

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (EXEMPTED INSTRUMENTS - INFORMATION) RULES

INTRODUCTION

Pursuant to section 397(1) of the Securities and Futures Ordinance (Cap. 571 (SFO)), the Securities and Futures Commission (SFC) has made the Securities and Futures (Exempted Instruments - Information) Rules (the Rules) at the **Annex**.

BACKGROUND

The SFO

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the SFC to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council established the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of draft subsidiary legislation, including the *vires* to make them.

THE PROPOSALS

Major policy considerations

4. The Rules supplement the regulatory regime for the offering of investment products laid down in Part IV of the SFO. Section 103(1) of the SFO imposes a general prohibition on the issue to the public of advertisements, invitations and documents relating to a wide range of investment products. The prohibition is subject to a number of exemptions that are essentially adopted from the Protection of Investors Ordinance (Cap. 335). In particular, under section 103(3)(e), (f) and (g) of the SFO, the documentation for certificates of deposit and commercial paper issued by certain persons is exempted from the application of section 103(1) of the SFO provided that certain minimum denomination and capitalization requirements are satisfied. Section 110(1) of the SFO provides that certain information must be filed under rules made by the SFC under section 397 for the purposes of section 110(1) in respect of issues falling within section 103(3)(e), (f) or (g). The Rules set out the information required to be filed to the SFC in such circumstances. The intention is to allow the relevant regulatory authorities in Hong Kong to monitor the development of capital markets.

THE RULES

5. Section 3 of the Rules provides that the information to be submitted to the SFC for the purposes of section 110 of the SFO is –

- (a) information that is related to the issue of a certificate of deposit or other instrument referred to in the advertisement, invitation or document in question and specified in the Schedule (section 3(a));
or
- (b) where the information specified in the Schedule is not applicable in relation to the issue, a statement to that effect (section 3(b)).

PUBLIC CONSULTATION

6. The SFC released a consultation document and an exposure draft of the Rules on 19 March 2002 for comment by the public. A total of two submissions were received. Having considered the submissions, the SFC

considers that no amendment to the Rules is necessary. In particular, the SFC has not accepted the comment of a respondent to require an issuer to submit additional information, as this would increase the costs of compliance without any additional regulatory benefit.

7. A draft of the Rules was considered by the Subcommittee at its meeting on 6 June 2002. No major concerns were expressed by members of the Subcommittee at the meeting.

FINANCIAL AND STAFFING IMPLICATIONS

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

COMMENCEMENT DATE

9. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the commencement date by the end of 2002.

PUBLICITY

10. The Rules will be published in the Gazette on 29 November 2002. The SFC will issue a press release on the same day.

ENQUIRIES

11. For any enquiries on this brief, please contact Mr. Gary Ho of the Investment Products Division of the SFC at 2840 9591 or Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.