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

A Consultation Document on the Securities and Futures (Insurance) Rules

《證券及期貨(保險)規則》諮詢文件

Hong Kong
June 2002

香港
2002 年 6 月

CONSULTATION

This consultation document invites the public to comment on the draft Securities and Futures (Insurance) Rules ("the draft Rules") which the Securities and Futures Commission ("the SFC") proposes to make under **section 116(5)** of the Securities and Futures Ordinance (No. 5 of 2002) ("the Ordinance").

The SFC maintains that the Rules should be easy to use and they have been drafted in a way that would facilitate compliance and enforcement. Industry practitioners are welcome to give suggestions on any specific area of the draft Rules so as to make them more user-friendly.

Introduction

1. Section 116(3)(c) of the Ordinance provides that the SFC shall refuse to grant a licence to carry on a regulated activity unless the applicant satisfies the SFC that it:
   (i) has lodged and maintains with the SFC such security in accordance with rules made by the SFC; or
   (ii) is insured in accordance with rules made by the SFC.

2. For the purposes of licensing, the SFC may therefore choose to require an applicant to comply with any security or insurance requirement by making the relevant rules as it sees fit.

3. In an attempt to develop a more protective coverage for both licensees and investors against infidelity events, errors or omissions on the part of the licensees (including their employees), the SFC inclines to go for the proposal of making rules in relation to insurance requirements instead of security. In making the proposal, the SFC has taken into consideration numerous factors including compensation level, administrative costs and effectiveness in maintaining the overall stability of the financial system with respect to each of the two alternatives as well as the new investor compensation arrangements under the Ordinance.

4. Section 116(5) of the Ordinance empowers the SFC to make rules that provide for:
   (a) insurance coverage for specified amounts to be taken out and maintained by a licensed corporation in relation to specified risks;
   (b) the terms on which the insurance is to be taken out and maintained;
   (c) any other matter relating to the insurance.

5. The draft Rules at <u>Appendix 1</u> thus set out the relevant insurance requirements for the purposes of licensing. In essence, a compulsory fidelity insurance scheme is proposed ("the Proposed Scheme") and licensed corporations conducting certain regulated activities as specified in the draft Rules would have to participate in the Proposed Scheme as one of the on-going obligations in maintaining their licences granted by the SFC.

6. The SFC has sent copies of this document to all registered firms using the FinNet communication network. In addition, copies of the document can be obtained free of charge at the SFC's office and on the SFC's website at http://www.hksfc.org.hk.

7. The public is invited to submit comments before the close of business on 2**5 July 2002**.

Background

8. The need for a compulsory fidelity insurance for market participants was first mooted by the Securities Review Committee (chaired by Mr. Ian H Davison) in May 1988. That Committee was formed to review the operation and regulation of the Hong Kong securities industry following the market crash in October 1987. Among other things, the Committee recommended implementing a compulsory fidelity insurance coverage for intermediaries that control client assets in order to foster market stability and investor protection.

9. This recommendation was adopted by the Stock Exchange of Hong Kong Limited ("the SEHK"). Since 1992, the SEHK has required its participants to take part in a compulsory Brokers' Fidelity Insurance ("BFI") Scheme which insures them against losses caused by employees' fraud and theft, error and omission, etc.

10. In April 1996, the SFC further put forth the recommendation by making a policy initiative to impose fidelity insurance requirements on dealers which are not Exchange Participants[1]. That initiative was generally welcomed by the industry.

11. Against this background, the SFC now proposes to require a uniform insurance policy (with terms and conditions similar to the current BFI Scheme) to be taken out and maintained by all licensed corporations whose businesses are subject to relatively higher fidelity risk. In this connection, it is considered that the insurance requirement is particularly essential for those licensees which are likely to receive or hold client assets in their business of securities and/or futures dealing.

The Proposed Scheme

12. In making the draft Rules, the SFC intends to develop a compulsory and common insurance scheme to cover all licensed corporations concerned. Therefore, upon implementation, the Proposed Scheme would replace the BFI Scheme which is now arranged for SEHK Participants only.

[1] The proposal was made in the SFC's "Consultation Paper on a draft for a composite Securities and Futures Bill" issued for public comments in April 1996.

13. The basic features and coverage of the Proposed Scheme are exhibited as follows.

Licensed Corporations Concerned

14. Participation in the Proposed Scheme as implemented under the draft Rules would be mandatory to all licensed corporations which:
    - (a) deal in securities,
    - (b) deal in futures contracts, or
    - (c) provide securities margin financing.

15. In other words, the draft Rules would concern corporations licensed for Type 1, Type 2 or Type 8 regulated activity as defined under Schedule 5 to the Ordinance.

16. However, to avoid excessive regulatory burden on licensees, a licensed corporation or an applicant to be licensed for the relevant regulated activities may be exempted from the insurance requirements under the following circumstances:

    (a) The company concerned is not an Exchange Participant; **and**

    (b) It is covered by an insurance policy against specified amount and risks (irrespective of whether the policy covers the company only or a group of companies including the company); or

    (c) It is a related company of an Exchange Participant and it has:
    - (i) entered into a client contract with this Exchange Participant being that company's executing broker; and
    - (ii) entered into third party client contracts or bears responsibility in respect of services or activities of the Exchange Participant; or

    (d) It does not handle client assets.

Specified Risks

17. It is proposed that the insurance coverage would be specific to the licensed corporations' businesses in Hong Kong. As such, overseas branches of licensed corporations would not be indemnified for losses that they may incur in relation to their overseas operations.

18. Broadly speaking, the exposures arising from fraudulent acts by employees or other parties, errors and omissions, etc faced by licensed corporations are more or less similar to each other. Therefore, the Proposed Scheme would be established to indemnify all insured licensees against a uniform spectrum of risks. Basically, the risks as specified in Schedule 2 to the draft Rules would be covered and the major risk categories, which are similar to those currently covered by the BFI Scheme, are summarized as follows:

A. Risk of loss of client assets of the licensed corporation concerned (including client assets that are received or held by its associated entity) attributable to:

   (a) fraudulent or dishonest acts committed by employees of the corporation or its associated entity;

   (b) robbery or theft while the client assets are in the custody of the corporation or its associated entity;

   (c) forgery or fraudulent alteration of a cheque or other negotiable instrument;

   (d) fraudulent use of an information system;

   (e) forged or fraudulent instructions relating to client assets.

B. Risk of loss attributable to negligent acts done or omitted to be done by the licensed corporation concerned or its employees (or by its associated entity or employees of its associated entity).

Indemnity Limit

19. Under the Proposed Scheme, each licensee insured would carry an annual amount of insurance coverage of HK$15 million in aggregate for all sections of the policy combined. This level of indemnity has proven workable for both the insurance market and the Exchange Participants insured under the BFI Scheme.

20. Where a corporation is licensed for more than one type of regulated activities concerned, e.g. both dealing in securities (Type 1) and dealing in futures contracts (Type 2), the indemnity limit would be increased to HK$25 million in aggregate for all sections combined per licensee in respect of all regulated activities covered by the insurance.

21. In this regard, although it is not feasible to accurately calculate the exact indemnity limit in light of the increased risk profile due to the carrying out of multiple regulated activities, it is generally believed that the common back office and other functions that the same licensee has maintained would infer the aggregated risk profile to be less than doubled. Based on the above rationale and the recommendation of the SFC's advisers, the indemnity limit for multiple regulated activities per licensee would be increased to HK$25 million instead of HK$30 million.

Self-insured Amount (Deductible)

22. Each licensed corporation would be responsible for the first HK$3 million in each and every loss or claim under the Proposed Scheme. This deductible level is in line with the current requirement of minimum liquid capital applicable to most dealers.

Premium Allocation

23. The SFC recognizes that premium allocation would be subject to many and varied views and the basic principle is to apply a fair and consistent allocation amongst the licensees. The SFC has taken advice on this aspect and reviewed how this has been addressed under the existing BFI Scheme.

24. Under the BFI Scheme, a minimum premium of HK$16,000 is applied to each SEHK Participant and the balance of premium is calculated for each Participant using their last annual turnover figure as an adjustable factor. Under the current policy this results in an average premium per participant of approximately HK$43,000.

25. As under the current BFI Scheme, the tendering insurers will quote a total annual policy premium in respect of the entire scheme, i.e. one lump sum for all licensees or a "global premium". This premium will be assessed by normal commercial underwriting of the risks in a competitive environment and will also be driven by the loss history in Hong Kong as well as the continued improvements expected in this sector.

26. Unlike the BFI Scheme, which is a relatively homogenous group of risk in view of a common activity, the Proposed Scheme will have five different groups of activity carrying different risk profiles.

27. As part of the tender process, insurers will be asked to break the global premium down into five amounts with each amount representing their views on the overall risk weighting attaching to that sector.

28. It is proposed that the minimum premium amount for all categories will remain in the region of HK$16,000 (i.e. base premium) as in the current BFI Scheme. The premium will be allocated amongst the individual licensees in each sector by using the base premium, which will be the same for each licensee in that sector, plus an adjustable factor which will be based on two parameters:

    a. <u>Turnover for the insured activity</u>

    This is a standard benchmark used by insurers of these risks to gauge overall business activity and thus is a good indicator of the overall risk. However, for licensees of Type 8 regulated activity (i.e. securities margin financing), an annualized average of their monthly loan balance will be used. The balance of premium due from each licensee (after the base premium from all licensees in that sector is taken from the sector allocation) will be determined by applying the percentage of that firm's turnover out of the total sector turnover, to the total sector balance of premium.

b. Individual claims weighting

Licensees having claims paid in the past three years will have a small additional loading applied on their premium. However, this will only apply to claims occurring after the commencement of the Proposed Scheme.

29. An example illustrating the methodology of premium allocation is set out at Appendix 2.

30. New licensees admitted during the policy period will be charged pro rata of the base premium and any licensees leaving the scheme during the policy period will not be entitled to any premium refund.

31. For the purposes of considering and determining the allocation of insurance premium, the SFC proposes to establish a Standing Committee under section 8(1)(a) of the Ordinance. The Standing Committee would comprise representatives of the industry in respect of each type of the regulated activities concerned and the SFC.

Duties of Disclosures of Licensed Corporations

32. Although the SFC would arrange the Proposed Scheme for the licensees concerned, it would not be a contract party in the insurance policy to be entered into between the insurer(s) and the licensees. For the purposes of the Proposed Scheme, individual licensees would assume their own duties of disclosure to the insurer(s). As a common practice in the insurance market, it is likely that the insurer(s) would require a review of all licensees concerned including a declaration of past claims/losses be they insured or uninsured. As a coordinator, the SFC may facilitate gathering of the required underwriting information from the licensees if necessary.

33. In addition to providing the basic information necessary for the insurer(s) to perform related risk assessment, the licensees concerned would need to ensure that they are complying with their legal duty of disclosure of all relevant material matters. In particular, they must satisfy themselves as to the accuracy and completeness of any information provided. It should be noted that if not all such information is disclosed, the insurer(s) would have the right to avoid the contract from its commencement which may lead to claims not being met.

34. Once the Proposed Scheme is established, each insured licensee would be responsible for reporting claims and potential claims to the insurer(s) as well as to the SFC. Related responsibilities and administrative details would be provided to the licensees in a separate document nearer the scheme inception date.

Benefits of Implementing the Proposed Scheme

Enhanced Protection to Licensed Corporations and Investors

35. The Proposed Scheme aims to provide indemnity protection to licensed corporations against the specified risks at a justifiable cost. In the possible event that an insured licensed corporation suffers from financial losses caused by the specified risks, the Proposed Scheme would indemnify the licensee concerned thus alleviating the adverse impact on its financial position and reducing the likelihood that the corporation may go into liquidation if a more severe loss is being encountered. Obviously, this would help maintain stability of the financial market as a whole and contribute to enhancing confidence of the Hong Kong market.

36. As for investors, the Proposed Scheme would increase the possibility and amount that investors could be compensated by licensed corporations in relation to losses caused by fraudulent acts, errors or omissions, etc.

Benefits of Implementing a Common Scheme

37. In order to ensure an adequate and consistent insurance coverage, the SFC considers that it would be most useful and cost effective to implement a common scheme for all licensees concerned across the industry. It is because, in the first place, a common scheme will relieve licensees of the administrative burden in seeking, assessing and negotiating with different insurance companies which vary in experience and financial position (or ability to meet claim obligations). It will also reduce the administrative burden in checking compliance with insurance requirements.

38. Secondly, with more insured firms participating in a single scheme, there would be an additional benefit of lowering the average insurance premium to be borne by individual licensees since the overall risk to the insurer(s) would be more widely spread.

39. Thirdly, a common scheme could save those licensed corporations operating in a small scale from the difficulty of finding acceptable insurers in arranging their own policies, or incurring unreasonably higher costs for the same insurance coverage that they would have to pay otherwise.

40. According to the advisers' information provided to the SFC, should SEHK Participants need to source their own fidelity insurance coverage rather than participating in the current collective scheme, each of them would be paying considerably more than the current premium level on average. Furthermore, a number of firms would experience considerable difficulty in securing any meaningful insurance protection at all.

International Practice

41. With the assistance of professional insurance advisers, the SFC has reviewed the insurance and capital requirements imposed on dealers in a number of overseas jurisdictions.

42. Generally speaking, it is observed that both capital and insurance requirements act in concert to maintain standard of the financial standing of intermediaries. While the insurance and capital requirements vary considerably from one jurisdiction to another, a number of jurisdictions such as the United States, Australia and Malaysia do have compulsory requirements imposed on dealers to take out insurance policies against fidelity, civil liability and/or professional indemnity risks.

Tender Procedures

43. The SFC, or through its advisers, would arrange a full tender of the Proposed Scheme in the Hong Kong and international insurance market.

44. It is proposed that selection of the successful insurer or a combination of insurers would be determined by the SFC on advice from its Advisory Committee having regard to the following major criteria:

    (a) Competitiveness of the premium;

    (b) Extent to which the terms offered could meet the requested program structure and policy coverage;

    (c) Insurer's reputation and financial soundness (including credit rating);

    (d) Evaluation of the pros and cons of choosing a single insurer or a co-insurance structure. It is envisaged that it may be better to spread the risk amongst a few key insurers for the long-term interest of the Proposed Scheme;

    (e) Ability to service the insured licensed corporations efficiently on claims handling (including whether the insurer has business presence in Hong Kong); and

    (f) Experience of the insurer in underwriting similar class of risk and their length of practice in the Hong Kong market.

Administration of the Proposed Scheme

45. Once the Proposed Scheme has been arranged, an explanatory circular letter and a debit note will be issued to each licensed corporation which needs to take out the insurance policy.

46. In relation to the on-going administration of the Proposed Scheme such as collection of premium and claims handling, the SFC may outsource such functions to professional service providers where appropriate.

47. As mentioned, the licensed corporations concerned would need to participate in the Proposed Scheme and pay their respective insurance premium. Upon payment of the premium, they would receive their insurance certificates.

48. The insured licensees would need to notify the insurer(s) claims/losses or circumstances likely to give rise to a claim/loss in accordance with the requirements and procedures to be set out in the certificate of insurance and the insurance policy. In handling claims, a panel of law firms may likely be appointed to keep the insurer(s) and the SFC appraised of the development and to ensure that the claims are settled as expeditiously as possible.

Other Matters

49. Written comments can be sent:

By mail to:	SFC (Insurance Rules) 12/F, Edinburgh Tower, The Landmark 15 Queen's Road Central Hong Kong
By fax at:	2293 5755
By on-line submission at:	http://www.hksfc.org.hk
By e-mail to:	insurance_rules@hksfc.org.hk

50. 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 to be published by the SFC. In this regard, please read the Personal Information Collection Statement attached at Appendix 3.

51. You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you would like your name and/or submission to be withheld from being published when you make your submission.

Securities and Futures Commission
June 2002

SECURITIES AND FUTURES (INSURANCE) RULES

(Made by the Securities and Futures Commission
under section 116(5) of the Securities and
Futures Ordinance (5 of 2002))

1. Commencement

These Rules shall come into operation on the day on which Part V of the Securities and Futures Ordinance (5 of 2002) comes into operation.

2. Interpretation

In these Rules, unless the context otherwise requires –

"dealing in futures contracts" ( ) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

"dealing in securities" ( ) has the meaning assigned to it by Part 2 of Schedule 5 to the Ordinance;

"insurer" ( ) means a person –

(a) specified in section 6(1) of the Insurance Companies Ordinance (Cap. 41); or

(b) carrying on insurance business and regulated under the law of any place outside Hong Kong;

"person requiring insurance" ( ) means a person referred to in section 3(1);

"premium" ( ) means the premium that is payable by a person requiring insurance to the underwriter in respect of a scheme period;

"scheme of insurance" ( ) means the scheme of insurance referred to in section 6 arranged by the Commission in respect of a scheme period;

"scheme master policy" ( ) means the policy of insurance issued by the underwriter of the scheme of insurance in respect of a scheme period under which the underwriter provides the insurance referred to in section 4 to a person requiring insurance;

"scheme period" (   ) means the period of insurance referred to in a scheme master policy;

"underwriter" (   ) means one or more insurers with whom the Commission arranges a scheme of insurance in respect of a scheme period.

3. Application

(1) Subject to subsections (2) and (3), these Rules apply to –

(a) an applicant for a licence; and

(b) a licensed corporation to which a licence is granted,

under section 116(1) of the Ordinance to carry on any regulated activity specified in Schedule 1.

(2) These Rules do not apply to a person referred to in subsection (1) which is not an exchange participant and –

(a) is insured in relation to the risks specified in Schedule 2 for the amount not less than that specified in Schedule 3 and has given to the Commission –

(i) a copy of the relevant policy of insurance; and

(ii) written confirmation from a responsible officer and its legal advisers that it is insured under that policy of insurance in relation to those risks and for that amount; or

(b) does not handle client assets.

(3) Where a person referred to in subsection (1) ("A") is -

(a) an exchange participant which is, or seeks to be, licensed under section 116(1) of the Ordinance for dealing in securities or dealing in futures contracts; and

(b) a related corporation of another person requiring insurance ("B") -

(i) which is, or seeks to be, licensed under section 116(1) of the Ordinance for dealing in securities or dealing in futures contracts;

(ii) which is not an exchange participant;

(iii) which is a client of A; and

(iv) for which A acts as executing broker in respect of dealings in securities or futures contracts by B for or on behalf of B's clients, where B is responsible to its clients in respect of the acts of A;

then –

(c) A shall be required to take out and maintain insurance in accordance with section 5 under which both A and B are insured in relation to the risks specified in Schedule 2 for the amount specified in Schedule 3 that is applicable to A;

(d) B shall not be required to take out and maintain separate insurance under these Rules; and

(e) for the purposes of Schedules 2 and 3, the person requiring insurance shall be regarded as including both A and B.

4. Duty to insure against specified risks for specified amount

Subject to section 5, a person requiring insurance shall take out and maintain insurance in relation to the risks specified in Schedule 2 for the amount specified in Schedule 3.

5. Duty to take out and maintain insurance under scheme of insurance

A person requiring insurance shall take out and maintain insurance referred to in section 4 under the scheme of insurance by –

(a) paying the premium; and

(b) complying with the terms and conditions of the scheme master policy,

in respect of each scheme period during which the person requiring insurance is, or is to be, licensed under section 116(1) of the Ordinance.

6. Commission to arrange scheme of insurance

For the purposes of section 5, the Commission shall arrange with one or more insurers a scheme of insurance under which a person requiring insurance is entitled to take out and maintain insurance as referred to in section 4 in respect of a scheme period, subject to the person requiring insurance –

(a) paying the premium; and

(b) complying with the terms and conditions of the scheme master policy.

7. Role of Commission in arranging scheme of insurance

(1) Without limiting the generality of section 6, the Commission’s role in arranging the scheme of insurance may include any of the following matters –

(a) determining the terms and conditions of the scheme master policy;

(b) collecting the premium from each person requiring insurance in such manner as the Commission specifies in writing and remitting such premiums collected to the underwriter;

(c) distributing certificates of insurance issued by the underwriter to persons requiring insurance which have paid the premium;

(d) receiving notifications of claims or circumstances likely to give rise to claims under the scheme master policy from persons requiring insurance and transmitting such notifications to the underwriter.

(2) The Commission may engage the services of a suitably qualified person to assist it in performing any part of its role in arranging the scheme of insurance.

8. No refund of premium

A premium paid by a person requiring insurance in accordance with these Rules is not refundable.

9. Consent to disclosure of information by the Commission for purposes of arranging insurance

(1) A person requiring insurance shall submit to the Commission (or any person assisting the Commission under section 7(2)) such information about the person requiring insurance and its business as the Commission may require for the purposes of arranging the scheme of insurance.

(2) A person requiring insurance is to be taken as having consented to the disclosure by the Commission (or any person assisting the Commission under section 7(2)) for the purposes of arranging the scheme of insurance to -

(a) any person assisting the Commission under section 7(2);

(b) the underwriter; or

(c) an insurer,

of information relating to the person requiring insurance where that information was obtained by the Commission from the person requiring insurance.

SCHEDULE 1

[s.3(1)]

REGULATED ACTIVITIES IN RESPECT OF WHICH INSURANCE IS REQUIRED

1. Dealing in securities.
2. Dealing in futures contracts.
3. Securities margin financing.

[s.4]

SCHEDULE 2

RISKS IN RELATION TO WHICH INSURANCE IS REQUIRED

The risks in relation to which a person requiring insurance shall take out and maintain insurance are –

1. Subject to paragraph 4, the risk of loss arising out of the loss of client assets of the person requiring insurance (including client assets that are received or held by an associated entity of the person requiring insurance) attributable to –
   (a) fraudulent or dishonest acts committed by employees of the person requiring insurance (or its associated entity or service bureau);
   (b) robbery or theft while the client assets are in the custody of the person requiring insurance (or its associated entity);
   (c) forgery or fraudulent alteration of a cheque or other negotiable instrument;
   (d) fraudulent use of an information system;
   (e) forged or fraudulent instructions relating to the client assets.

2. Subject to paragraph 4, the risk of loss attributable to –

   (a) receipt in good faith of counterfeit currency by the person requiring insurance;

   (b) costs and expenses incurred in connection with investigations under the Ordinance or otherwise in relation to the businesses carried on by the person requiring insurance which constitute regulated activity specified in Schedule 1;

   (c) reasonable fees and expenses incurred by the person requiring insurance in connection with determining the amount of a loss or claim in respect of which it is insured.

3. Subject to paragraph 4, the risk of loss attributable to negligent acts done or omitted to be done by the person requiring insurance or its employees (or by its associated entity or employees of the associated entity or by its service bureau or employees of the service bureau).

4. The risks specified in paragraphs 1, 2 and 3 shall exclude –

   (a) losses attributable to branch offices maintained outside Hong Kong by the person requiring insurance;

(b) losses arising otherwise than in respect of the person requiring insurance carrying on regulated activity specified in Schedule 1.

5. For the purposes of this Schedule –

"employee" ( ) in relation to a person, includes an individual who is or has been an employee, officer or licensed representative of the person, or who is or has been engaged by the person whether under a contract of service or otherwise;

"service bureau" ( ), in relation to a person requiring insurance ("A"), means a person to whom A has subcontracted the duty to perform certain functions which are ancillary to the carrying on by A of any regulated activity specified in Schedule 1.

[s.4]

SCHEDULE 3

INSURED AMOUNTS

1. Subject to paragraph 3, where a person requiring insurance is licensed, or seeks to be licensed, under section 116(1) of the Ordinance, to conduct one regulated activity specified in Schedule 1, the insured amount per scheme period is $15,000,000 in respect of all of the risks specified in Schedule 2.

2. Subject to paragraph 3, where a person requiring insurance is licensed, or seeks to be licensed, under section 116(1) of the Ordinance, by the Commission to conduct more than one regulated activity specified in Schedule 1, the insured amount per scheme period is $25,000,000 in respect of all of the risks specified in Schedule 2.

3. Where, in respect of a scheme period, the underwriter is liable under the scheme master policy for only the part of a loss or claim by a person requiring insurance that exceeds a certain amount, that amount shall not exceed $3,000,000.

Chairman

Securities and Futures

Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 116(5) of the Securities and Futures Ordinance (5 of 2002). They require applicants for licences, and licensed corporations to whom the Commission has granted licences under section 116(1) of the Ordinance to carry on certain regulated activities, to take out and maintain insurance in respect of specified risks and for specified amounts, under a scheme of insurance arranged by the Commission. They also prescribe the requirements with which those applicants and licensed corporations must comply in relation to such insurance.

Example to illustrate allocation of premium

This example is an illustration of how the proposed allocation mechanism will work in the first year of the Scheme. In subsequent years, the calculation of premium for an individual licensee may also take into account its claim history.

Assuming the global premium is $35 million[1] and the insurer has allocated this amount amongst the five sectors as follows:

a. Securities Dealers who are SEHK Participants

Number of dealers: 500
Sector Premium allocated: $23 million
Total base premium: (500 x $16,000) = $8,000,000
Balance allocated on turnover: $15,000,000
Variable amount: Last annual transaction values

If Firm A had 0.2% of the total sector turnover in the previous financial year, then it will pay an insurance premium of $46,000 ($16,000 + $15 million x 0.2%).

b. Securities Dealers who are not SEHK Participants

Number of dealers: 200
Sector Premium allocated: $6.5 million
Total base premium: (200 x $16,000) = $3,200,000
Balance allocated on turnover: $3,300,000
Variable amount: Last annual transaction values

c. Commodities (Futures Contract) Dealers who are Participants of the Hong Kong Futures Exchange Limited

Number of dealers: 130
Sector Premium allocated: $4.5 million
Total base premium: (130 x $16,000) = $2,080,000
Balance allocated on turnover: $2,420,000
Variable amount: Number of contracts transacted last year

[1] Please note that this is a hypothetical amount for illustration only.

d. Commodities (Futures Contract) Dealers who are not Participants of the Hong Kong Futures Exchange Limited

   Number of dealers: 20
   Sector Premium allocated: $700,000
   Total base premium: (20 x $16,000) = $320,000
   Balance allocated on turnover: $380,000
   Variable amount: Number of contracts transacted last year

e. Securities Margin Financiers

   Number of financiers: 8
   Sector Premium allocated: $300,000
   Total base premium: (8 x $16,000) = $128,000
   Balance allocated on loan balance: $172,000
   Variable amount: Average monthly loan balance last year

Where a corporation is licensed for more than one type of regulated activity concerned and carries a single indemnity limit of $25 million for all activities, it will need to pay the equivalent of one base premium and a variable amount. That variable amount is calculated having regard to the last annual securities transaction value and the number of futures contracts transacted by it last year.

Appendix 3

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 Data[1] will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance ("PDPO").

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to the Consultation Document on the Proposed Licensing Fee under the Securities and Futures (Fees) Rules ("the Consultation Document") 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

[1] Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 ("PDPO")

Consultation Document. The SFC has the right to charge a reasonable fee for processing any data access request.

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.