SECURITIES AND FUTURES COMMISSION

證 券 及 期 貨 事 務 監 察 委 員 會

A Consultation Paper on the Securities and Futures (Registration of Commission Disciplinary Orders) Rules

《證券及期貨(登記證監會的紀律處分命令)規則》 諮詢文件

Hong Kong
March 2002

香港
2002 年 3 月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Registration of Commission Disciplinary Orders) Rules** ("the draft Rules") which the Securities and Futures Commission ("SFC") proposes to make under section 397 of the Securities and Futures Ordinance (No. 5 of 2002) ("the Ordinance") when it commences.

Introduction

1.   The draft Rules provide for the manner in which applications may be made to register orders of the SFCin the Court of First Instance. It is proposed that essentially identical rules will be made by the Chief Justice to provide for registration of orders of the Securities and Futures Appeals Tribunal ("SFAT") and the Market Misconduct Tribunal ("MMT").

2.   Part IX of the Ordinance is concerned with the SFC's disciplinary functions. It sets out the sanctions that the SFC may impose, and the categories of persons on whom sanctions may be imposed. Sections 194(2) and 196(2) in particular empower the SFC to order a regulated person to pay a pecuniary penalty in certain circumstances provided that it has had regard to the fining guidelines to be published in accordance with section 199 of the Ordinance. Sections 194(5) and 196(5) permit the SFC to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First instance for payment of money. Sections 194(5) and 196(5) provide that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Commission under section 397.

3.   Part XI of the Ordinance is concerned with the establishment of the SFAT which will have the jurisdiction to review a wide range of decisions by the SFC, the Hong Kong Monetary Authority and the Investor Compensation Company (to be recognized under section 79 of the Ordinance) and make orders concerning proceedings before the SFAT. Section 226 permits the SFAT to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First Instance. Section 226 provides that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Chief Justice under section 233.

4.   One of the key matters covered by Part XIII of the Ordinance is the establishment of the MMT. The MMT will have the jurisdiction to hear market misconduct cases and to make a wide range of orders imposing sanctions on offenders and concerning proceedings before it. Section 264 permits the MMT to register such an order in the Court of First Instance and the order, on registration, is regarded for all purposes as an order of the Court of First Instance. Section 264 provides that the manner in which the application is to be made for the registration of an order is to be set out in rules made by the Chief Justice under section 269.

5.   There are controls built into the legislative system, whereby any rules made by the SFC or the Chief Justice must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398

of the Ordinance on rules to be made by the SFC. Therefore, the SFC now releases the draft Rules (see Attachment 1) for public consultation.

6.   The public may obtain copies of the consultation document and the attachment free of charge at the SFC's office and on the SFC's Internet website at http://www.hksfc.org.hk.

7.   The SFC invites interested parties to submit written comments on the draft Rules or to comment on related matters that might have a significant impact upon the draft Rules **no later than 24th April 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Rules.

The draft Rules

8.   The draft Rules prescribe that on application to the Court of First Instance in respect of orders made by the Commission for the purposes of sections 194(5) and 196(5) of the Ordinance there must be produced to the Registrar of the High Court the order, in duplicate, and notice in writing requesting that the order be registered.

New Policy Initiatives

10.   The draft Rules are procedural and merely implement the policy in the Ordinance which was considered in detail by the Legislative Council Bills Committee.

Other matters

11.   Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

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

13.   Written comments may be sent -

    By mail to: SFC (Registration of Orders Rules)
                            12/F, Edinburgh Tower
                            The Landmark
                            15 Queen's Road Central
                            Hong Kong

    By fax to: (852) 2868 0252

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

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

14. The draft Rules should be read in conjunction with the Securities and Futures Ordinance itself.

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 PDPO.

Purpose of Collection

2.   The Personal Data provided in your submission to the SFC in response to this Consultation Paper 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 Paper. The names of persons who submit comments on the Consultation Paper 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 Paper. 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 Paper, 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.

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