



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

Consultation Conclusions on the Draft Securities and Futures (Associated Entities) Rules

《證券及期貨(有聯繫實體)規則》草擬本
諮詢文件總結

Hong Kong
MAY 2002

香港
2002年5月

INTRODUCTION

1. On 22 March 2002, the Securities and Futures Commission ("SFC") issued a Consultation Paper to solicit comments on the draft Securities and Futures (Associated Entities) Rules (the "draft Rules").
2. The draft Rules prescribe for the purposes of section 165 of the Securities and Futures Ordinance (No. 5 of 2002) ("the Ordinance") the particulars that an associated entity of an intermediary must provide to the SFC when it becomes or ceases to be an associated entity. A notice is also required when there is a change in any such particulars.
3. The consultation exercise ended on 19 April 2002.
4. It is advisable to read this document in conjunction with the Consultation Paper itself.

CONSULTATION EXERCISE

5. A press release regarding the consultation exercise was issued on 22 March 2002. The Consultation Paper and the draft Rules were posted on the website of the SFC and distributed to all registrants through FinNet.
6. Three submissions were received. Two of them were from The Institute of Securities Dealers Ltd and the Hong Kong Stockbrokers Association Ltd. They had no comment on the draft Rules.
7. The other one was from the Hong Kong Securities Institute with the results of a survey to its members on the draft Rules. According to that survey, 88.8% of the respondents agreed with the information currently specified in the draft Rules. The remaining 11.2% of the respondents had no comment.

CONSULTATION CONCLUSIONS

8. While the submissions generally supported the form of the original draft Rules attached to the Consultation Paper, we consider that it is necessary to amend the draft Rules to give guidance to corporations who are required to give notice under section 165 of the Ordinance, and to reflect changes in the Securities and Futures (Licensed Persons and Registered Institutions) Rules. The relevant part of these latter rules are to be regrouped as the Securities and Futures (Intermediary Information) Rules and are therefore called the "Intermediary Information Rules" in this paper. We have also further particularized the types of information which require reporting.

Standardizing information provided by associated entities

9. Whilst section 165 of the Ordinance requires all corporations to give a notice on becoming associated entities, formerly the draft Rules did not specify the particulars that licensed corporations and authorized financial institutions were required to give in the notice. The SFC takes the view that the particulars should be standardized - with notices given by associated entities already licensed or registered with the SFC containing only certain basic information and other associated entities providing more detailed information. The Rules have been amended accordingly.
10. Consistent with the Intermediary Information Rules, associated entities are now required to advise the SFC of their correspondence address and web site address (if any). Reporting of correspondence address of their executive officers and controlling entities is also required. Where the associated entity is not an authorized financial institution, it should also provide details of its bank accounts for receiving or holding client assets in Hong Kong.
11. The SFC considers that it is not necessary for associated entities to report the address of the principal place of business of any intermediary because changes in business address will be provided by the intermediary itself.
12. In addition, associated entities will not be required to report whether their executive officers are licensed representatives since such information is already available to the SFC.

Holding of client assets

13. We do not believe that it is necessary to retain the requirement that an associated entity gives particulars of whether it holds assets for other intermediaries (formerly clause 3(i) in the original draft Rules) because an intermediary cannot, unless it is approved by the SFC, deposit client assets with an entity other than its associated entity or an authorized financial institution. An intermediary is already required to identify such entity under the Intermediary Information Rules or when the intermediary seeks approval from the SFC.
14. If a corporation intends to cease being an associated entity of an intermediary, it must properly return client assets that it held for that intermediary prior to such cessation. The Rules require associated entities to provide confirmation that the assets have been properly accounted for. However, where such confirmation cannot be given, we think that details of such client assets must be provided to the SFC for the purpose of safeguarding investors' interests. The Rules have been amended to require such particulars to be provided by the associated entities.
15. Where the associated entity is an authorized financial institution, the SFC views that it should not be required to provide confirmation that all client

assets are disposed of when it ceased to be an associated entity. This is because section 164 of the Ordinance allows an authorized financial institution (irrespective of whether it is an associated entity) to hold client assets. As such, it may continue to hold client assets for any intermediary after it ceased to be its associated entity.

16. The Rules have also been amended such that associated entities will only need to notify the address of each of the premises where books and records relating to client assets of the intermediary that are received or held by them in Hong Kong are kept.

Solvency of associated entities

17. The SFC thinks that information on financial soundness of associated entities (who hold client assets) is important for investor protection. Associated entities (other than authorized financial institutions which are regulated by the Hong Kong Monetary Authority) are therefore required to notify the SFC if they are aware of the existence of any matters that might render them insolvent. The Rules have been amended to require such particulars to be provided by associated entities when they first become an associated entity. As associated entities are required to notify the SFC of any change in the particulars given, they will be under a duty to notify the SFC when they become aware of the existence of any matters that might render them insolvent.