



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

A Consultation Paper on
the Securities and Futures (Stock Market Listing) Rules
and
the Securities and Futures (Transfer of Functions –
Stock Exchange Company) Order

Hong Kong
May 2002

香港
2002年5月

Consultation Document

i. This consultation document invites public comments on the draft **Securities and Futures (Stock Market Listing) Rules** (the “draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 36(1) of the Securities and Futures Ordinance (5 of 2002) (the “Ordinance”) when it commences and on the draft **Securities and Futures (Transfer of Functions – Stock Exchange Company) Order** (the “draft Order”) which the Chief Executive in Council may promulgate under section 25(1) of the Ordinance.

ii. Subsidiary legislative rules and orders must be subject to negative vetting by the Legislative Council. In addition, for rules that the SFC proposes to make, section 398 of the Ordinance stipulates a mandatory consultation requirement. The SFC now releases the draft Rules and the draft Order, attached as Annex 1 to this document, for public consultation.

iii. The public may obtain copies of this as well as other consultation documents and attachments free of charge at the SFC office and on the SFC Internet website at <http://www.hksfc.org.hk>.

iv. The SFC invites interested parties to submit written comments on the draft Rules and the draft Order, and other matters that might have a significant impact on the Rules and the Order **before 7 June 2002**. Persons wishing to comment should provide details of any organizations whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit their proposed text for amending the Rules and the Order.

v. Written comments may be sent

By mail to: SFC (Stock Market Listing Rules)
Attn: Corporate Finance Division
12/F, Edinburgh Tower
The Landmark
15 Queen’s Road Central
Hong Kong

By fax to: (852) 2810 5385

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: stock_market_listing_rules@hksfc.org.hk

vi. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents. In this connection, please read the Personal Information Collection Statement attached as Annex 2 to this consultation paper.

vii. You might not wish your name to be published by the SFC in connection with your submission. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

Introduction

1. The Hong Kong securities market stakes its credibility on transparency and the integrity of information issued to the investing public. Our regulatory regime is disclosure-based and investor protection is furthered through providing the public with reliable information and enabling investors to make well-informed decisions for themselves. This is the approach adopted internationally in all major jurisdictions.
2. Key to this is information disclosure by companies with public shareholders or which are seeking to raise funds from the public. In reaching public investors, these companies take on an obligation to provide timely, accurate, and full disclosure of material information. Failure to do so is a violation of the public trust and should be met with appropriate enforcement action.
3. 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.
4. Our enforcement regime for corporate information disclosure has been mostly based on the non-statutory Listing Rules of the Stock Exchange of Hong Kong and on the contractual obligation that a listed company owes to the Exchange under a Listing Agreement. As the Hong Kong market continues to develop and gain in diversity and complexity, there have been increasing suggestions for some degree of statutory support. International regulatory practice also points in this direction.
5. In particular, there is a consensus that effective enforcement is paramount to credible disclosure regulation and the regulatory regime must be backed with:
 - Effective investigatory powers to be available for use in cases of suspected dissemination of false or misleading information to the public; and
 - Effective sanctions – the most serious of which, criminal liability, would be used rarely but its applicability in the most egregious cases would have an overall positive effect.
6. Different jurisdictions provide for this in different ways and the international models continue to evolve. The SFC has carefully reviewed Hong Kong market practice and our legislative framework and now proposes certain minimum changes to the present Securities (Stock Exchange Listing) Rules (to be re-enacted as the Securities and Futures (Stock Market Listing) Rules).
7. Under the draft Rules, companies that disseminate information to public investors pursuant to applicable rules or laws will have to file a copy of the disclosure materials with the SFC. Accordingly, under existing statutory laws concerning the provision of false or misleading information, re-enacted in

section 384 of the new Ordinance, any person that intentionally or recklessly provides false or misleading information when making the disclosure (in other words, any company that lies to the public) would be subject to the statutory powers of the SFC. The SFC will be able to employ its existing investigatory powers in establishing the facts and gathering evidence. In appropriate cases, the SFC may bring (or refer to the Department of Justice to bring) the offenders to prosecution in the courts.

8. Prospectuses and other listing documents constitute the single most important category of corporate information disclosure to the public. Disclosure in these materials forms a key element of the relationship between a company and its public shareholders. Accordingly, the draft Rules also require companies seeking to list their securities for trading in the Hong Kong public market to submit their application materials as a statutory filing to the SFC.
9. There would be no additional costs to the companies or the market. The draft Rules provide that a company may save the administrative step of filing with the SFC by authorizing the Exchange to file the materials on its behalf. The Exchange will continue to discharge its prospectus-vetting and authorization function.
10. The net effect of the draft Rules is to bring the Hong Kong regulatory regime more in line with international practice in providing for a statutory regulator of corporate information disclosure to the public. This is important for effective enforcement and the credibility of our disclosure-based regulation.

The Draft Rules

11. Most of the provisions in the draft Rules are copied from existing laws. These include clauses 1– 4, 7– 10, and 12– 14, which are in the present Securities (Stock Exchange Listing) Rules, and clauses 11 and 15, which are taken from the existing Securities (Stock Exchange Listing) (Approved Share Registrar) Rules. These provisions have been operating smoothly and the market is well accustomed to their application in practice. Any changes reflected in the draft Rules are only technical in nature and are intended to make the language more user-friendly.
12. Clauses 5 and 6 relate to the policies mentioned above on the regulation of corporate information disclosure to the public. Specifically, clause 6 requires companies whose securities are listed on the Stock Exchange to dual-file their public disclosure materials with the SFC. This will not change the disclosure content requirements, most of which are set out in the Stock Exchange Listing Rules and will continue to be administered by the Exchange. It will, however, attach statutory liability under section 384 of the Ordinance to any person who intentionally or recklessly makes false or misleading information disclosure.
13. Corporate information disclosure to the public is also made pursuant to the SFC Codes on Takeovers and Mergers and Share Repurchases. Identical disclosure is usually required by the Stock Exchange Listing Rules, but not in

all cases. To address this, Clause 6 also specifically refers to disclosure made pursuant to these Codes.

14. Since the disclosure materials will be statutory filings with the SFC, the SFC will be able to invoke its powers under section 182 of the Ordinance to conduct the necessary investigations into cases of suspected false or misleading information disclosure to the public. If there is sufficient evidence and prosecution is appropriate, the SFC may refer the case to the Department of Justice or, under section 388, itself prosecute the matter before a magistrate.
15. In the event that an investigation uncovers suspected wrongdoing in areas other than false or misleading disclosure, the SFC may refer the matter to another regulatory body or, if the matter fall within the jurisdiction of the SFC, itself take appropriate further action. (Examples include corporate fraud, which may be a matter for the Police Commercial Crime Bureau, or market manipulation and misconduct by intermediaries, both of which are matters for SFC enforcement.)
16. Where the false or misleading disclosure has a proven market manipulation element, it might be possible to bring a civil action in front of the new Market Misconduct Tribunal or criminal prosecution in the courts. (Sections 277 and 298 of the Ordinance requires proof of the false or misleading information being likely to induce a subscription, sale or purchase in securities or likely to maintain, increase, reduce, or stabilize the price of securities.) In addition, following an investigation, the SFC may pass the evidence it has gathered to the Stock Exchange for them to consider potential disciplinary action under the Listing Rules.
17. Prospectuses and other listing documents constitute the single most important category of disclosure materials. Clause 5 recognizes this and requires companies seeking to access the public market to file a copy of its listing application made to the Stock Exchange with the SFC. In line with the international model practiced in all major jurisdictions, the SFC will be able to comment on the draft disclosure materials (principally the prospectus) and object to the company accessing the public market on the basis of insufficient or inadequate disclosure.
18. Under sections 40A and 342F of the Companies Ordinance, any person who authorizes a prospectus containing any untrue statements commits an offence, unless he proves that the untrue statement was immaterial or he had reasonable grounds for believing the statement to be true. Under the new Ordinance, the SFC may invoke its section 182 investigatory power for such suspected false or misleading disclosure in prospectuses. If appropriate, the SFC may bring (or refer to the Department of Justice to bring) prosecutorial action.

Saving Market Costs and Administrative Burden

19. The SFC recognizes that cost is an important consideration for market users. To avoid unnecessary administrative burden, the draft Rules allow a company

or other person to file the required disclosure materials only with the Stock Exchange, provided that the person has authorized the Exchange to make the statutory filing to the SFC on its behalf. There will be no additional filing or compliance costs. By taking this route, the company or other person will also avoid inadvertently forgetting to file its disclosure materials with the SFC.

20. In addition, the public disclosure materials a company files under clause 6 will not be subject to any SFC pre-vetting. There will be no additional steps in the administrative process or any time delay in disseminating the information.
21. In respect of prospectuses and other initial-listing disclosure materials, the Stock Exchange will remain the frontline regulator in vetting and authorizing the documents. Listing applicants will continue to make their applications to the Stock Exchange, which, with the authorization of the applicants, will make the appropriate filings with the SFC. The power of the SFC under clause 5 will be a reserve power only. The SFC will enter into a new Memorandum of Understanding with the Exchange on the administrative arrangements and how the SFC will continue to rely on the frontline regulation by the Exchange.

The Draft Order

22. In order that the Stock Exchange can continue to act as the frontline regulator of listed companies and listing applications, the present transfer (from the SFC to the Exchange) of prospectus-vetting and authorization function will remain. Accordingly, the draft Order is substantially identical to the present Securities (Transfer of Functions) Order.
23. The Ordinance uses a new defined concept of “collective investment schemes” to include mutual funds and other pooled investment vehicles. The general intention is that these products should be subject to authorization by the SFC if marketed to the public. The present Transfer of Functions Order carves out mutual funds; the power to authorize prospectuses for these products has not been transferred from the SFC to the Stock Exchange. Similarly, the new draft Order will carve out collective investment schemes that should be subject to SFC authorization.

International Comparison

24. The net effect of the draft Rules and the draft Order is to bring the Hong Kong regulatory regime more in line with international practice in providing for a statutory regulator of corporate information disclosure to the public. All major jurisdictions provide for statutory investigation and enforcement against false or misleading disclosure. Given the widely accepted disclosure-based approach, the use of statutory powers is key to effective regulation and public credibility.
25. The US Securities and Exchange Commission, the UK Financial Services Authority, and the Australian Securities and Investments Commission are

empowered by legislation to conduct statutory investigations into public disclosure abuses. The laws in these jurisdictions also make violations of the relevant disclosure requirements criminal offences. The effect of the proposed draft Rules will be in line with this international practice.

26. The SEC and FSA are also able to seek fines and other civil penalties for violation of disclosure requirements in administrative proceedings, and ASIC has recently been empowered to apply for civil sanctions in the courts. The SFC does not propose to introduce this option at present but will keep the possibility under review as investigatory experience accumulates.

Checks and Balances

27. The draft Rules do not introduce any new enforcement powers for the SFC and only enable the SFC to invoke its existing investigatory and prosecutorial powers in cases of suspected false or misleading corporate information disclosure. Checks and balances currently in place or to be established under the Ordinance will automatically apply. These include built-in safeguards (required proof of mens rea and other elements as clearly set out in relevant sections of the Ordinance) and various internal control mechanisms (as already explained in detail in previous public consultation documents). There are also a number of external mechanisms of checks and balances, including judicial review by the courts, the Process Review Panel, the Ombudsman, and the Independent Commission Against Corruption.
28. The power of the SFC under clause 5 will be a reserve power. Nevertheless, it will be subject to the same mechanisms of checks and balances as are generally applicable to the work of the SFC. In addition, we propose that, where the SFC exercises its reserve power, the decision will be subject to the full-merit review of the new Securities and Futures Appeals Tribunal.

No Merit Regulation of Business Activities

29. The draft Rules enable the SFC to perform more effectively its role in regulation of corporate information disclosure. The SFC will not be regulating corporate activities or transactions. For example, the SFC will not attempt to determine what transactions are permissible between a listed company and its connected parties, nor whether a rights issue is at an appropriate price. Under our disclosure-based regulation, such commercial decisions are left to the company's management, board of directors, and shareholders (with relevant voting and other procedures as set out in the Stock Exchange Listing Rules). The merit of a transaction is not a matter for regulators to determine. Our object is to ensure that public investors receive timely, accurate, and full information disclosure in order to make the best judgment of the events for themselves.

Other Matters

30. Investigation of disclosure abuse is an inherently difficult task. The complex nature of corporate and financial activities makes building a case a painstaking exercise. Furthermore, most companies listed in Hong Kong have substantial operations outside of the territory; important evidence and witnesses might be unavailable. That the SFC will have to gather sufficient evidence to establish a case to the criminal standard of proof, i.e., beyond all reasonable doubt, will also raise very high the bar for successful enforcement.
31. Nevertheless, the SFC is committed to employing all the tools available to it to pursue persons who provide false or misleading information (i.e., lie) to the public and the market. The SFC will re-deploy internal resources and recruit for further market expertise where necessary to carry out this disclosure regulatory function. In cases involving cross-jurisdiction issues, we will also need to seek the co-operation of fellow regulators overseas under formal memoranda of understanding or informal arrangements.

Public Consultation

32. Strengthening our enforcement of disclosure regulation in Hong Kong is an important part of the overall effort to enhance the transparency, credibility, and competitiveness of our securities market. The proposals in the draft Rules and draft Order will bring Hong Kong further in line with the international model of having a disclosure regulator able to employ the necessary tools to promote the quality of corporate information disclosure.
33. The SFC would welcome views and comments from the public on the above proposals, the draft Rules and the draft Order, and any related matters.

Securities and Futures Commission
6 May 2002

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(NO. 5 OF 2002, SECTION 36(1))

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

No.		Page
1.	Commencement	3
2.	Interpretation	3

PART II STOCK MARKET LISTING

3.	Requirements for listing applications	4
4.	Exemptions from section 3	5
5.	Copy of listing materials to be filed with the Commission	6
6.	Copy of ongoing disclosure materials to be filed with the Commission	8

PART III SUSPENSION OF DEALINGS

7.	Suspension of dealings in securities	9
8.	Powers of the Commission upon the suspension under this Part of dealings in any securities	10
9.	Provisions supplementary to sections 7 and 8	13
10.	Restriction on re-listing	13
11.	Waiver of requirements of Parts II and III	13

PART IV APPROVED SHARE REGISTRARS

12.	Approval of share registrars	14
13.	Securities not to be listed where approved share registrar not employed	14

14. Suspension of dealings in cessation of employment etc. of approved share registrar 14

15. Power to exempt 16

16. Appeal against suspension 16

PART V
MISCELLANEOUS

17. Suspensions, etc. by recognized exchange company to be notified to the Commission 17

18. Notices, etc. to be in writing 17

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(Made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002) after consultation with the Financial Secretary and the Stock Exchange Company.)

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (5 of 2002).

2. Interpretation

In these rules, unless the context otherwise requires –

"applicant" means a corporation which has made an application under section 3;

"application" means an application made under section 3 and all documents in support of or in connection with the application including any replacement of or amendment or supplement to such application and the filing obligation in section 5(1) applies separately to any such replacement, amendment or supplement;

“approved share registrar” means a share registrar who is member of an association of persons approved, for the purposes of these Rules, by the Commission under section 15;

"chief executive", in relation to a corporation, means a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"director", in relation to the Commission, means a director appointed under Schedule 2 of the Ordinance;

"expert" means an expert within the meaning of section 38C of the Companies Ordinance (Cap. 32);

"issuer" means a corporation or other body whose securities are listed, or proposed to be listed, on a recognized stock market;

“share registrar” means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market.

PART II

STOCK MARKET LISTING

3. Requirements for listing applications

An application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant must –

- (a) comply with the rules and requirements of the recognized exchange company (except to the extent that compliance is waived or not required by the recognized exchange company);
- (b) comply with any provision of law applicable;
- (c) contain such particulars and information which, according to the particular nature of the applicant and the securities for the listing of which application is being made, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position, of the

applicant at the time of the application and its profits and losses and of the rights attaching to such securities;

- (d) state the name of the applicant;
- (e) give particulars of the numbers, classes and denominations of the securities which are the subject of the application;
- (f) give particulars of the proposed manner of issue of the securities, whether by offer for sale, public subscription, private placing, introduction or otherwise;
- (g) state, in so far as is known, or may be ascertained after reasonable enquiry, by the directors of the applicant, the name and address of any person who at the time of the application is a substantial shareholder of the applicant or of another corporation of which it is a subsidiary, and the extent of his shareholding in the applicant or that other corporation;
- (h) give particulars of the qualifications and experience of the directors and chief executive of the applicant;
- (i) specify the purpose for which the applicant intends to use the proceeds (if any) of the issue or sale of the securities to which the application relates, or the portion of such proceeds to be received by the applicant; and
- (j) specify the qualifications of any person whose opinion as an expert is referred to in any document included in the application.

4. Exemptions from section 3

Section 3 does not apply to the listing of any –

- (a) securities issued or allotted –

- (i) by a capitalization issue pro rata (apart from fractional entitlements) to existing shareholders, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they are not issued or allotted because of restrictions imposed by legislation of that place; or
 - (ii) pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;
- (b) securities offered on a pre-emptive basis, pro rata (apart from fractional entitlements) to existing holdings, to holders of the relevant class of shares in the corporation, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they were not offered because of restrictions imposed by legislation of that place;
 - (c) shares issued in substitution for shares listed on a recognized stock market, if the issue of the shares does not involve any increase in the issued share capital of the corporation.

5. Copy of listing materials to be filed with the Commission

(1) An applicant must file a copy of its application with the Commission within one business day after the day on which the applicant submits the application to the recognized exchange company concerned.

(2) An applicant is regarded as having complied with subsection (1) on the day it submits the application to the recognized exchange company concerned if, prior to or at the time of submitting the application to the recognized exchange company the applicant has authorized the recognized exchange company in writing to file the application with the Commission on its behalf.

(3) The recognised exchange company must not list the securities to which the application relates unless –

- (a) the period specified in subsection (5) has expired and the Commission has not, within that period, notified the recognized exchange company and the applicant under subsection (6) that it objects to the listing; or
- (b) the Commission has notified the recognized exchange company and the applicant that it does not object to the listing.

(4) The Commission may, by notice to the applicant and the recognised exchange company given within 10 business days from the date the applicant files a copy of its application with the Commission, require the applicant to supply to the Commission such further information as the Commission may reasonably require for the performance of its functions under these Rules.

(5) The period specified for the purposes of subsection (3) is 10 business days –

- (a) where the Commission has not given notice under subsection (4), from the date the applicant files a copy of its application with the Commission; or
- (b) where the Commission has given notice under subsection (4), from the date when the further information is supplied.

(6) The Commission may, by notice in writing to the recognized exchange company and the applicant, object to a listing if it appears to the Commission that –

- (a) the application in respect of the listing does not comply with a requirement specified in section 3;
- (b) an application in respect of the listing is false or misleading as to a material fact or is false or misleading through the omission of a material fact;

- (c) the applicant has failed to comply with a requirement under subsection (4) or, in purported compliance with such requirement has furnished the Commission with information which is false or misleading in any material particular; or
- (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

(7) A notice given under subsection (6) must be accompanied by a statement specifying the reasons for the objection.

6. Copy of ongoing disclosure materials to be filed with the Commission

(1) An issuer must file with the Commission a copy of any announcement, statement, circular, or other document made or issued by it or on its behalf to the public or to a group of persons comprising members of the public (including its shareholders) under the rules and requirements of a recognized exchange company or any provision of law applicable, or pursuant to the terms of any listing agreement between the issuer and a recognized exchange company under the rules of the recognized exchange company within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(2) A person must file with the Commission a copy of any announcement, statement, circular or other document made or issued by that person or on his behalf to the public or to a group of persons comprising members of the public (including holders of the securities of an issuer) under any codes published by the Commission under sections 399(2)(a) and (b) of the Ordinance within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(3) An issuer or other person, as the case may be, is regarded as having complied with subsection (1) or (2) if the issuer or other person has –

- (a) filed with the recognized exchange company concerned; and
- (b) authorized the recognized exchange company in writing to file with the Commission on its behalf,

a copy of the relevant announcement, statement, circular or other document.

PART III

SUSPENSION OF DEALINGS

7. Suspension of dealings in securities

- (1) Where it appears to the Commission that –
 - (a) any materially false, incomplete or misleading information has been included in any –
 - (i) prospectus, circular, or other document, including an introduction document and a document containing proposals for an arrangement or reconstruction of a corporation, issued in connection with a listing of securities on a recognized stock market;
 - (ii) announcement, statement, circular or other document made or issued by or on behalf of an issuer in connection with its affairs; or
 - (b) it is necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on the recognized stock market it operates;
 - (c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market; or

- (d) there has been a failure to comply with any condition imposed by the Commission under section 8(3)(c) relating to the listing of, or dealings in, any securities,

the Commission may direct, by notice to the recognized exchange company concerned, the recognized exchange company to suspend all dealings in any securities specified in the notice.

(2) A recognized exchange company must comply with any notice given under subsection (1) without delay.

8. Powers of the Commission upon the suspension under this Part of dealings in any securities

(1) An issuer which is aggrieved by the exercise of the Commission's powers under section 7 may make representations in writing to the Commission and where an issuer makes such representations, the Commission must notify the recognized exchange company concerned.

(2) In respect of the exercise of the Commission's powers under section 7, the recognized exchange company concerned may make representations in writing to the Commission irrespective of whether representations in respect of that exercise of powers have been made by an issuer under subsection (1) and where the recognized exchange company makes such representations, the Commission must notify the issuer concerned.

(3) Where the Commission has –

- (a) directed a recognized exchange company under section 7(1) to suspend dealings in any securities; and
- (b) considered any –
 - (i) representations by the issuer under subsection (1);

- (ii) representations by the recognized exchange company under subsection (2); and
- (iii) further representations by the issuer or the recognized exchange company,

the Commission by notice to the recognized exchange company concerned may –

- (c) permit dealings in the securities to recommence subject to such conditions as the Commission may think fit to impose, being conditions of the nature specified in subsection (4); or
- (d) direct the recognized exchange company to cancel the listing of the securities on its recognized stock market if the Commission –
 - (i) is satisfied that there has been a failure to comply with the requirements in respect of listing set out in these Rules or in any other rules made under section 36 of the Ordinance; or
 - (ii) considers that such action is necessary to maintain an orderly market in Hong Kong,

and the recognized exchange company must comply with that direction without delay.

- (4) The conditions which may be imposed under subsection (3)(c) are –
 - (a) where the Commission has exercised its powers under section 7(1)(a) or (d), conditions imposed with the object of ensuring, so far as is reasonably practicable, that the issuer remedies the default by reason of which the suspension of dealings was directed, provided that the Commission must permit such dealings unconditionally without delay if it is of the view that there has been no such default;

- (b) where the Commission has exercised its powers under section 7 (1)(b), such conditions as the Commission may consider necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on its recognized stock market;
- (c) where the Commission has exercised its powers under section 7(1)(c), such conditions as the Commission may consider to be in the interest of the investing public or in the public interest, or to be appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market.

(5) In subsection (3) "further representations" means representations either in writing or orally or both in writing and orally as the issuer or the recognized exchange company concerned may determine which are submitted within such reasonable time as the Commission may determine.

(6) The functions of the Commission under this section may only be exercised by a meeting of the Commission and are not delegable.

(7) A director of the Commission who made the decision in the exercise of the Commission's powers under section 7 may not participate in the deliberations or voting of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers.

(8) Notwithstanding subsection (7), the director referred to in that subsection may attend any meeting or proceeding of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers and may make such explanations of his decision as he thinks necessary.

9. Provisions supplementary to sections 7 and 8

(1) At any hearing held by the Commission to receive oral representations made to it under section 8(3), the issuer and the recognized exchange company each have the right to be represented by its counsel or solicitor.

(2) If representations are made under section 8(1) or 8(2) against a direction made under section 7(1) then, pending the decision of the Commission under section 8 (3), all dealings in the securities concerned shall continue to be suspended.

10. Restriction on re-listing

No security the listing of which has been cancelled under section 8 may be listed again on a recognized stock market except in accordance with Part II.

11. Waiver of requirements of Parts II and III

The Commission may by notice to an applicant or an issuer, as the case may be, and a recognized exchange company, modify or waive, subject to such reasonable conditions as the Commission may think fit to impose, the requirements of any provision of Parts II and III where the Commission is of the opinion that –

- (a) the applicant or issuer, as the case may be, cannot comply with the provision or it would be unreasonable or unduly burdensome for the applicant or issuer to do so;
- (b) the provision has no relevance to the circumstances of the applicant or issuer, as the case may be; or

- (c) compliance with the provision would be detrimental to the commercial interests of the applicant or issuer, as the case may be, or to the interests of the holders of its securities.

PART IV

APPROVED SHARE REGISTRARS

12. Approval of share registrars

- (1) The Commission may approve an association of persons as an association each of whose members must be an approved share registrar for the purposes of these Rules.
- (2) The Commission may cancel the approval of any association of persons approved under subsection (1).
- (3) The Commission must maintain a list of associations of persons approved under subsection (1).

13. Securities not to be listed where approved share registrar not employed

No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant may be approved by the recognized exchange company concerned unless the applicant is an approved share registrar or employs an approved share registrar.

14. Suspension of dealings on cessation of employment etc. of approved share registrar

- (1) If –
 - (a) the securities of a corporation are listed on a recognized stock market; and

- (b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar;

the recognized exchange company concerned must suspend dealings in those securities unless within 3 months after the date on which the recognized exchange company first learned of such cessation or before the expiry of 21 days' notice given under subsection (2), whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(2) Before suspending dealings in the securities of a corporation under subsection (1) the recognized exchange company concerned must give notice in writing to the corporation warning the corporation of its intention to suspend dealings in the corporation's securities unless, before the date specified in the notice, being the date on which the period of 3 months specified in subsection (1) expires or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(3) The Commission may require a recognized exchange company to give notice under subsection (2) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar if, in the Commission's opinion, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company must comply with such a requirement without delay.

(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (1) must permit the recommencement of dealings in those securities when it is satisfied that the corporation has become an approved share registrar or has employed an approved share registrar as its share registrar.

15. Power to exempt

(1) The Commission may exempt all or any particular class of securities issued by a specified corporation from all or any of the provisions of this Part.

(2) An exemption granted under subsection (1) must be notified in writing by the Commission to the specified corporation and to the recognized exchange company which operates the recognised stock market on which the exempted class of securities are, or are proposed to be, listed.

(3) The Commission may withdraw any exemption granted under subsection (1), and such withdrawal must be notified in the same manner as an exemption is required to be notified under subsection (2).

(4) Where any securities of a corporation are listed on a recognised stock market and have been exempted under subsection (1), in the event of a withdrawal under subsection (3) of the exemption the recognised exchange company concerned must suspend dealings in those securities unless at the date of notification of the withdrawal the corporation is, or within 3 months after the date the corporation becomes, an approved share registrar or employs an approved share registrar as its share registrar.

16. Appeal against suspension

(1) Where a recognized exchange company suspends dealings in the securities of a corporation under sections 13 or 14 the corporation may within 21 days of the suspension appeal in writing to the Commission against the suspension.

(2) An appeal under subsection (1) must be accompanied by such submissions in writing as the corporation wishes to make.

(3) On any appeal under subsection (1), the Commission may –

- (a) dismiss the appeal;
- (b) direct the recognized exchange company to recommence dealings in the securities; or
- (c) direct the recognized exchange company to recommence dealings in the securities subject to such conditions as the Commission thinks fit.

PART V

MISCELLANEOUS

17. Suspensions, etc. by recognized exchange company to be notified to the Commission

(1) If a recognized exchange company intends to suspend dealings in any securities it must, where reasonably practicable, inform the Commission of its intention prior to such suspension and, if not so practicable, inform the Commission of the suspension as soon as possible after the event.

(2) A recognized exchange company, after having suspended dealings in any securities, may not permit dealing in them to recommence without first giving notice to the Commission.

(3) A recognized exchange company may not cancel the listing of any securities unless it gives the Commission 48 hours' notice of its intention to do so.

18. Notices, etc. to be in writing

Any notice or direction under these rules must be in writing.

Chairman
Securities and Futures Commission

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002). They prescribe certain requirements to be met before securities may be listed including requirements for applications for the listing of securities and the employment of approved share registrars and provide for the cancellation of the listing of any specified securities by the Commission if the requirements for listing are not met. The Rules prescribe the circumstances in which and the conditions subject to which a recognized exchange company must suspend dealings in specified securities. They also prescribe for the filing with the Commission of copies of applications for the listing of securities and information disclosed to the public by issuers and certain other persons under the rules and other requirements of a recognized exchange company.

SECURITIES AND FUTURES
(TRANSFER OF FUNCTIONS – STOCK EXCHANGE COMPANY) ORDER

(Made by the Chief Executive in Council under
section 25(1) of the Securities and Futures
Ordinance (No. 5 of 2002))

1. Commencement

This Order shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (No. 5 of 2002).

2. Interpretation

In this Order, unless the context otherwise requires, the expressions "prospectus" (招股章程), "share" (股份) and "debenture" (債權證) have the respective meanings assigned to them by the Companies Ordinance (Cap. 32).

3. Application

Nothing in this Order applies to a prospectus offering interests in a collective investment scheme, the issue of which –

- (a) would be an offence under section 103(1)(b) of the Ordinance; or
- (b) is exempted from the application of section 103(1)(b) solely by virtue of section 103(3)(h) of the Ordinance.

4. Transfer of functions of the Commission

The functions conferred upon the Commission by sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap. 32) are transferred to the Stock Exchange Company to the extent that they relate to any prospectus which is concerned with any shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognised stock market.

5. Fees

The Stock Exchange Company is entitled to charge and retain any fees for the performance of functions transferred under this Order which, had this Order not been made, would be payable to the Commission under the Securities and Futures (Fees) Rules (L.N. [] of 2002) in relation to the performance by the Commission of such functions.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 25(1) of the Securities and Futures Ordinance (No. 5 of 2002). It transfers certain functions of the Securities

and Futures Commission in relation to prospectuses under the Companies Ordinance (Cap.32) to the Stock Exchange of Hong Kong Limited.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection by the securities and Futures Commission (“SFC”), what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to the draft amendments proposed to be made to the current Financial Resources Rules, under section 28 of the Securities and Futures Commission Ordinance, may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, rules, regulations, codes and guidelines made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Document. The names of persons who submit comments on the Consultation Document together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Document, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer,
The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen's Road Central Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.