

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (REGISTRATION OF COMMISSION DISCIPLINARY ORDERS) 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 (Registration of Commission Disciplinary Orders) 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 SFO (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 RULES

Major policy considerations

4. The Rules supplement the disciplinary regime for persons regulated by the SFC as laid down in Part IX of the SFO. Part IX sets out the sanctions that the SFC may impose in respect of breaches of regulatory requirements. Under sections 194(2) and 196(2) of the SFO, the SFC may order a regulated person to pay a pecuniary penalty in certain circumstances provided that it has had regard to the fining guidelines published in the Gazette under section 199. Sections 194(5) and 196(5) provide that the Court of First Instance may, on application of the SFC made in the manner prescribed by rules made under section 397, register such an order. On registration, the order is regarded for all purposes as an order of the Court of First Instance for payment of money. The Rules prescribe the manner in which the SFC is to make applications to the Court of First Instance to register the disciplinary orders.

Major features of the Rules

5. Section 3 of the Rules provides that the SFC shall, for the purpose of making an application in respect of an order pursuant to section 194(5) or 196(5) of the SFO, produce to the Registrar of the High Court a notice in writing requesting that the order be registered, together with the order and a copy of the order.

PUBLIC CONSULTATION

6. The SFC released a consultation document and an exposure draft of the Rules on 27 March 2002 for comment by the public. One submission was received.

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

FINANCIAL AND STAFFING IMPLICATIONS

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

COMMENCEMENT DATE

10. 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

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

ENQUIRIES

12. For any enquiries on this brief, please contact Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.

The Securities and Futures Commission
25 November 2002