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SECURITIES AND FUTURES (PRICE STABILIZING) RULES

(Made by the Securities and Futures Commission under sections 282 and 306 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary)

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Interpretation

(1) In these Rules, unless the context otherwise requires—
“ancillary stabilizing action” (附帶穩定價格行動), in relation to any relevant securities, means any action that may be taken under section 7 in connection with any primary stabilizing action in respect of the relevant securities;

“associate” (有聯繫者)—

(a) for the purposes of or in connection with determining the application of section 4, has the meaning assigned to it by section 245(1) of the Ordinance; or

(b) for the purposes of or in connection with determining the application of section 5, has the meaning assigned to it by section 285(1) of the Ordinance;

“closing date” (截止日期), in relation to any relevant securities, means—

(a) the date specified in an offer document relating to the relevant securities as the last date for acceptance of the offer; or

(b) if no such date is specified in the offer document relating to the relevant securities, the date on which the offeror receives any of the proceeds of the offer;

“commission” (佣金) means any form of commission, including a benefit of any kind, offered or given in connection with any regulated activity;

“debt securities” (債務證券) means debentures issued by, or which it is reasonably foreseeable will be issued by, a corporation, a multilateral agency, or a government or municipal government authority;

“depository receipt” (寄存單據) means a certificate or any other instrument which—

- (a) confers contractual or property rights (other than rights consisting of options) on its holder in respect of equity securities or debt securities held by a depository, custodian or other person (“the custodian”) not being the person on whom the rights are conferred by the certificate or instrument;
- (b) may be transferred by its holder without requiring the consent of the custodian;
- (c) is traded or has been admitted to trading on an overseas stock market; and
- (d) is uniform in all material respects with the equity securities or the debt securities it represents and is changeable by its holder into the equity securities or the debt securities at any time;

“equity securities” (權益證券) means shares issued by, or which it is reasonably foreseeable will be issued by, a corporation, but does not include any interest in any collective investment scheme;

“first public announcement date” (首次公開宣告日期), in relation to any relevant securities, means the date of the first public announcement relating to the relevant securities which indicates, or might reasonably be understood as indicating, that an offer relating to the relevant securities is intended to take place in some form and at some time;

“initial stabilizing action” (初步穩定價格行動), in relation to any relevant securities, means the first action taken by the stabilizing manager in the course of primary stabilizing action in respect of the relevant securities;

“initial stabilizing price” (初步穩定價格), in relation to any relevant securities, means the price at which the stabilizing manager takes any initial stabilizing action in respect of the relevant securities;

“issuer” (發行人)—

- (a) in relation to a depository receipt, means the person who issued or is to issue the securities which the depository receipt represents; or
- (b) in relation to any other relevant securities, means the person by whom the relevant securities are or are to be issued;

“offer” (要約) means an offer or an invitation to make an offer, or (except in sections 6(b) and 7(1)(d)) an issue;

“offer document” (要約文件)—

- (a) in relation to an offer described in section 3(d)(i), means a prospectus, or an advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of the Ordinance; or
- (b) in relation to an offer described in section 3(d)(ii), means the public announcement referred to therein;

- “offer price” (要約價), in relation to any relevant securities, means the specified price at which the relevant securities are offered to the public without accounting for any concessions, commission, brokerage, transaction fees or levies;
- “offeror” (要約人), in relation to an offer of any relevant securities, means the issuer, or a holder of the relevant securities making the offer;
- “overseas stock market” (海外證券市場) means a stock market outside Hong Kong;
- “primary stabilizing action” (基本穩定價格行動), in relation to any relevant securities, means any action that may be taken under section 6;
- “prospectus” (招股章程)—
- (a) in relation to an offer of any relevant securities in a company, means a prospectus authorized for registration under section 38D of the Companies Ordinance (Cap. 32); or
 - (b) in relation to an offer of any relevant securities in an overseas company, means a prospectus authorized for registration under section 342C of the Companies Ordinance (Cap. 32);
- “public announcement” (公開宣告), in relation to any relevant securities, means any communication made by or on behalf of an offeror or the stabilizing manager, being a communication made in circumstances in which it is likely that members of the public will become aware of the communication;
- “relevant authorized automated trading services” (有關認可自動化交易服務) means authorized automated trading services where—
- (a) the terms of their authorization include a term permitting stabilizing action to be taken in compliance with these Rules in respect of relevant securities traded by means of such authorized automated trading services; and
 - (b) such term is contained in the register maintained under section 99(1) of the Ordinance;
- “relevant communications” (有關通訊) means any of the communications specified in Schedule 1;
- “relevant offer” (有關要約) means an offer of relevant securities in respect of which any stabilizing action is taken;
- “relevant securities” (有關證券) means—
- (a) equity securities;
 - (b) debt securities; or
 - (c) depositary receipts of equity securities or debt securities;
- “stabilizing action” (穩定價格行動) means primary stabilizing action or ancillary stabilizing action;
- “stabilizing manager” (穩定價格操作人) means the single intermediary appointed by or on behalf of the offeror to take any stabilizing action under these Rules;

“stabilizing period” (穩定價格期間), in relation to any relevant securities, means the period—

(a) beginning on the earlier of—

- (i) the commencement of trading of the relevant securities on a recognized stock market or by means of relevant authorized automated trading services; or
- (ii) where applicable, the commencement of trading of the relevant securities on a specified stock exchange outside Hong Kong,

after the offer document relating to the relevant securities is issued and the offer price for the relevant securities is announced, whether in the offer document or otherwise; and

(b) ending on the earlier of the 30th day after—

- (i) the closing date; or
- (ii) the commencement of trading of the relevant securities on a recognized stock market;

“stabilizing price” (穩定價格), in relation to any relevant securities, means the price at which any stabilizing action in respect of the relevant securities is taken.

(2) For the purposes of these Rules, a depositary receipt shall be regarded as the same as the equity securities or the debt securities it represents in the corresponding quantity.

3. Application

Notwithstanding anything in these Rules, stabilizing action may only be taken in respect of relevant securities the subject of an offer for cash where—

- (a) the offer for cash is to be, or has been, made at a specified price payable in Hong Kong dollars or in any foreign currency;
- (b) the relevant securities are traded or have been admitted to trading on a recognized stock market or by means of relevant authorized automated trading services, or are the subject of an application for admission to trading on a recognized stock market or by means of relevant authorized automated trading services;
- (c) the total value of the relevant securities offered (excluding any allocation of the relevant securities referred to in section 7(1)(a)(i)) at the offer price is not less than \$100 million (or its equivalent in any foreign currency); and
- (d) the offer is to the public, and such offer—
 - (i) is to be, is, or has been subject of a prospectus, or an advertisement, invitation or document the issue of which has been authorized by the Commission under section 105 of the Ordinance; or

- (ii) (A) is an offer—
- (I) within the meaning of section 343(2) of the Companies Ordinance (Cap. 32); or
 - (II) in respect of which an exemption from compliance with the requirements of sections 38(1) and (3) and 44A(2) of the Companies Ordinance (Cap. 32) is made by virtue of section 3 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.);
- (B) is for relevant securities that are or will be uniform in all respects with securities previously issued and for the time being traded or admitted to trading on a recognized stock market or by means of relevant authorized automated trading services; and
- (C) is to be, is, or has been subject of a public announcement containing the offer price of the relevant securities and the information relating to the relevant securities required in item 4 of Schedule 1, provided that if the offer comprises equity securities to be sold by an existing shareholder, the shareholder has agreed to subscribe for the same number of such equity securities at the same price after taking account of expenses incurred.

PART 2

EXEMPTION FOR STABILIZING ACTION

4. Conduct not to constitute market misconduct

For the purposes of section 282(1) of the Ordinance, any stabilizing action in respect of any relevant securities taken in compliance with these Rules shall not be regarded as constituting market misconduct.

5. Conduct not to constitute offences under Part XIV of the Ordinance

For the purposes of section 306(1) of the Ordinance, any stabilizing action in respect of any relevant securities taken in compliance with these Rules shall not be regarded as constituting an offence under Part XIV (other than section 300 or 302) of the Ordinance.

PART 3

STABILIZING ACTION

6. Primary stabilizing action

The stabilizing manager may take all or any of the following actions in respect of any relevant securities during the stabilizing period—

- (a) purchase, or agree to purchase, any of the relevant securities;
- (b) offer or attempt to do anything as described in paragraph (a), for the sole purpose of preventing or minimizing any reduction in the market price of the relevant securities.

7. Ancillary stabilizing action

(1) The stabilizing manager may, in connection with any primary stabilizing action taken in respect of any relevant securities under section 6, take all or any of the following actions—

- (a) for the purpose of preventing or minimizing any reduction in the market price of the relevant securities—
 - (i) allocate a greater number of the relevant securities than the number that is initially offered; or
 - (ii) sell or agree to sell the relevant securities so as to establish a short position in them;
- (b) pursuant to an option or other right to purchase or subscribe for the relevant securities as referred to in section 10(3), purchase or subscribe for or agree to purchase or subscribe for the relevant securities in order to close out any position established under paragraph (a);
- (c) sell or agree to sell any relevant securities acquired by the stabilizing manager in the course of the primary stabilizing action in order to liquidate any position that has been established by such action;
- (d) offer or attempt to do anything as described in paragraph (a)(ii), (b) or (c).

(2) Ancillary stabilizing action under subsection (1)(b) may be taken without regard to the limits on pricing in section 11 and Schedule 2.

8. Disclosure of stabilizing action

(1) The stabilizing manager shall not take any stabilizing action in respect of any relevant securities unless—

- (a) from the first public announcement date, adequate disclosure is made, in relevant communications issued by or on behalf of the offeror or the stabilizing manager, of the fact that stabilizing action may take place in relation to the offer;
- (b) where the recognized exchange company operating the recognized stock market or the operator of the overseas stock market on which the relevant securities are or will be traded, or the person authorized to provide the relevant authorized automated trading services by means of which the relevant securities are or will be traded, requires to be informed of any stabilizing action that may take place in respect of the relevant securities during the stabilizing period, the requirement has been complied with; and
- (c) a register has been established and kept in compliance with section 13(1).

(2) For the purposes of subsection (1)(a), adequate disclosure is regarded as having been made in relevant communications issued by or on behalf of the offeror or the stabilizing manager if, in the relevant communications specified in Schedule 1, disclosure is made as prescribed in the Notes to that Schedule.

(3) The requirement to make adequate disclosure in subsection (1)(a) in relevant communications does not apply to any communication which is not specified in Schedule 1.

9. Interim and post-stabilization disclosure

(1) As soon as reasonably practicable after purchasing or subscribing for or agreeing to purchase or subscribe for any relevant securities pursuant to the exercise or partial exercise of an option under section 7(1)(b), the stabilizing manager shall ensure that a public announcement stating the number of relevant securities purchased or subscribed for, or which have been agreed to be purchased or subscribed for, pursuant to such exercise or partial exercise of such option and the number of relevant securities available thereafter under any unexercised portion of the option is issued, whether by or on behalf of the offeror or the stabilizing manager.

(2) Within 7 days after the end of the stabilizing period, the stabilizing manager shall ensure that a public announcement containing the information required in Schedule 3 is issued, whether by or on behalf of the offeror or by the stabilizing manager.

10. Restrictions on stabilizing action

(1) The stabilizing manager shall not take any stabilizing action in respect of any relevant securities in any case where—

- (a) at the time when the offer price of the relevant securities was determined, the market price of the relevant securities or of rights to them was or could reasonably be anticipated to be an artificial price; and
- (b) the stabilizing manager knew or ought reasonably to have known that the artificiality in the market price was attributable in whole or in part to any conduct of any person which constitutes market misconduct or an offence under Part XIV of the Ordinance.

(2) The stabilizing manager shall not take any stabilizing action in respect of any relevant securities in any case where—

- (a) the relevant securities are debt securities;
- (b) there are equity securities into which those debt securities can be converted or to the purchase of which those debt securities give rights; and
- (c) the terms of conversion, purchase or subscription have not yet been the subject of a public announcement.

(3) The stabilizing manager shall not take any stabilizing action in respect of any relevant securities in any case where—

- (a) it or an associate of its has, in connection with the offer relating to the relevant securities, an option or other right to purchase or subscribe for the relevant securities from the offeror; and
- (b) that option or right may be exercised or relied on after the first public announcement date and during or after the stabilizing period,

unless the existence and principal terms of the option or right have been disclosed in the relevant offer document.

11. Limits on pricing in stabilizing action

(1) Subject to subsection (2), the stabilizing manager shall not, in the course of any primary stabilizing action taken in respect of any relevant securities, make any bid or effect any transaction in relation to the relevant securities at a price exceeding, where the bid or transaction is made or effected at a time or in the circumstances specified in column 2 of Schedule 2, the price specified in column 3 of that Schedule opposite the time or circumstances so specified.

(2) The prohibition in subsection (1) does not apply to any stabilizing action taken in respect of debt securities.

12. Management of stabilization

(1) The stabilizing manager shall ensure that, in relation to any stabilizing action taken or to be taken by it—

- (a) the disclosure requirements specified in sections 8 and 9 are complied with;
- (b) where the recognized exchange company operating the recognized stock market or the operator of the overseas stock market on which the relevant securities are or will be traded, or the person authorized to provide the relevant authorized automated trading services by means of which the relevant securities are or will be traded, requires to be informed of any stabilizing action that may take place in respect of the relevant securities during the stabilizing period, the requirement has been complied with; and
- (c) any person appointed by the stabilizing manager to act as its agent for the purpose of making any bid or effecting any transaction in the course of the stabilizing action complies with the applicable requirements of these Rules.

(2) No bid may be made or transaction effected in the course of any stabilizing action unless the stabilizing manager—

- (a) has established the register required in section 13; and
- (b) is in compliance with the registration requirements in section 13 in respect of all earlier transactions effected in the course of stabilizing action in connection with the relevant offer.

(3) Subject to subsection (4), no bid may be made or transaction effected in the course of any stabilizing action in respect of any relevant offer except by the stabilizing manager appointed in respect of the relevant offer.

(4) The stabilizing manager may appoint a person to act as its agent for the purpose of making any bid or effecting any transaction in the course of any stabilizing action on terms which—

- (a) make the agent responsible to the stabilizing manager; and
- (b) make the stabilizing manager responsible to others for the conduct of the agent as if the conduct were committed by the stabilizing manager.

(5) Subject to subsection (6), during the stabilizing period for any relevant offer, the stabilizing manager shall not as principal enter into any dealing in any relevant securities to which the stabilizing action relates with any agent it has appointed under subsection (4) to act on its behalf in respect of such stabilizing action.

(6) Subsection (5) does not apply if, at the time of the transaction, neither the stabilizing manager nor the agent concerned knew or ought reasonably to have known the identity of the counterparty.

(7) For the purposes of subsection (5), “dealing” (交易) does not include the giving of any instruction by the stabilizing manager as principal to its agent appointed under subsection (4) to make any bid or effect any transaction in any relevant securities in the course of any stabilizing action.

PART 4

REGISTER OF STABILIZING ACTIONS

13. Record keeping for stabilizing actions taken

(1) The stabilizing manager shall establish and keep a register in respect of each offer of relevant securities to which these Rules apply under section 3.

(2) The stabilizing manager shall ensure that the register referred to in subsection (1) contains, and is updated immediately or on a daily basis (from business day to business day)—

- (a) the names of all agents appointed under section 12 and details of the terms of the appointment of each;
 - (b) the general parameters (including the initial stabilizing price) laid down by the stabilizing manager for each of the agents and the date and time of their communication, variation or revocation;
 - (c) details of each transaction effected in the course of the stabilizing action in question including—
 - (i) the type of the relevant securities;
 - (ii) the unit price of the relevant securities;
 - (iii) the quantity or total value of the relevant securities in the transaction;
 - (iv) the date and time of the transaction; and
 - (v) details of the counterparty to the transaction;
 - (d) details of the allocation of relevant securities (name of offeree and amount allotted); and
 - (e) details (so far as known to the stabilizing manager) of transactions other than those which are effected by or in accordance with the instructions of the stabilizing manager at a price above the current stabilizing price for the purposes of determining the maximum price in respect of item 2 of Schedule 2.
- (3) The register shall—
- (a) be kept in Hong Kong; or
 - (b) be capable of being brought to, or reconstituted in, Hong Kong within 48 hours of receipt by the stabilizing manager of notification in writing for access from anyone entitled to inspect it under section 14.

(4) If the register is not kept in either English or Chinese, it shall be capable of being converted into either language within the 48-hour period referred to in subsection (3).

(5) The register shall be maintained for a period of at least 7 years after the end of the stabilizing period.

14. Inspection of register

(1) Subject to subsection (2), where any stabilizing action has been taken in respect of any relevant securities, any offeror of the relevant securities may, within 3 months after the end of the stabilizing period, by giving notification in writing to the stabilizing manager concerned, inspect the register kept and maintained under section 13.

(2) Subsection (1) does not entitle an offeror to inspect any part of the register other than the details described in section 13(2)(c)(i), (ii), (iii) or (iv).

(3) Without prejudice to section 13(3), the stabilizing manager shall make the part of the register to which an offeror is entitled to inspect under subsection (2) available for inspection within a reasonable time of being notified by the offeror under subsection (1) that he wishes to make the inspection.

(4) The Commission may inspect the register and take copies of it at any time and, without prejudice to section 13(3), the stabilizing manager shall make the register available to the Commission or a person authorized in writing by the Commission for the purpose.

PART 5

MISCELLANEOUS

15. Overseas stabilization

(1) A person who, in a place outside Hong Kong, commits any conduct in respect of any relevant securities—

- (a) for the purpose of preventing or minimizing any reduction in the market price of the relevant securities on an overseas stock market;
- (b) in compliance with provisions specified in Schedule 4 and made by a body or authority also specified in that Schedule; and
- (c) in relation to an offer of the relevant securities which is governed by and made in accordance with the laws of the country (or the state or territory in a country) of the body or authority specified in Schedule 4,

shall be regarded for the purposes of sections 282(1) and 306(1) of the Ordinance as committing the conduct for the purpose referred to in paragraph (a) and in compliance with the other applicable provisions of these Rules.

(2) The provisions specified in Schedule 4 are specified as they have effect from time to time.

SCHEDULE 1

[ss. 2, 3 & 8]

RELEVANT COMMUNICATIONS

Item	Communication	Relevant notes (see below)
1.	Any electronic screen based statement	(a), (b), (d) and (e)
2.	Press announcement (or other public announcement)	(c), (d) and (e)
3.	Invitation telex (or similar communication)	(b) and (e)
4.	Offer document	(f)

Notes:

- (a) Item 1 extends to any statement in respect of the offer made by or on behalf of the offeror or the stabilizing manager on screen facilities (whether provided by the stabilizing manager or not) conveying information on prices for a sale or purchase of securities.
- (b) For items 1 and 3, adequate disclosure is given if the communication contains some indication of the fact that the price of the securities the subject of the offer may be stabilized in accordance with these Rules. For this purpose, a reference to “details of intended stabilization/SFO in [name the relevant offer document]” will be sufficient.
- (c) For item 2, adequate disclosure is given if the announcement includes a statement of the fact that the price of the securities the subject of the offer may be stabilized in accordance with these Rules. For this purpose, a reference to “the details of the intended stabilization and how it will be regulated under the Securities and Futures Ordinance will be contained in [name the relevant offer document]” or words to similar effect, will be sufficient.
- (d) Items 1 and 2 only apply to communications made after the later of the following 2 dates—
 (i) the first public announcement date; or
 (ii) the 45th day before the first day of the stabilizing period.
- (e) Items 1, 2 and 3 only apply to communications made prior to the issue of the offer document.
- (f) For item 4, adequate disclosure is given if the communication contains—
 (i) wording substantially similar to the following—
 “In connection with this [issue/offer], [name the stabilizing manager] [or any person acting for it] may over-allot or effect transactions with a view to supporting the market price of [give description of the relevant securities] at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there is no obligation on [name the stabilizing manager] [or any person acting for it] to do this. Such stabilizing action, if taken, may be discontinued at any time, and is required to be brought to an end after a limited period.”;
 (ii) a summary of the possible stabilizing action to be taken under section 6 or 7 of these Rules;
 (iii) warnings to the effect—
 (A) that the stabilizing manager may, in connection with the stabilizing action, maintain a long position in the relevant securities;
 (B) that there is no certainty regarding the extent to which and the time period for which the stabilizing manager will maintain such a position;
 (C) that investors should be warned of possible impact in the case of liquidation of the long position by the stabilizing manager;

- (D) that stabilizing action cannot be taken to support the price of any relevant securities for longer than the stabilizing period which begins on the commencement of trading of the relevant securities after the offer document is issued and the offer price for the relevant securities is announced, whether in the offer document or otherwise, and ends on the earlier of the 30th day after—
- (I) the closing date; or
 - (II) the commencement of trading of the relevant securities,
- that the stabilizing period is expected to expire on [insert date], and that after this date, when no further stabilizing action may be taken, demand for the security, and therefore its price, could fall;
- (E) that investors should be aware that the price of the security cannot be assured to stay at or above its offer price by the taking of any stabilizing action; and
- (F) that stabilizing bids may be made or transactions effected in the course of the stabilizing action at any price at or below the offer price, which means that stabilizing bids may be made or transactions effected at a price below the price the investor has paid for the security.

SCHEDULE 2

[ss. 7, 11 & 13]

PRICING LIMITS

Item	Time or circumstances of action	Maximum price
1.	Initial stabilizing action	The offer price
2.	After the initial stabilizing action, where there has been a deal done or transaction effected at a price above the stabilizing price on the relevant market	The offer price, or the price at which that deal was done or at which that transaction was effected, whichever is the lower
3.	After the initial stabilizing action, where there has been no deal or transaction described in item 2	The offer price, or the initial stabilizing price, whichever is the lower

Notes:

- (a) For the purposes of item 2, a deal done or transaction effected does not include a deal done or transaction effected by or on the instructions of the stabilizing manager.
- (b) For the purposes of this Schedule, “relevant market” (有關市場) means the relevant recognized stock market, relevant authorized automated trading services, or relevant overseas stock market which the stabilizing manager believes to be the principal market on which those securities are dealt in at the time of the deal or transaction.
- (c) Where the price of any relevant securities on the relevant market is in a currency other than the currency of the price of the securities to be stabilized, stabilizing bids may be made or transactions effected at a price that reflects any change in the relevant rate of exchange; but this does not permit stabilizing action at a price above the equivalent, in the other currency, of the offer price in the currency of the relevant exchange.

SCHEDULE 3

[s. 9]

POST-STABILIZATION DISCLOSURE

The public announcement referred to in section 9(2) of these Rules shall contain the following information—

- (a) the ending date of stabilizing period;
- (b) whether or not any stabilizing action was taken;
- (c) where there were more than one purchase in the course of any stabilizing action, the price range between which purchases were made;
- (d) where applicable, the date of the last purchase in the course of any stabilizing action and the price at which it was made; and
- (e) where applicable, the extent to which any over-allotment option was exercised.

SCHEDULE 4

[s. 15]

OVERSEAS STABILIZATION

Andrew Len Tao SHENG
Chairman,
Securities and Futures Commission

9 December 2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under sections 282 and 306 of the Securities and Futures Ordinance (Cap. 571) for the purpose of excluding price stabilization conducted in accordance with the Rules from the application of the market misconduct provisions in Part XIII and the offence provisions in Part XIV of the Ordinance. They prescribe the circumstances in which the prices of certain securities offered to the public may be stabilized for a limited period, the type of stabilizing action which may be taken and the requirements for disclosure of such action.