



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

**A Consultation Paper on the draft Securities
and Futures (Miscellaneous) Rules**

《證券及期貨(雜項條文)規則》諮詢文件

Hong Kong
July 2002

香港
2002年7月

Consultation

This consultation document invites public comments on the draft **Securities and Futures (Miscellaneous) Rules** (“the draft Rules”) which the Securities and Futures Commission (“SFC”) proposes to make under section 397(1) of the Securities and Futures Ordinance (5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. The Miscellaneous Rules, as their name suggests, contain a range of provisions which do not readily fit into other subsidiary legislation made under the Ordinance. For the reasons explained below the Commission invites comments only on sections 4 and 7 of the draft Rules.

Sections 3,5 and 6

2. Sections 3, 5 and 6 were formerly in the draft Securities and Futures (Licensed Persons and Registered Institutions) Rules that were exhibited for consultation in November 2001 - but have now been largely subsumed by the new draft Securities and Futures (Intermediary Information) Rules. These sections have been amended to reflect comments received during the consultation that the Commission accepted. The consultation conclusions paper on the Licensed Persons and Registered Institutions Rules sets out the comments received and the Commission’s responses. As there has already been public consultation, further comments are not being sought on these provisions.

Section 4 of the draft Rules

3. Section 4 of the draft Rules requires intermediaries to maintain a complaints register and to make this register available for inspection by its clients or an interested member of the investing public during office hours. This requirement is introduced in the interests of investor protection and transparency would help to ensure that client complaints are being addressed.

Section 7 of the draft Rules

4. Section 179 gives a person, who the SFC has authorized, the power to inquire into suspected crimes or misconduct in a corporation that is or was listed. In the course of such an inquiry, the authorised person can compel an “auditor” to produce documents in the nature of audit working papers and compel the “auditor” to explain documents that have been produced. Section 7 of the draft Rules elaborates on the definition of "auditor" in Part 1 of Schedule 1 of the Ordinance for the purposes of section 179 of the Ordinance.

5. The term "auditor" is defined in Schedule 1 to the Ordinance to be a person registered under the Professional Accountants Ordinance who holds a practising certificate or a person specified in rules made by the SFC under section 397 of the Ordinance.

6. However, the person who is registered under the Professional Accountants Ordinance who holds a practising certificate is usually assisted by an audit team. Much of the work on an audit is performed by this team which will comprise junior staff of the auditing firm or consultants (eg valuers) engaged for that audit. To ensure that there are no gaps in an authorised person's power to compel the production of relevant documents, and to ensure that the appropriate audit team member or consultant can be required to explain a document, the SFC proposes in section 7 of the draft Rules on the people to widen the category of persons considered to be auditors for the purpose of section 179 to cover:

- former auditors;
- auditors appointed under foreign legislation; and
- people employed or engaged by an auditor for the purposes of an audit, whether or not they are "auditors" themselves.

7. 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. The SFC therefore now releases the draft Rules (see Attachment 1) for public consultation.

8. 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>.

9. 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 26th July 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.

New Policy Initiatives

10. Section 4 of the draft Rules, which proposes that intermediaries should keep a complaints register, represents a new policy initiative but is based upon more general requirements set out in the existing Code of Conduct concerning the handling of complaints. Section 7 does not represent a policy change as the restricted definition of "auditor" was not intended to apply in the context of section 179 of the Ordinance.

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 to be published by the SFC. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

13. Written comments may be sent -

By mail to: SFC (Miscellaneous 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: miscellaneous_rules@hksfc.org.hk

13. 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
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.

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