-

‘The licensee shall not hold client assets.’

or any other condition to such effect.

Name of signatory : \_\_\_\_\_

Capacity<sup>3</sup> : \_\_\_\_\_

Signature : \_\_\_\_\_

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<sup>3</sup> For registered adviser, the signatory must be a registered investment adviser or commodity trading adviser. Where the corporation is a non-AI exempt person, the signatory should be one of its directors supervising the conduct of its exempted activities.



# SECURITIES AND FUTURES COMMISSION

Deemed Licensed Corporation  
under the Securities and Futures Ordinance ('SFO')

## Information Sheet for Transitional Arrangements

Name of corporation	
CE number	
Contact person for this form	
Contact person's telephone number	

### Section 1: Complaints officer and emergency contact person

1.1 You must appoint a complaints officer to handle complaints received by you. Please provide the following information on your complaints officer.

Name in English		CE No. (if any)	
Name in Chinese (if any)			
Job title			
Telephone number			
Facsimile number			
Correspondence address			
E-mail address			

1.2 You must also appoint a contact person whom the SFC may contact in the event of an emergency or other urgent need. Please provide the following information on your emergency contact person. [Note: For group companies, it is preferable that this person should have sufficient authority and be familiar with the overall affairs of the group.]

Name in English		CE No. (if any)	
Name in Chinese (if any)			
Job title			
Telephone number	Office		Residential
Mobile phone number			
Facsimile number			
Correspondence address			
E-mail address			

Note: If there is insufficient space to complete your answer to any question, please continue on a photocopy of the relevant page.

## Section 2: Electronic and record keeping addresses

2.1 Please provide the following information on your electronic addresses and record keeping premises.

[Note:As a deemed licensed corporation, the following premises are considered to have complied with section 130 requirements relating to the keeping of records or documents. Any subsequent addition will require the SFC's approval.]

<b>E-mail and website addresses</b>	<i>(e-mail)</i>	<i>(website)</i>
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<b>Record keeping address 1</b>		
<b>Flat, floor and block no.</b>		
<b>Building name</b>		
<b>Street no. &amp; name</b>		
<b>District &amp; city</b>		
<b>State &amp; country</b>		
<b>Postal code, if any</b>		
<b>Telephone and facsimile numbers</b>	<i>(telephone)</i>	<i>(facsimile)</i>

<b>Record keeping address 2</b>		
<b>Flat, floor and block no.</b>		
<b>Building name</b>		
<b>Street no. &amp; name</b>		
<b>District &amp; city</b>		
<b>State &amp; country</b>		
<b>Postal code, if any</b>		
<b>Telephone and facsimile numbers</b>	<i>(telephone)</i>	<i>(facsimile)</i>

<b>Record keeping address 3</b>		
<b>Flat, floor and block no.</b>		
<b>Building name</b>		
<b>Street no. &amp; name</b>		
<b>District &amp; city</b>		
<b>State &amp; country</b>		
<b>Postal code, if any</b>		
<b>Telephone and facsimile numbers</b>	<i>(telephone)</i>	<i>(facsimile)</i>

**Section 3: Associated entities**

**“Associated entity”** is a company which is in a controlling entity relationship with you, and receives or holds in Hong Kong your client assets. Controlling entity and controlling entity relationship are defined in Part 1 of Schedule 1 to the SFO.

3.1 Do you have any associated entity?

- Yes.
- No.

3.2 Please provide the following information on your associated entities.

Name of associated entity	Is it a deemed licensed corporation or a deemed registered institution?		Effective date of becoming an associated entity (dd/mm/yyyy)
	<input type="checkbox"/> Yes. CE No: (        )	<input type="checkbox"/> No*	/  /
	<input type="checkbox"/> Yes. CE No: (        )	<input type="checkbox"/> No*	/  /
	<input type="checkbox"/> Yes. CE No: (        )	<input type="checkbox"/> No*	/  /

\* If you tick NO to any of the above, please complete Question 3.5.

3.3 Are you currently acting as an associated entity of a deemed licensed corporation and/or deemed registered institution?

- Yes.
- No.

3.4 Please provide the names of the deemed licensed corporations or deemed registered institutions for which you act as their associated entity.

Name of deemed licensed corporation or deemed registered institution	CE No.

- 3.5** Please provide the following information on an associated entity.  
 [Note: The following basic information is collected for the purpose of identifying your associated entity. We will obtain further details from the associated entity when the SFO commences.]

<b>Corporate information</b>			
Name in English			
Name in Chinese (if any)			
Business name (if applicable)			
Place of incorporation			
Date of incorporation	(dd)	(mm)	(yyyy)
Financial year end	(dd)	(mm)	
Name of auditor			
<b>Addresses, telephone and facsimile numbers of principal place of business in Hong Kong</b>			
Flat, floor and block no.			
Building name			
Street no. & name			
District			
Telephone and facsimile numbers	(telephone)	(facsimile)	
E-mail address			
Website address			
<b>Information of executive officers</b>			
Note: "Executive officer" in the context of an associated entity means any director of the associated entity who is responsible for directly supervising the receiving or holding of the intermediaries' client assets.			
Name of executive officers in English (and Chinese, if any)	HKID/ Passport No.^	Passport details^	
		Date of expiry (dd/mm/yyyy)	Issuing country
( )		/ /	
( )		/ /	
( )		/ /	
( )		/ /	
( )		/ /	

^ Only applicable to persons who are non-Hong Kong permanent residents.

**Section 4: Insurance** (For securities dealer or commodity dealer or securities margin financier or non-AI exempt dealer only) **(This is not applicable to a Stock Exchange participant.)**

4.1 Have you taken out any fidelity insurance in relation to your business of regulated activity?

- Yes. Go to Question 4.2.
- No.

4.2 Please provide the following details of your insurance scheme.

Name of insurer						
Indemnity level (in HK\$)						
Deductibles (in HK\$)						
Insured period	From	/	/	To	/	/
		<i>dd</i>	<i>mm</i>		<i>yyyy</i>	<i>dd</i>

**Section 5: Regulated Activity** (For securities dealer or commodity dealer or non-AI exempt dealer)

5.1 Are you carrying on Type 7 regulated activity on providing automated trading services, e.g. internet trading services?

- Yes.
- advised the SFC.
- not yet advise the SFC.
- No.

**Section 6: Other corporate information** (For non-AI exempt dealer or non-AI exempt investment adviser only)

<b>Financial year end</b>	/	
	<i>dd</i>	<i>mm</i>
<b>Auditor and appointment date</b>	/	
	<i>(Name of auditor)</i>	<i>dd mm yyyy</i>

**Section 7: Individuals carrying out regulated activity** (For non-AI exempt dealer or non-AI exempt investment adviser only)

**“Executive director”** means a director of the corporation who –

- actively participates in; or
- is responsible for directly supervising

the business of a regulated activity for which the corporation is licensed. He must also be a responsible officer of the corporation.

**“Responsible officer”** means a person who is a licensed representative and is approved by the Commission under s.126(1) of the SFO to act as a responsible officer. He should have sufficient authority to supervise the regulated activity. He may or may not be an executive director.

**7.1** Please provide the following information on individual who carries on regulated activity(ies) on your behalf.

Individuals listed below will be deemed to have been licensed as your licensed representatives for the regulated activity(ies) they currently perform for you. In addition, they will be grandfathered for the competence requirements of a licensed representative or a responsible officer (as the case may be) for such regulated activity(ies). Please ensure that this list contains all the individuals and the appropriate type(s) of regulated activity that they currently perform for you. **If there is any change in the individuals or the type(s) of regulated activity they perform, you must notify the SFC before 28 February 2003.**

Name of individual	Type of regulated activity performs		Is this individual currently registered with the SFC?	
	as a representative	as a responsible officer <sup>1</sup>	Yes	No*
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>
	Type _____	Type _____	<input type="checkbox"/> CE No: ( _____ )	<input type="checkbox"/>

\* If you tick NO, please request the individual to complete Annex 1.

<sup>1</sup> The SFC seeks such information only for the purpose of grandfathering these individuals for the competence requirements of a responsible officer. You may have less than 2 persons supervising your regulated activity while you are deemed licensed because section 125 of the SFO on the requirements of executive officers does not apply to you during the transitional period.

**Section 8: Reviewed by**

<b>Signature</b>	
<b>Name of signatory</b>	
	Director
<b>Date</b>	



<input type="checkbox"/> Residential	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Business
<b>Flat, floor and block no.</b>		
<b>Building name</b>		
<b>Street number &amp; name</b>		
<b>District &amp; City</b>		
<b>State &amp; Country</b>		
<b>Postal code, (if any)</b>		
<b>Telephone number</b>		
<b>Facsimile number and e-mail address</b>	<i>(facsimile)</i>	<i>(e-mail)</i>
<input type="checkbox"/> Residential	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Business
<b>Flat, floor and block no.</b>		
<b>Building name</b>		
<b>Street number &amp; name</b>		
<b>District &amp; City</b>		
<b>State &amp; Country</b>		
<b>Postal code, (if any)</b>		
<b>Telephone number</b>		
<b>Facsimile number and e-mail address</b>	<i>(facsimile)</i>	<i>(e-mail)</i>

**Completed by**

<b>Signature</b>	
<b>Name of signatory</b>	
<b>Date</b>	