

DRAFT

SECURITIES AND FUTURES (CLIENT MONEY) RULES

DRAFT

SECURITIES AND FUTURES (CLIENT MONEY) RULES

No		Page
1.	Commencement	1
2.	Interpretation	1
3.	Payment of client money into segregated accounts	3
4.	Payment of client money out of segregated accounts	8
5.	Payment of interest on client money held in segregated accounts	10
6.	Notification where client money becomes subject to exchange control	10
7.	Reporting of non-compliance with certain Rules	11
8.	Penalties	11

DRAFT

SECURITIES AND FUTURES (CLIENT MONEY) RULES

(Made by the Securities and Futures Commission under
section 145(1) of the Securities and Futures
Ordinance (of 2001)

1. Commencement

These Rules shall come into operation on the day
appointed for the commencement of Part VI of the
Ordinance.

2. Interpretation

(1) In these Rules, unless the context otherwise
requires -

“client contract” (客戶合約) includes any contract or
arrangement between -

- (a) a licensed corporation and its client
containing terms on which the licensed
corporation is to provide services the

DRAFT

provision of which constitutes a regulated activity;

- (b) an associated entity of a licensed corporation and a client of the licensed corporation, which contains terms regarding the treatment of client money;

“client’s authority” (客戶授權) means the authority given in writing by a client to a licensed corporation or its associated entity concerning the treatment of client money and such authority -

- (a) is effective only if it specifies the period for which it is current;
- (b) remains in force for the period so specified or 12 months, whichever is the shorter; and
- (c) may be renewed in writing or otherwise for one or more further periods not exceeding 12 months at any one time.

DRAFT

(2) These Rules do not apply to an associated entity that is an authorized financial institution.

3. Payment of client money into segregated accounts

(1) A licensed corporation that receives or holds client money as referred to in subsection (2) and any associated entity of the licensed corporation that receives or holds such client money must establish and maintain in Hong Kong one or more segregated trust accounts or client accounts, each of which must be designated as such and maintained with -

- (a) an authorized financial institution; or
- (b) any other institution approved by the Commission for the purposes of these Rules, either generally or in a particular case.

(2) The following amounts of client money received or held in Hong Kong by a licensed corporation or any of its associated entities must be dealt with in accordance with subsection (3) -

DRAFT

- (a) all amounts received in respect of dealing in securities or dealing in futures contracts on behalf of a client -
- (i) less brokerage and other proper charges;
 - (ii) other than those amounts that the licensed corporation is required to pay out on the day of such receipt or within the following 2 business days in order to meet settlement or margin requirements which are the client's obligations in respect of such dealing;
 - (iii) other than those amounts that are reimbursements of money which the licensed corporation has paid out before the day of such receipt in order to meet the client's obligations in respect of such dealing;
- (b) all amounts that are received from or on behalf of a client to whom the licensed corporation provides financial accommodation to facilitate the acquisition

DRAFT

and, where applicable, the continued holding of securities, except those amounts that are used to reduce the amount owed by the client to the licensed corporation;

- (c) all amounts, less brokerage and other proper charges, that are received from or on behalf of a client in respect of leveraged foreign exchange trading;
- (d) all other amounts received from or on behalf of a client;
- (e) subject to any agreement with a client to the contrary, all amounts derived by way of interest from the retention of any amount mentioned in paragraph (a), (b), (c) or (d).

(3) Within one business day after the receipt of any client money as referred to in subsection (2), the licensed corporation or associated entity that received it must pay it -

- (a) into an account referred to in subsection (1);

DRAFT

(b) to the client from whom or on whose behalf it has been received;

(c) in accordance with an oral or written direction from the client from whom or on whose behalf it has been received; or

(d) in accordance with the client's authority of the client from whom or on whose behalf it has been received, except where -

(i) this would be unconscionable in the sense used in the Unconscionable Contracts Ordinance (Cap.458), as if the client's authority were a contract under that Ordinance; or

(ii) subsection (4) applies.

(4) Neither the licensed corporation nor the associated entity as referred to in subsection (3) may apply, or permit to be applied any client money as referred to in subsection (2) to -

DRAFT

(a) its account in Hong Kong, or the account in Hong Kong of any corporation with which it is in a controlling entity relationship, other than an account referred to in subsection (1); or

(b) an account of -

(i) any of its officers or employees;

or

(ii) any officer or employee of any corporation with which it is in a controlling entity relationship,

unless that officer or employee is the client from whom or on whose behalf such client money has been received.

(5) No amount may be paid into an account referred to in subsection (1) unless it is -

(a) client money;

(b) received in a form in which it is aggregated with client money; or

DRAFT

- (c) authorized to be paid into the account by the Commission in a particular case on an application being made for that purpose.

4. Payment of client money out of segregated accounts

(1) All client money as referred to in section 3(2) that is paid into an account referred to in section 3(1) must be retained there by the licensed corporation or associated entity maintaining that account until it is -

- (a) paid to the client on whose behalf it is being held;

- (b) paid in accordance with section 3(3)(c) or (d);

- (c) required in order to meet settlement or margin requirements -

- (i) which arise in respect of dealing in securities or dealing in futures contracts carried out by the licensed corporation on behalf

DRAFT

of the client on whose behalf it
is being held; and

(ii) which are the client's obligations
in respect of such dealing; or

(d) required to pay money that the client on
whose behalf it is being held owes to the
licensed corporation in respect of
regulated activity carried out by the
licensed corporation in accordance with a
client contract.

(2) An amount that is paid with client money into
an account referred to in section 3(1) in the form
described in section 3(5)(b) must be paid out again by
the licensed corporation, or the associated entity of the
licensed corporation, which received it, within one
business day after -

(a) the receipt of such an aggregated sum; or

(b) the identification of such amount,

whichever occurs later.

DRAFT

5. Payment of interest on client money held in segregated accounts

Subject to any agreement with a client to the contrary, a licensed corporation or any associated entity of the licensed corporation must distribute at least once every 6 months to the client all amounts derived by way of interest from the retention in an account referred to in section 3(1) of client money as referred to in section 3(2) received from or on behalf of the client.

6. Notification where client money becomes subject to exchange control

Where client money held by a licensed corporation or an associated entity of the licensed corporation becomes subject to exchange control, the licensed corporation or associated entity must inform -

(a) the client on whose behalf it is being held; and

(b) the Commission,

DRAFT

within one business day after becoming aware of this fact.

7. Reporting of non-compliance with certain provisions of the Rules

A licensed corporation or an associated entity which becomes aware that it is not in compliance with section 3 or 4(1) must notify the Commission within one business day.

8. Penalties

(1) A licensed corporation or an associated entity that contravenes section 3 or 4 -

(a) without reasonable excuse commits an offence and is liable -

- (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months;

DRAFT

(b) with intent to defraud commits an offence
and is liable -

(i) on conviction on indictment to a
fine of \$1,000,000 and to
imprisonment for 7 years; or

(ii) on summary conviction to a fine of
\$500,000 and to imprisonment for 1
year.

(2) A licensed corporation or an associated entity
that contravenes section 5, 6 or 7 -

(a) without reasonable excuse commits an
offence and is liable on conviction to a
fine at level 3;

(b) with intent to defraud commits an offence
and is liable on conviction to a fine at
level 6.

Chairman,
Securities and Futures
Commission

2001

DRAFT

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 145(1) of the Securities and Futures Ordinance (of 2001). They prescribe the manner in which licensed corporations and certain associated entities must treat and deal with client money received or held in Hong Kong. There is provision for the payment of client money into segregated trust accounts or client accounts within one business day after receipt. Requirements are specified in respect of: payments out of such accounts, the payment of interest on client money held in such accounts, notification where client money becomes subject to exchange control, and self-reporting of non-compliance. Penalties are prescribed for breach of the Rules.