

**SECURITIES AND FUTURES (INVESTOR COMPENSATION) RULES**

**( ORD. NO. 5 OF 2002 SECTION 244(1))**

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## SECURITIES AND FUTURES (INVESTOR COMPENSATION) RULES

(Made by the Chief Executive in Council under  
section 244(1) of the Securities and  
Futures Ordinance (No. 5 of 2002)

### PART I

#### PRELIMINARY

##### 1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part XII of the Securities and Futures Ordinance (No. 5 of 2002).

##### 2. Interpretation

In these Rules, unless the context otherwise requires –

“currency futures contract” (貨幣期貨合約) means a futures contract in respect of currency;

“Exchange Company” (交易所公司) when used –

- (a) in relation to the levy imposed under Part II means the Stock Exchange Company;
- (b) in relation to the levy imposed under Part III means the Futures Exchange Company;

“exchange traded funds” (交易所買賣基金) means collective investment schemes that hold portfolios of securities which are designed generally to correspond to the price and yield performance of the underlying portfolio of securities with in kind creation and redemption facilities and which are listed or traded on a recognized stock market operated by the Stock Exchange Company as a single security;

“exchange traded funds market maker” (交易所買賣基金莊家) means any person who is registered as an exchange traded funds market maker by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company;

“Mini-Hang Seng Index Futures contract” (小型恒生指數期貨合約) means the stock index futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company;

“new futures contract” (新期貨合約) means a futures contract that –

- (a) has been approved as such by the Commission under section 20(2)(a) of the Ordinance; and
- (b) has not traded on a recognized futures market prior to the commencement of these Rules;

“pilot programme” (試驗計劃) has the meaning assigned to it by the rules of the Stock Exchange Company;

“pilot programme market maker” (試驗計劃莊家) has the meaning assigned to it by the rules of the Stock Exchange Company;

“pilot programme securities” (試驗計劃證券) means securities that are traded on a recognized stock market operated by the Stock Exchange Company under the pilot programme;

"relevant period" (有關期間) means the period of 6 months commencing on the first day of trading in the new futures contract on a recognized futures market;

"remittance" (轉交) means a remittance under section 13;

“rules of the Futures Exchange Company” (期交所規章) means the rules –

- (a) of the Futures Exchange Company;
- (b) made under section 23 of the Ordinance; and
- (c) approved by the Commission under section 24 of the Ordinance;

“rules of the Stock Exchange Company” (聯交所規章) means the rules –

- (a) of the Stock Exchange Company;
- (b) made under section 23 of the Ordinance; and
- (c) approved by the Commission under section 24 of the Ordinance;

“stock futures contract” (股票期貨合約) means a stock futures contract for which the contract specifications are set out in the rules of the Futures Exchange Company.

## PART II

### MEANS OF FUNDING THE COMPENSATION FUND – LEVY ON SECURITIES

#### 3. Rate of levy payable in respect of securities

Subject to sections 4, 5 and 6, for the purposes of the compensation fund, a levy is payable to the Commission -

- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

of securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules at the rate of 0.002% of the consideration .

#### 4. Stock options

For the purposes of the compensation fund, the rate of levy that is payable -

- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

of a stock option which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

#### 5. Pilot programme securities

For the purposes of the compensation fund, the rate of levy that is payable by a pilot programme market maker on his sale or purchase in such capacity of pilot programme securities which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

**6. Exchange traded funds**

For the purposes of the compensation fund, the rate of levy that is payable by an exchange traded funds market maker on his sale or purchase in such capacity of shares in exchange traded funds which is recorded on a recognized stock market or notified to a recognized exchange company under its rules is 0% of the consideration.

**PART III**  
**MEANS OF FUNDING THE COMPENSATION FUND - LEVY ON**  
**FUTURES CONTRACTS**

**7. Amount of levy payable in respect of futures contracts**

Subject to sections 8, 9, 10 and 11, for the purposes of the compensation fund, a levy is payable to the Commission –

- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

of a futures contract traded on a recognized futures market under its rules in the amount of \$0.50.

**8. Mini-Hang Seng Index Futures contracts**

For the purposes of the compensation fund, the amount of levy that is payable to the Commission -

- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

of a Mini-Hang Seng Index Futures contract traded on a recognized futures market is \$0.20.

**9. Currency futures contracts**

For the purposes of the compensation fund, the amount of levy that is payable –

- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

of a currency futures contract traded on a recognized futures market is nil.

**10. Newly traded futures contracts**

For the purposes of the compensation fund, the amount of levy that is payable

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- (a) by a seller on the sale; and
- (b) by a purchaser on the purchase,

during the relevant period of a new futures contract traded on a recognized futures market is nil.

**11. Stock futures contracts**

For the purposes of the compensation fund, the amount of levy that is payable

- (a) by a seller on the sale; and
  - (b) by a purchaser on the purchase,
- of a stock futures contract traded on a recognized futures market, or an option on such a contract traded on a recognized futures market, is \$0.20.

#### **PART IV MANNER OF PAYMENT AND INCIDENTAL MATTERS**

##### **12. Payment of levies**

(1) A person who is liable to pay a levy under these rules must pay the levy in such manner as may be prescribed from time to time in the rules of the Exchange Company as approved by the Commission under section 24 of the Ordinance.

(2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

##### **13. Exchange Company to collect and remit levy**

The Exchange Company must collect the levy paid to it and, subject to section 21, remit the same to the Commission by paying it - -

- (a) into such bank account as may be specified by the Commission; and
- (b) on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a working day, on the next working day.

##### **14. Depositing levy pending remittance**

Pending remittance to the Commission of levy collected by the Exchange Company in accordance with section 13, such levy must -

- (a) be deposited as soon as practicable in a bank within the meaning of the Banking Ordinance (Cap. 155); and
- (b) subject to section 15, be held by the Exchange Company on behalf of the Commission until remitted.

##### **15 Returns**

(1) Within 7 days after the date of each remittance of levy the Exchange Company must furnish to the Commission a return relating to the remittance.

- (2) A return furnished under subsection (1) must -
  - (a) be in such form as may be specified by the Commission;
  - (b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and
  - (c) contain such information as may be specified by the Commission.

## **16 Adjustment of remittance and returns**

A return or the amount of remittance to which it relates may be adjusted to reflect any deduction made during the month covered by it or any error in a previous return or remittance.

## **17 Late remittance charge**

(1) If the Exchange Company fails to remit the levy when required under these Rules, it is liable to pay to the Commission a late remittance charge of 2% above the best lending rate of The Hongkong and Shanghai Banking Corporation Limited, calculated on a daily basis until such remittance is made.

(2) The amount of the late remittance and the late remittance charge payable under subsection (1) is recoverable as a civil debt due to the Commission.

## **18 Records**

The Exchange Company must keep proper records of all transactions relating to the collection, deduction, refund and remittance of the levy.

## **19. Commission access to records**

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of his authority, inspect and make copies of the records kept under section 18.

## **20. Report**

(1) Subject to subsection (3), the Exchange Company must furnish to the Commission -

- (a) within 1 month after 31 March in each year or such longer period as may be specified by the Commission;
- (b) a report certifying that the returns furnished under section 15 relating to all remittances made in respect of the 12 months ending on 31 March in that year are correct and in accordance with these Rules.

(2) The report furnished under subsection (1) must be -

- (a) in such form as may be specified by the Commission;
- (b) prepared and certified by the auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 32); and
- (c) at the expense of the Exchange Company.

(3) The first report furnished under subsection (1) must deal with returns furnished in respect of all remittances made on or before 31 March 2003.

## **21. Refund of levy**

- (1) Where a person has paid a levy under Part II or III, he may apply to the Commission for the refund of such levy on the ground that he -
  - (a) was in fact not liable to pay the levy;
  - (b) was subsequently found to be not liable to pay the levy; or
  - (c) subsequently became not liable to pay the levy.
- (2) An application under subsection (1) must be -
  - (a) in writing; and
  - (b) accompanied by all relevant information.
- (3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it must refund the levy to the applicant.

## **22. Notification of failure to pay levy**

Where the Exchange Company is aware of any person's failure to pay a levy payable by him in accordance with these Rules, it must as soon as practicable notify the Commission of the matter.

## **23. Request for information**

- (1) The Commission, by notice in writing, may require the Exchange Company to provide information specified in the notice relating to the collection, deposit, refund, deduction and remittance of the levy.
- (2) Where a notice is given under subsection (1), the Exchange Company must as soon as practicable provide the information specified in the notice.

Clerk to the Executive Council,

COUNCIL CHAMBER

2002

## **Explanatory Note**

These Rules are made by the Chief Executive in Council under section 244(1) of the Securities and Futures Ordinance (No. 5 of 2002). They prescribe the means of funding the compensation fund established under section 236 of the Ordinance. These Rules must be read in the light of any Order made under section 80 of the Ordinance transferring functions of the Commission under these Rules to a recognized investor compensation company.