



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

**A Consultation Paper on the Securities
and Futures (Associated Entities) Rules**

《證券及期貨(有聯繫實體)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 (Associated Entities) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397 (1) of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Part VI of the Ordinance empowers the SFC to make rules imposing ongoing financial and operational requirements on persons licensed or registered under Part V of the Ordinance.

2. Part VI also closes a regulatory gap under the existing legislation that enables an intermediary, for example a securities dealer, to register client’s securities held in the dealer’s safe custody in the name of a nominee company set up by the securities dealer. These nominees are presently unregulated. To improve investor protection section 164 of the Ordinance prescribes the types of persons that are allowed to receive or hold in Hong Kong client assets. These persons now include an “associated entity of an intermediary” - a term that would cover most nominees that hold assets of intermediaries. However, the provisions of Part VI require an associated entity to comply with the various rules made under Part VI, except the Financial Resources Rules.

3. In addition, section 165(1) requires an associated entity to notify the SFC within 7 business days after it becomes, or ceases to be, an associated entity of an intermediary and provide the information specified in rules made by the SFC for this purpose. The rules that the SFC proposes to make for this purpose are the draft Rules.

4. The term “intermediary” means a licensed corporation (i.e. a corporation licensed by the SFC under Part V of the Ordinance for a regulated activity) or a registered institution (i.e. an authorized financial institution registered under Part V of the Ordinance). The term “associated entity” means a company that is in a controlling entity relationship with an intermediary and receives or holds in Hong Kong client assets of the intermediary. A “controlling entity relationship” exists, for example, if either the associated entity or the intermediary would, either alone or with any of its associates –

- (a) be entitled to exercise or control the exercise of not less than 20% (or such other percentage as may be prescribed) of the voting power at general meetings of the other; or
- (b) have the right to nominate any of the directors of the other; or
- (c) have an interest in shares carrying the right to veto any resolution or vary, modify, limit or add conditions to any resolution, at general meetings of the other.

5. The Securities and Futures Ordinance does not contain detailed provisions setting out the information required to be provided by persons to whom section 165(1) applies. It merely gives the SFC the necessary rule-making power, under section 397, to prescribe requirements in subsidiary legislation. This provides the flexibility to

address evolving market needs by quickly amending the rules rather than the primary legislation.

6. There are controls built into the legislative system, whereby any rules made by the SFC must be subject to negative vetting by the Legislative Council. In addition, a mandatory consultation requirement is stipulated in section 398 of the Securities and Futures Ordinance for rules made by the SFC. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.

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

8. 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 19 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

9. The draft Rules prescribe for the purposes of section 165(1) of the Ordinance the particulars that an associated entity of an intermediary (other than an associated entity that is a licensed corporation or an authorized financial institution) must provide to the Commission by notice in writing when it becomes or ceases to be an associated entity. A notice is also required when there is a change in any such particulars.

10. The draft has been prepared having regard to the information that the SFC would ask a licensed corporation to provide. It is the intention of the SFC that the draft Rules should be user-friendly and, for example, they have been drafted in plain English where possible with this objective in mind. The SFC would welcome suggestions from industry participants on any specific improvements that could be made to streamline procedures or make it easier for participants to comply with the Ordinance and the draft Rules.

New Policy Initiatives

11. No new policy changes have been incorporated into the draft Rules which are intended simply to implement the policy already explained in section 165 of the Ordinance.

Other matters

12. 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 connection, please read the Personal Information Collection Statement attached to this consultation paper.

13. 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.

14. Written comments may be sent -

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

By fax to: (852) 2293 5755

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

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

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

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, 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

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

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.