

L.N. 28 of 2011

**Securities and Futures Ordinance (Amendment of
Schedule 5) Notice 2011**

(Made by the Financial Secretary under section 142 of the Securities
and Futures Ordinance (Cap. 571))

1. Commencement

This Notice comes into operation on 1 June 2011.

2. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as
set out in section 3.

3. Schedule 5 amended (Regulated activities)

(1) Schedule 5, Part 1—

Repeal

“management.”

Substitute

“management;”.

(2) Schedule 5, Part 1, after entry relating to Type 9—

Add

“Type 10 : providing credit rating services.”.

(3) Schedule 5, Part 2, definition of *advising on securities*, after
“ “advising on corporate finance” ”—

Add

“or *providing credit rating services*”.

(4) Schedule 5, Part 2—

Add in alphabetical order

“*credit ratings* (信貸評級) means opinions, expressed using a defined ranking system, primarily regarding the creditworthiness of—

- (a) a person other than an individual;
- (b) debt securities;
- (c) preferred securities; or
- (d) an agreement to provide credit;

debt securities (債務證券) means debenture stocks, loan stocks, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities, and other securities or instruments acknowledging, evidencing or creating indebtedness;

preferred securities (優先證券) means preference shares, preferred shares or preferred stock;

providing credit rating services (提供信貸評級服務) means—

- (a) preparing credit ratings—
 - (i) for dissemination to the public, whether in Hong Kong or elsewhere; or
 - (ii) with a reasonable expectation that they will be so disseminated; or
- (b) preparing credit ratings—
 - (i) for distribution by subscription, whether in Hong Kong or elsewhere; or
 - (ii) with a reasonable expectation that they will be so distributed,

but does not include—

- (c) preparing, pursuant to a request made by a person, a credit rating which is exclusively prepared for, and provided to, the person and that is neither intended for dissemination to the public or distribution by subscription, whether in Hong Kong or elsewhere, nor reasonably expected to be so disseminated or distributed; or
- (d) gathering, collating, disseminating or distributing information concerning the indebtedness or credit history of any person;”.

John TSANG
Financial Secretary

9 February 2011

Explanatory Note

The purpose of this Notice is to amend Schedule 5 to the Securities and Futures Ordinance (Cap. 571) (*SFO*), which describes the different types of “regulated activity” for the purposes of the SFO, by adding a new type of regulated activity to Part 1 of that Schedule—Type 10: “providing credit rating services”. The objective is to create a licensing regime, and related legal and regulatory obligations, for credit rating agencies (*CRAs*), and their rating analysts, providing credit rating services in Hong Kong. The SFO requires that corporations must be licensed and authorized financial institutions must be registered if they carry on a business in a regulated activity or hold themselves out as doing so in Hong Kong, or actively market whether in Hong Kong or outside Hong Kong to the public any services they provide that would constitute a regulated activity if provided in Hong Kong (see sections 114(1) and (2)(a) and (b) and 115(1) of the SFO). In addition, any individual performing a regulated function in relation to a regulated activity carried on as a business or holding out as doing so, or actively marketing whether in Hong Kong or outside Hong Kong to the public any function the individual performs which would constitute a regulated function if performed in Hong Kong must be a licensed representative accredited to the licensed corporation or an individual whose name is registered by the Monetary Authority as engaged by a registered institution in respect of a regulated activity (see sections 114(3) and (4)(a) and (b) and 115(2) of the SFO). Accordingly, CRAs that are licensed for the new Type 10 regulated activity will be corporations licensed under section 116 or 117 of the SFO or authorized financial institutions registered under section 119(1) of the SFO for the regulated activity (see section 114(2)(a) and (b) of the SFO). The rating analysts who carry on a regulated activity for CRAs will be obliged to be licensed or registered as representatives accredited to these CRAs (see section 114(4)(a) and (b) of the SFO).

2. Section 1 provides for the commencement of this Notice.
3. Section 2 provides for the amendment of Schedule 5 to the SFO.
4. Section 3(1) makes a technical amendment to Part 1 of Schedule 5 to the SFO.
5. Section 3(2) adds the new Type 10 regulated activity to Part 1 of Schedule 5 to the SFO—“providing credit rating services”.
6. Section 3(3) amends the definition of *advising on securities* in relation to the new Type 10 regulated activity and section 3(4) adds 4 related definitions in relation to the new Type 10 regulated activity—*credit ratings*, *debt securities*, *preferred securities* and *providing credit rating services*.