

LEGISLATIVE COUNCIL BRIEF

Securities and Futures Ordinance (Cap. 571)

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

INTRODUCTION

Pursuant to section 36(1) of the Securities and Futures Ordinance (Cap. 571) (SFO), the Securities and Futures Commission (SFC) has made the Securities and Futures (Stock Market Listing) 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 has already provided 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 has 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. Part III of the SFO provides for the regulation of exchanges, clearing houses, exchange controllers, investor compensation companies and automated trading services. The Rules are made under section 36(1) of the SFO, which empowers the SFC to make rules in respect of the listing of securities, including, in particular, rules prescribing or providing for the following matters –

- (a) the requirements to be met before securities may be listed;
- (b) the procedure for dealing with applications for the listing of securities;
- (c) the cancellation of the listing of any specified securities by the SFC in certain circumstances; and
- (d) the conditions subject to which, and the circumstances in which, dealings in securities shall be suspended or recommence.

5. Section 36(1) also empowers the SFC to make rules providing for any matters which may be prescribed by a recognized exchange company in rules made under section 23 of the SFO. They include such matters as may be necessary or desirable for the proper regulation and efficient operation of the securities market.

6. In accordance with section 36(2) of the SFO, the SFC has consulted the Financial Secretary and The Stock Exchange of Hong Kong Limited (SEHK) before making the Rules.

7. The Rules are based largely on the two sets of existing Rules, namely the Securities (Stock Exchange Listing) Rules (Cap. 333, Sub. Leg. C) and the Securities (Stock Exchange Listing) (Approved Share Registrar) Rules (Cap. 333, Sub. Leg. F).

New elements of the Rules

8. The enforcement regime for corporate information disclosure in Hong Kong has been mostly based on the non-statutory Listing Rules of SEHK and on the contractual obligation that a listed company owes to

SEHK under a Listing Agreement. The Rules seek to provide the SFC with the necessary tools for more effective enforcement against false or misleading corporate information disclosure.

9. The Rules provide for new filing arrangements in relation to application for listing of securities on a recognized stock market and on-going public disclosure made by listed corporations. These are included in sections 5 to 7 of the Rules. The remaining provisions of the Rules are substantially identical to existing law.

10. The Rules require a corporation applying to list its securities for trading on a recognized stock market to file copies of its listing application to the SFC after the same is submitted to the exchange company (“dual-filing”). To facilitate compliance and minimize any additional costs to a listing applicant, the Rules enable the applicant to fulfil this obligation by authorizing the exchange company to file the material with the SFC on its behalf.

11. The SFC may require the applicant to supply further information in relation to the listing application and may object to the listing if the applicant fails to comply with such a requirement, or if it appears to the SFC that the applicant has supplied false or misleading information in its application, or it is not in the public interest or in the interest of the investing public. This will allow the SFC to comment on the materials and object to the listing on the basis of insufficient or inadequate disclosure to the public.

12. The Rules provide that similar filing requirements will apply to public statements and other on-going public disclosure of information by listed corporations pursuant to requirements under rules made by SEHK or other applicable laws.

13. With these dual-filing requirements, the SFC will be able to employ its investigatory powers in gathering evidence and establishing the facts. Where appropriate, the SFC may bring offenders to prosecution in the Court.

14. To minimize any duplication of resources and compliance burden, SEHK will remain the primary point of contact for a listing applicant. The vetting of the listing application by the SFC will not cause any delay to the process as it will run concurrently with SEHK’s consideration of the listing application under its own rules. In relation to

public disclosure made by a listed corporation, it will not be subject to pre-vetting by the SFC.

15. The SFC will enter into a Memorandum of Understanding with SEHK which will clearly stipulate the respective roles of the two bodies in relation to the implementation of the new dual-filing arrangements. The MOU will be published as soon as it is ready and well in advance of the commencement date of the Rules so that the market will have sufficient time to familiarize itself with the new arrangements.

16. An effective disclosure regulatory regime benefits the investing public as well as other market and industry participants. The credibility of a market as being fair and transparent, with proper safeguards on the integrity of information disclosure, translates into a lower cost of funds to issuers of securities, attracts more local and international investors, thus providing further opportunities for intermediaries and professionals and increasing market size and liquidity.

THE RULES

Stock market listing

17. Section 3 prescribes the requirements for listing applications submitted to a recognized exchange company. Section 4 provides for certain limited exemptions from the requirements for listing applications set out in sections 3 and 5.

Dual filing with the SFC

18. Section 5 provides that a corporation applying to list its securities (the “applicant”) will be required to submit copies of its listing application to the SFC within one business day after the same is submitted to the exchange company.

19. Under section 6, the SFC may require the applicant to supply further information. The SFC may within 10 business days of the applicant filing the application or supplying the further information, if required (whichever is the later), object to the listing if the applicant fails to comply with such a requirement, or it appears to the SFC that the applicant has supplied false or misleading information in its application, or it is not in the public interest or in the interest of the investing public.

20. Section 7 provides, in effect, that similar filing requirements as those described in paragraph 18 above will apply to public statements and other on-going public disclosure of information by listed corporations pursuant to requirements under rules made by the exchange company or other applicable laws.

Suspension of dealings

21. Under section 8, the SFC may direct the exchange company to suspend dealings in the securities of a listed corporation if it appears to the SFC that the corporation has supplied any materially false or misleading information in its prospectus or other listing document or in any public communications and on other grounds such as the public interest or to maintain a fair and orderly market.

22. Section 9 sets out the powers of the SFC after taking action under section 8, including the power to permit dealings to recommence subject to conditions which it may impose and to cancel the listing in certain circumstances. The listed corporation and the exchange company may make representations to the SFC.

23. Section 10 contains provisions relating to the making of oral representations to the SFC. Section 11 provides for restrictions on re-listing of securities the listing of which has been cancelled under section 9.

Approved share registrars

24. Part IV of the Rules provides for the approval of share registrars and prohibits the listing of any securities of a corporation unless the corporation is, or employs, an approved share registrar; suspension of dealings in listed securities if the corporation ceases to be, or no longer employs, an approved share registrar; SFC's power to exempt securities from application of this part of the Rules; and provisions relating to appeal against a suspension.

Miscellaneous provisions

25. Part V of the Rules contains various miscellaneous provisions including the SFC's power to waive certain requirements of the Rules in certain circumstances, requirements for the exchange company to notify the SFC in certain circumstances and transitional provisions.

Need for ongoing review

26. The proposals enshrined in the Rules aim to enhance the existing regulatory framework relating to the approval of listing and subsequent surveillance of disclosure by listed corporations under the SEHK Listing Rules. The SFC will review the Rules in the light of the recommendations of the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure expected of in March 2003.

PUBLIC CONSULTATION

27. The SFC released a consultation document and an exposure draft of the Rules on 6 May 2002 for comment by the public. A total of 11 submissions were received. The SFC has considered all the comments received and revised the Rules to better reflect the policy intention, address market concerns and improve the drafting. The majority of the respondents generally accepted the new dual-filing arrangements as an effective deterrent against disclosure of false or misleading information and a positive move to improve the quality of corporate information disclosure.

28. A draft of the Rules was considered by the Subcommittee at its meeting held on 20 September 2002. No major concerns were expressed by Members of the Subcommittee at the meeting.

FINANCIAL AND STAFFING IMPLICATIONS

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

COMMENCEMENT DATE

30. 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 target commencement date by the end of 2002.

PUBLICITY

31. The Rules will be published in the Gazette on 13 December 2002. The SFC will issue a press release on the same day.

ENQUIRIES

32. For any enquiries on this brief, please contact Mr. Laurence Li of the Corporate Finance Division of the SFC on 2840 9488 or Mrs. Mary Ahern of the Legal Services Division of the SFC on 2283 6809.

The Securities and Futures Commission
13 December 2002