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**SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS – SECURITIES
BORROWING AND LENDING) RULES**

(Cap. XXX, section [])

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

No.		Page
1.	Commencement	1
2.	Interpretation	1

**PART II
EXEMPTIONS AND INTERESTS DISREGARDED**

3.	Prescribed circumstances	3
4.	Prescribed interests in shares	5
5.	Notification by agents	6

**PART III
APPROVALS AND RECORDS**

6.	Approved lending agents	7
7.	Records to be kept by approved lending agents	7
8.	Records to be kept by institutional investors	8
9.	Records to be kept by regulated persons	8

DRAFT

SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS – SECURITIES BORROWING AND LENDING) RULES

(Made by the Commission under section [] of the Securities and Futures Ordinance
([] of 2001)

PART I PRELIMINARY

1. Commencement

These rules shall come into operation on the day appointed for the commencement of Part XV of the Ordinance.

2. Interpretation

- (1) In these rules, unless the context otherwise requires –
- “approved lending agent” () means a corporation that is approved by the Commission in accordance with section 7;
- “equivalent shares” () means shares of an identical description, nominal value and amount to the particular shares lent;
- “collateral” () means money or securities provided to secure the return of shares lent and includes a letter of credit and a guarantee;
- “designated shares” () means shares in which an institutional investor is interested which –
- (a) have been set apart as being available for lending; or
 - (b) have been identified by a record as being available for lending;
- “duty of disclosure” () has the same meaning as in section [] of the Ordinance;
- “institutional investor” () means -
- (a) a collective investment scheme authorized under section 103 of the Ordinance;
 - (b) an approved pension scheme that is approved by the Commission under section [] of the Ordinance;
 - (c) an authorized financial institution;
 - (d) an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
 - (e) a qualified overseas scheme;

DRAFT

- (f) a corporation authorized under the law of any place outside Hong Kong, recognized for the purposes of these rules by the Commission by notice in the Gazette, to carry on business as –
 - (i) a bank;
 - (ii) an insurance company;
- (g) a manager of a person referred to in paragraphs (a) to (f) in relation to the interest in shares of the person referred to in paragraphs (a) to (f); and
- (h) any person of a class prescribed by the Commission for the purposes of these rules by notice in the Gazette;

“lend” () means to transfer shares to a person who is required to return those shares, or equivalent shares, if requested to do so, and “borrow” shall be construed accordingly;

“listed corporation” () has the same meaning as in section [] of the Ordinance;

“prescribed particulars” () in relation to an event mentioned in sections 7 to 9 means –

- (a) the date of the event;
- (b) the description and quantity of the shares the subject of the event; and
- (c) the value of any collateral given, taken, returned or given up (as the case may be);

"prescribed purpose" () means-

- (a) on-lending the interest in shares, under the terms of a relevant agreement, to another person;
- (b) returning the interest in shares in accordance with the terms of a relevant agreement, to a person from whom such an interest in shares was borrowed;

"qualified overseas scheme" () has the same meaning as in section [314(4)] of the Ordinance;

“qualifying shares” () means shares in which an institutional investor is interested and which an approved lending agent has authority to lend as agent for an institutional investor;

“regulated person”() means –

- (a) an intermediary licensed or registered for Type 1 regulated activity; or

DRAFT

- (b) a corporation which is licensed or registered in a place outside Hong Kong, recognized for the purposes of these rules by the Commission, for an activity which in the opinion of the Commission is equivalent to Type 1 regulated activity;

“relevant agreement” () means a securities borrowing and lending agreement under which –

- (a) the borrower of shares is required to provide collateral, determined by reference to the market value of the shares lent, to secure the return of the shares; and
- (b) the lender of the shares can require the return of the shares at any time on giving notice to the borrower;

“relevant share capital” () has the same meaning as in section [] of the Ordinance;

“shares” () means shares comprised in the relevant share capital of a listed corporation and -

- (a) includes an interest in shares so comprised; and
- (b) where shares so comprised are returned under the terms of a relevant agreement, includes equivalent shares.

“short position” () has the same meaning as in section [] of the Ordinance;

PART II EXEMPTIONS AND INTERESTS DISREGARDED

3. Prescribed circumstances

- (1) In the following circumstances an institutional investor who –
 - (a) is interested in shares held by an approved lending agent; and
 - (b) complies with the conditions set out in subsection (4)

will not be under a duty of disclosure under section 304(1)(d) of the Ordinance -

- (i) where the approved lending agent lends qualifying shares under the terms of a relevant agreement; or
- (ii) where shares to which paragraph (i) applied are returned in accordance with the terms of the relevant agreement.

DRAFT

- (2) In the following circumstances an approved lending agent who -
- (a) complies with the conditions set out in subsection (4); and
 - (b) complies with the requirements of section 7,

will not be under a duty of disclosure under section 304(1)(d) of the Ordinance -

- (i) where the approved lending agent lends qualifying shares under the terms of a relevant agreement; or
- (ii) where shares to which paragraph (i) applied are returned in accordance with the terms of the relevant agreement.

- (3) In the following circumstances an institutional investor who –

- (a) complies with the conditions set out in subsection (5); and
- (b) complies with the requirements of section 8; and

will not be under a duty of disclosure under section 304(1)(d) of the Ordinance -

- (i) where the institutional investor lends shares under the terms of a relevant agreement; or
- (ii) where shares to which paragraph (i) applied are returned in accordance with the terms of the relevant agreement.

(4) The conditions referred to in subsections (1) and (2) are that when shares in which an institutional investor or approved lending agent (as the case may be) is interested –

- (a) become qualifying shares; or
- (b) cease to be qualifying shares;

he treats each of the events mentioned in paragraph (a) and (b), for the purposes of the Ordinance, as if it were a change in the nature of his interest in those shares.

(5) The conditions referred to in subsection (3) are that when shares in which an institutional investor is interested –

- (a) become designated shares; or
- (b) cease to be designated shares,

he treats each of the events mentioned in paragraph (a) and (b), for the purposes of the Ordinance, as if it were a change in the nature of his interest in those shares;

(6) If an approved lending agent fails to comply with the requirements of section 7 he shall be taken, for the purposes for the purposes of Divisions 2 to 5 of the Ordinance, to

DRAFT

have lent all shares then lent by him under the terms of a relevant agreement, at the time that he failed to comply with the requirements of section 7.

(7) If an institutional investor fails to comply with the requirements of section 8 he shall be taken, for the purposes for the purposes of Divisions 2 to 5 of the Ordinance, to have lent all shares then lent by him under the terms of a relevant agreement, at the time that he failed to comply with the requirements of section 8.

4. Prescribed interests in shares

(1) Subject to subsections (2) (3) and (4), the following interests are prescribed interests, and prescribed short positions, for the purposes of section 314(1)(j) of the Ordinance

- (a) the interest, or short position, in shares of a regulated person where -
 - (i) the interest in shares has been borrowed under the terms of a relevant agreement; and
 - (ii) the interest in shares is used, or intended to be used, within 5 business days after the day on which the interest was borrowed by the regulated person for a prescribed purpose; and
- (b) the interest in shares, or short position, of a regulated person where –
 - (i) the interest in shares to which paragraph (a) applies is returned to the regulated person in accordance with the terms of the relevant agreement under which the interest was lent, by the person who borrowed that interest; and
 - (ii) the interests in shares is used, or intended to be used, within 5 business days after the day on which the interest was returned to the regulated person for a prescribed purpose.

(2) Subject to subsections (3) and (4), where an interest in shares is not used for a prescribed purpose by the regulated person, or by a related corporation of the regulated person, within the period of 5 business days specified in subsection (1) the regulated person shall be taken to have acquired that interest, or come to have that short position, (as the case may be) for the purposes of Divisions 2 to 5 of the Ordinance on the last day of that period.

DRAFT

(3) Subject to subsection (4), where an interest in shares is used for a purpose, other than a prescribed purpose, by the regulated person, or by a related corporation of the regulated person, within the period of 5 business days specified in subsection (1) the regulated person shall be taken to have acquired that interest, or come to have that short position, (as the case may be) for the purposes of Divisions 2 to 5 of the Ordinance on the day that it is used for that purpose.

(4) If a regulated person fails to comply with the requirements of section 9 all interests, and short positions, in shares of a regulated person that are prescribed interests and short positions under subsection (1) shall cease to be prescribed interests or short positions (as the case may be) and the regulated person shall be taken to have acquired an interest, or come to have a short position (as the case may be) in such shares for the purposes of Divisions 2 to 5 of the Ordinance, on the day that -

- (a) he failed to comply with the requirements of section 9; or
- (b) he acquired that interest, or came to have that short position, in shares, which ever is the later.

5. Notification by agents

Where -

- (a) an approved lending agent lends an interest in shares to which section 3(1)(i) or (2)(i) applies; or
- (b) an interest in shares to which paragraph (a) applies is returned in the circumstances set out in section 3(1)(ii) or (2)(ii),

an institutional investor shall not be required, under section 312 of the Ordinance, to secure that its agent notifies it of the lending or the return of the interest.

PART III APPROVALS AND RECORDS

6. Approved Lending agents

- (1) A corporation is an approved lending agent if it is approved by the Commission, in writing, as an approved lending agent for the purposes of these rules.
- (2) An application for approval under subsection (1) shall be accompanied

DRAFT

by -

- (a) such information and particulars as the Commission may reasonably require; and
- (b) an application fee prescribed by rules made under section 382 for the purposes of this section;

(3) The Commission may, by notice in writing served on a person approved under subsection (1) withdraw its approval where the Commission is satisfied that it is appropriate to do so.

7. Records to be kept by approved lending agents

(1) On the occurrence of any of the following events an approved lending agent shall record prescribed particulars of the event -

- (a) the approved lending agent lends shares to which section 3(2)(i) applies;
- (b) shares to which section 3(2)(ii) applies are returned to the approved lending agent.

(2) An approved lending agent shall -

- (a) subject to paragraph (b), retain each record referred to in subsection (1) for not less than three years from the date the relevant record was made; and
- (b) if requested by an employee of the Commission, within such period, provide any such record to the Commission within 5 business days.

8. Records to be kept by institutional investors

(1) On the occurrence of any of the following events a institutional investor shall record prescribed particulars of the event -

- (a) the institutional investor lends shares to which section 3(3)(i) applies;
- (b) shares to which section 3(3)(ii) applies are returned to the institutional investor.

(2) A institutional investor shall -

DRAFT

- (a) subject to paragraph (b), retain each record referred to in subsection (1) for not less than three years from the date the relevant record was made; and
- (b) if requested by an employee of the Commission, within such period, provide any such record to the Commission within 5 business days.

9. Records to be kept by regulated persons

(1) On the occurrence of any the following events a regulated person shall record the prescribed particulars of that event –

- (a) the regulated person borrows or lends an interest in shares to which section 4(1)(a) applies;
- (b) an interest in shares to which section 4(1)(b) applies is returned to the regulated person;
- (c) the regulated person –
 - (i) borrows an interest in shares to which section 4(1)(a) applies; or
 - (ii) an interest in shares to which section 4(1)(b) applies, is returned to a regulated person,and the interest in shares is not used for a prescribed purpose within the period of 5 business days specified in section 4(1);

(2) A regulated person shall-

- (a) subject to paragraph (b), retain each record referred to in subsection (1) for not less than three years from the date the relevant record was made; and
- (b) if requested by an employee of the Commission, within such period, provide any such record to the Commission within 5 business days of such request.

Chairman,
Securities and Futures Commission

[] 2001

DRAFT

EXPLANATORY NOTE

These Rules are made by the Securities and Futures Commission under section [] of the Securities and Futures Ordinance (of 2001). They prescribe the circumstances in which persons lending shares are exempt from the duty of disclosure under Divisions 2 to 4 of Part XV of the Ordinance and prescribe interests, and short positions, in shares held by regulated persons that are to be disregarded under section [314] of the Ordinance. The Rules provide for approval of custodians and others as approved lending agents and the keeping of records of dealings in interests in shares that are exempt from the duty of disclosure or disregarded under these Rules.