

Consultation Document
The Draft Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (the “draft Rules”)

Introduction

1. Unlike the Securities Ordinance and the Commodities Trading Ordinance, the Securities and Futures Bill does not contain detailed requirements in relation to the issuance of contract notes, statements of account or receipts; it merely gives the Commission the necessary rule-making power under clause 148 to prescribe requirements in the subsidiary legislation. The basis for this approach is that, consistent with modern securities legislation such as the UK Financial Services and Markets Act, effective regulation depends upon the regulator having the flexibility to quickly address changing market practices and global conditions, by amending the rules rather than the primary legislation.
2. While there are controls already built into the legislative system whereby any rules made by the Commission must be subject to negative vetting by the Legislative Council, the Commission now releases the draft Rules for public consultation.
3. The SFC has used the FinNet communication network to send copies of this consultation document to registered dealers that have lodged their Financial Resources Rules returns electronically with the SFC via FinNet. Copies of the consultation document are available free of charge at the SFC’s office and may also be found on the SFC’s Internet website at <http://www.hksfc.org.hk>.
4. The public is invited to submit comments before close of business on 9 November 2001 by sending them by fax to 2523-4598 or by mail or e-mail to the following address:

SFC Contract Notes Rules
12/F, Edinburgh Tower
The Landmark
15 Queen’s Road, Central
Hong Kong

or:

contract_notes_rules@hksfc.org.hk

5. It should be stressed that the draft Rules must be read in conjunction with the Securities and Futures Bill itself. For example, exempt persons

will only need to issue contract notes etc. in the course of their regulated activities.

6. To ensure that our regulatory thinking is generally in the right direction, the SFC has formulated the draft Rules after consulting selected representatives from the brokerage, fund management and banking industry. We wish to acknowledge and thank them for their invaluable input.

Background

7. A copy of the draft Rules is attached. In short, the draft Rules prescribe how intermediaries licensed or exempt for different types of regulated activities (and where appropriate their associated entities) must issue contract notes, statements of account and receipts to their clients.
8. The draft Rules have drawn on sections 75 and 121Z of the Securities Ordinance, section 45A of the Commodities Trading Ordinance and section 4 of the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules, the Code of Conduct for Persons Registered with the Securities and Futures Commission (“Code”) and the Fund Manager Code of Conduct (“FMCC”).
9. We have prepared the draft Rules with the aim to
 - (a) rationalise our requirements, which are currently disposed in four different Ordinances;
 - (b) rectify known anomalies and deficiencies; and
 - (c) where appropriate, streamline the requirements where intermediaries conduct more than one regulated activity.

The Rules must be drafted to ensure that clients get timely and meaningful information about transactions conducted on their behalf, so that they can properly understand their circumstances and protect their own interests.

New Policy Initiatives

10. Several policy changes have been incorporated into the draft Rules:
 - (a) to apply to all intermediaries (or, where applicable, their associated entities);

- (b) to allow introducing brokers, asset managers and some others not to issue contract notes to the clients where another intermediary, typically the execution broker, already provides the clients with the necessary information;
- (c) to bring together all related requirements currently incorporated in the Code and the FMCC;
- (d) to make specific allowance for consolidated contract notes and statements of account in view of the single licence regime;
- (e) to relax existing requirements in relation to securities margin financing;
- (f) to allow for average pricing for reporting in contract notes dealing in securities and futures contracts; and
- (g) to extend the time for providing a contract note to a client from one to two business days.

Application of Rules – Intermediary Types

11. Currently, under the various Ordinances, the relevant requirements only apply to specific types of registered, exempt or licensed persons (namely securities dealers, futures dealers, securities margin financiers and leveraged foreign exchange traders). This will be too restrictive under the Bill as there will be new types of regulated activities which an intermediary may conduct. Under the draft Rules, all intermediaries will be required to issue contract notes or statements of account whenever they enter into a contract¹ or provide financial accommodation in the course of any regulated activity.

Where a Transaction Involves Two Intermediaries

12. Section 75, Securities Ordinance currently requires all securities dealers to issue contract notes. However, many of the asset managers that are registered as securities dealers do not issue contract notes because these tend to be issued directly by the execution brokers to the custodians or trustees or directly to the clients. Moreover, there are some introducing brokers that do not issue contract notes at all. As the execution brokers already issue the contract notes to the clients, there are no investors' protection issues. Under the draft Rules, in these circumstances, only one set of contract note needs be issued to avoid duplication (section 5).

¹ Defined to cover dealing in securities, futures and leveraged foreign exchange trading.

Application of Rules - Transaction Types

13. Currently, a securities or futures dealer is clearly required to issue contract notes when they purchase, sell or exchange securities or futures contracts. There is uncertainty however as to other types of transactions. It is unclear, for example, whether a contract note will need to be issued for options trading or for securities borrowing or lending. The draft Rules now make it clear that contract notes are required to be issued wherever there is dealing in securities or futures contracts of any kind, including specifically securities borrowing or lending (section 6(3)(a)(ii) and 6(4)(b)(iii)(B)).

To Rectify Inconsistency of Approach

14. The requirements for securities margin financiers, securities dealers providing securities margin financing and leveraged foreign exchange traders to prepare and send regular statements of account are in the relevant legislation. However such requirements for futures dealers and securities dealers (i.e. those not providing securities margin financing) are only in the Code or FMCC. Furthermore, the Code currently contains some extra requirements such as the indication of a short selling order on the contract note by an exchange participant of the SEHK. These requirements are now rationalised and incorporated into the draft Rules².

Contract Notes – New Definition

15. Some market practitioners are currently issuing confirmations and memoranda instead of contract notes as required under the Ordinances. There has been uncertainty as to whether confirmations and memoranda are acceptable alternatives. The draft Rules now define contract note (section 2) as a document which records a contract so that the actual title itself becomes irrelevant.

Average Pricing

16. Also, some of the larger firms have noted a need to quote average price upon client's request. According to a strict interpretation of the law, contract notes must be issued for each transaction³ and hence average price cannot be used in the contract notes. We see no good reason why this should be disallowed if clients actually prefer to get their

² With the exception that managers of authorised collective investment schemes need not comply with our statement of account requirements – as this is covered under the Code on Unit Trusts and Mutual Funds.

³ This means that if a client places a large order, requiring the intermediary to enter into different transactions in order to fill that order, the client may be receiving many contract notes in relation to that same order.

information on this basis, and therefore propose to allow average price (section 6(4)(b)(ii) and 6(5)(a)(ii)).

Consolidated Reporting to Clients

17. Given that an intermediary is permitted to conduct different kinds of regulated activities under the Bill, under the draft Rules, an intermediary may consolidate contracts for all regulated activities entered into on the same business day into one single contract note (section 6(2)). The same applies to statements of account (section 7). This requirement for daily reporting was introduced by legislative amendment last year. Although it is repeated in the draft Rules, we are particularly interested in observations from the industry about how the requirement has worked in practice and the compliance burden.

Requirements to Provide Daily Statements of Account for Margined Transactions

18. Currently, many intermediaries collect margins from their clients for dealing in futures and options contracts, leveraged foreign exchange trading, short selling and securities borrowing and lending transactions. Instead of repeating the requirements under each heading, we have introduced a new section under “margined transaction” to cover these types of transactions (section 9).

Requirements to Provide Details of Margin Policies, etc.

19. The requirements to issue statements of account under the Securities (Margin Financing) (Amendment) Ordinance have been criticised for being excessive (it requires a statement of account to be issued each time certain terms, such as list of acceptable collateral and margin ratios, change; whether these affect the client or not). The draft Rules now require an intermediary to provide details of margin policies etc. to a client at the outset and to promptly notify the client of any subsequent changes (section 8(2) and (3)). This will be extended to apply to all margined transactions⁴, see section 9(2) and (3). We believe it is important for a client to know the terms under which margining is done and be advised when these terms are changed.

Receipts

20. Section 75, Securities Ordinance does not mention the issuance of a receipt to a client but section 83, Securities Ordinance requires the

⁴ Under the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules and the Code, there is already a requirement for the client agreement to include details of margin requirements, circumstances under which collateral is to be liquidated and position closed etc.

maintenance of a copy of the acknowledgement of receipt where a dealer is in receipt of securities from a client. The draft Rules now make it clear that an intermediary must issue receipts in order that a client can obtain proof of his deposit of securities or money with the intermediary (section 12) for safe custody or margin collateral purposes. At the same time, the draft Rules also prescribe circumstances under which the issuance of a receipt will not be necessary: such as when scrip is directly deposited into CCASS.

Delivery by Electronic Means

21. A number of enquiries had been received as to whether communications, documents transmitted via electronic means would be acceptable. It is proposed to clarify that such will be permitted subject to requirements under the ETO. Also since the Code had recently stipulated that client agreements etc be written in Chinese or English (as selected by the client), it is proposed to allow the client to select Chinese or English for contract notes, statement of accounts and receipts (section 14(4)).

Monthly Statements of Account

22. A relaxation is made in the draft Rules so that monthly statements of accounts need not be sent to professional investors who agree to this arrangement in writing.
23. The draft Rules require monthly statements of account to be issued by intermediaries (with the exception of fund managers managing collective investment schemes authorised by the Commission under clause 103 of the Bill) within 7 days of each month-end (section 11(4)).

Delivery of Contract Notes to Clients

24. While we have relaxed an isolated requirement (issuance of monthly statements of account) where the client involved is a professional investor, we may be criticised for not having gone far enough to differentiate sophisticated or professional investors from others. We shall specifically invite comment on this.

**SECURITIES AND FUTURES
(CONTRACT NOTES, STATEMENTS OF
ACCOUNT AND RECEIPTS) RULES**

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ACCOUNT AND RECEIPTS) RULES**

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**SECURITIES AND FUTURES (CONTRACT NOTES, STATEMENTS OF
ACCOUNT AND RECEIPTS) RULES**

(Made by the Securities and Futures Commission under
section 148(1) of the Securities and Futures
Ordinance(of 2001))

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day
appointed for the commencement of Part VI of the
Securities and Futures Ordinance (of 2001).

2. Interpretation

In these Rules, unless the context otherwise
requires -

"asset management" () has the meaning assigned to it
by Part 2 of Schedule 6 to the Ordinance;

"balance" () includes, where applicable, money
ledger balance;

"CE number" () means the unique central entity identification number assigned to an intermediary or an associated entity of an intermediary by the Commission;

"contract note" () means a document which records relevant contracts entered into by an intermediary with or on behalf of a client of the intermediary in the conduct of regulated activity for which the intermediary is licensed or exempt;

"deliver" () includes cause to be delivered;

"floating loss" () means unrealized losses calculated by marking to market open positions;

"floating profit" () means unrealized profits calculated by marking to market open positions;

"margin ratio" (), in relation to each description of securities collateral, means the percentage of the value of such collateral up to which a client of an intermediary is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

"margin value" (), in relation to each description of securities collateral, means the maximum amount of money which a client of an intermediary is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that particular description of securities collateral;

"margined transaction" () means a relevant contract entered into in Hong Kong by an intermediary with or on behalf of a client of the intermediary which requires the client to -

(a) pay a margin to the intermediary; or

(b) provide security to the intermediary to meet the client's obligations,

other than under an arrangement where financial accommodation is provided to the client by the intermediary;

"net equity" () means the balance in a client's account at any given time -

(a) plus any floating profit;

(b) less any floating loss; and

(c) after adjusting for any income credited to
and charges levied against that account;

"relevant contract" () means -

(a) a contract, other than a market contract,
for the purchase, sale, exchange or other
dealing in securities, including a
transaction under a securities borrowing
and lending agreement;

(b) a contract, other than a market contract,
for the purchase, sale, exchange or other
dealing in a futures contract; or

(c) a leveraged foreign exchange contract;

"scrip" () means the paper certificates that
demonstrate ownership of securities;

"statement of account" () means a statement of
account as referred to in Division 3 of Part II and

includes, where applicable, a summary of terms on which -

(a) financial accommodation is provided to a client; or

(b) margined transactions are effected with or on behalf of a client.

3. Application

These Rules do not apply to an intermediary in relation to a relevant contract entered into between a person ("A") and either another intermediary ("B") or its equivalent regulated by a jurisdiction outside Hong Kong ("C") in respect of which -

(a) the intermediary has merely passed on to A an offer to conduct regulated activity by B or C and -

(i) B issues a contract note,
statement of account or receipt
to A in accordance with these
Rules; or

(ii) C issues the equivalent of a contract note, statement of account or receipt to A in accordance with the law applicable to it in the jurisdiction in which it is regulated; or

(b) the intermediary has merely introduced A to B or C.

PART II

PREPARATION AND PROVISION OF CONTRACT NOTES, STATEMENTS OF ACCOUNT AND RECEIPTS

Division 1 - General rules

4. Information required in all cases

Each -

(a) contract note as referred to in section 6;

(b) statement of account as referred to in Division 3 of Part II; and

(c) receipt as referred to in section 12,

required to be prepared and provided to a client of an intermediary by the intermediary or an associated entity of the intermediary must include the following information, where applicable -

(d) the name under which the intermediary or associated entity carries on business and the address of the principal place in Hong Kong at which business is carried on;

(e) the CE number of the intermediary or associated entity;

(f) the name, address and account number of the client; and

(g) the date on which the contract note, statement of account or receipt is prepared.

5. Avoidance of duplication

Where an intermediary ("A") or any associated entity of A knows or has reasonable cause to believe that another intermediary has prepared and delivered to a client of A a contract note, statement of account or receipt in accordance with these Rules, neither A nor any associated entity of A is required to do so in respect of the same matter.

Division 2 - Contract notes

6. Preparation and provision of contract notes

(1) Subject to subsection (2) and section 7, an intermediary must -

(a) prepare a contract note in accordance with this section in respect of every relevant contract entered into in Hong Kong by the intermediary with or on behalf of a client of the intermediary; and

(b) deliver such contract note to -

- (i) the client; or
- (ii) any other person designated in writing by the client,

no later than the end of the second business day after entering into the relevant contract.

(2) Where an intermediary enters into more than one relevant contract with or on behalf of a client of the intermediary on the same business day -

(a) unless the client instructs otherwise, the intermediary may prepare a single contract note which records all the relevant contracts entered into with or on behalf of the client on that business day;

(b) if such a contract note is prepared, the intermediary must deliver it to -

- (i) the client; or
- (ii) any other person designated in writing by the client,

no later than the end of the second business day after entering into those relevant contracts; and

(c) such contract note must include the information specified in subsection (3) in respect of each relevant contract it records.

(3) A contract note must include the following information, where applicable -

(a) full particulars of the relevant contract including -

(i) the quantity, name, description and any other particulars of the securities, futures contracts or leveraged foreign exchange contracts involved, sufficient to identify them;

(ii) where the relevant contract is for a dealing in securities or futures contracts, whether it is for a purchase, sale, exchange or other dealing;

- (iii) the name of the market or exchange on which the relevant contract has been executed; and
 - (iv) whether the relevant contract is for the opening or closing of a position;
- (b) where the intermediary that has entered into the relevant contract is acting as principal, a statement that it is so acting, except in the case of a leveraged foreign exchange contract;
- (c) the date -
 - (i) of the relevant contract;
 - (ii) of settlement or performance;
- (d) the rate or amount of commission payable in respect of the relevant contract; and
- (e) the amount of stamp duty, levy or charges payable in connection with the relevant contract.

(4) In addition to the information specified in subsection (3), a contract note in respect of a relevant contract for securities must include the following information, where applicable -

(a) whether the client's account is a cash account or a margin account;

(b) in the case of a purchase or a sale -

(i) the price per unit of the securities; or

(ii) at the request of the client -

(A) the average price per unit for the purchase of the same description of securities; or

(B) the average price per unit for the sale of the same description of securities;
and

(iii) an indication where it relates to -

(A) a short selling order, where the intermediary knows this;
or

(B) a borrowing or lending under a securities borrowing and lending agreement; and

(c) the amount of consideration payable under the relevant contract.

(5) In addition to the information specified in subsection (3), a contract note in respect of a futures contract must include the following information, where applicable -

(a) in the case of a purchase or sale -

(i) the price per futures contract; or

(ii) at the request of the client -

(A) the average price per futures contract for the purchase of the same description of futures contract; or

(B) the average price per futures contract for the sale of the same description of futures contract;

(b) if the futures contract has been executed by an agent in Hong Kong, the name of the agent; and

(c) if the futures contract has been cleared by another person, the name of that person.

(6) In addition to the information specified in subsection (3), a contract note in respect of a leveraged foreign exchange contract must include the following information, where applicable -

(a) where the intermediary is acting as agent, a statement that it is so acting and the name of the person for whom it is acting;

(b) the date and time -

(i) of receipt of the client order;

and

(ii) of execution of the leveraged foreign exchange contract;

(c) particulars of the leveraged foreign exchange contract specifying any currency

to which the contract relates, and in relation to each such currency -

(i) the amount involved;

(ii) the price at which it is executed;

and

(iii) the interest rate; and

(d) the amount of margin deposit required.

(7) Where an intermediary that has entered into a relevant contract has included in a contract note an average price as referred to in subsection (4)(b)(ii) or (5)(a)(ii) and the client with or on whose behalf the intermediary has entered into the relevant contract requests an analysis of such average price -

(a) the intermediary must provide a detailed analysis of each underlying purchase or sale of securities or futures contracts (as the case may be); and

(b) such an analysis must be delivered to -

(i) the client; or

(ii) any other person designated in writing by the client,

no later than the end of the second business day after the request is received.

7. Consolidation of contract notes with daily statements of account

Instead of preparing and delivering contract notes in accordance with section 6, an intermediary may consolidate the contract notes in respect of relevant contracts entered into during the same business day into the statement of account it provides to the client with or on whose behalf the intermediary has entered into those relevant contracts under section 8 or 9 in respect of that day.

Division 3 - Statements of account

8. Preparation and provision of daily statements of account by intermediaries providing financial accommodation and their associated entities

(1) This section applies to -

(a) a deposit of client assets by or on behalf of a client of an intermediary with the intermediary or any other person to facilitate the provision of financial accommodation to the client by the intermediary;

(b) a withdrawal of client assets by or on behalf of a client of an intermediary from the intermediary or any other person to facilitate the provision of financial accommodation to the client by the intermediary;

(c) a disposal initiated by an intermediary of any client securities and collateral; or

(d) an adjustment by an intermediary to a client's account comprising -

(i) an extension or reduction of financial accommodation;

(ii) a credit, including a crediting of income except as a result of accrual of interest paid by the

intermediary or an associated entity of the intermediary; or
(iii) a debit, including any deduction of charges from the client's account except as a result of accrual of interest charged by the intermediary or an associated entity of the intermediary.

(2) An intermediary must -

(a) prepare a summary of the terms on which financial accommodation is provided to a client of the intermediary in accordance with subsection (3); and

(b) deliver such summary of terms and details of any subsequent change in such terms to -

(i) the client; or

(ii) any other person designated in writing by the client,

no later than the end of the next business day after -

(iii) entering into the arrangement for the provision of financial accommodation by the intermediary;

or

(iv) any change in the terms on which financial accommodation is provided to the client by the intermediary.

(3) The summary of terms as referred to in subsection (2) must include the following information, where applicable -

(a) a list of items which the intermediary will accept as securities collateral, together with applicable margin ratios;

(b) the client's credit limit;

(c) the expiry date of the arrangement for the provision of financial accommodation;

(d) the basis upon which interest charges and interest income on credit balances are to be calculated; and

(e) details of the margin call policy and the circumstances under which client assets may be liquidated.

(4) An intermediary or an associated entity of the intermediary must -

(a) prepare a statement of account in respect of a client of the intermediary in accordance with subsection (5); and

(b) deliver such statement of account to -

(i) the client; or

(ii) any other person designated in writing by the client,

no later than the end of the second business day after any deposit, withdrawal, disposal or adjustment as referred to in subsection (1).

(5) The statement of account as referred to in subsection (4) must include the following information, where applicable -

- (a) the outstanding balance of the client's account as at the beginning and as at the end of each day on which a deposit, withdrawal, disposal or adjustment as referred to in subsection (1) takes place and details of all movements in such balance during that day;
- (b) the quantity, market price and market value of each description of client securities and collateral held for that account as at the end of that day;
- (c) the margin ratio and margin value of each description of securities collateral held for that account as at the end of that day;
- (d) details of all movements of client securities and collateral held for that account during that day, including the quantity of each description of client securities and collateral deposited to or withdrawn from that account during that day;
- (e) details of all disposals initiated by the intermediary of client securities and

collateral held for that account during that day and what happened to the proceeds of those disposals; and

(f) a breakdown of the income credited to and charges levied against that account during that day.

9. Preparation and provision of daily statements of account by intermediaries in relation to margined transactions

(1) An intermediary must -

(a) prepare a summary of the terms on which margined transactions are entered into with or on behalf of a client of the intermediary in accordance with subsection (2); and

(b) deliver such summary of terms and details of any subsequent change in such terms to -

(i) the client; or

(ii) any other person designated in writing by the client,

no later than the end of the next business day after -

(iii) entering into the arrangement for effecting margined transactions by the intermediary; or

(iv) any change in the terms on which margined transactions are entered into by the intermediary.

(2) The summary of terms as referred to in subsection (1) must include the following information, where applicable -

(a) a list of items which the intermediary will accept as security in relation to a margined transaction;

(b) the client's position or trading limits;

(c) the expiry date of the arrangement for effecting margined transactions; and

(d) details of the margin call policy and the circumstances under which the intermediary may close the client's open positions.

(3) Subject to subsection (5), an intermediary or an associated entity of the intermediary must -

(a) prepare a statement of account in accordance with subsection (4) in respect of -

- (i) each margined transaction entered into by the intermediary with or on behalf of a client of the intermediary; or
- (ii) where more than one margined transaction has been entered into on the same business day, all the margined transactions entered into with or on behalf of the client on that day; and

(b) deliver such statement of account to -

- (i) the client; or

(ii) any other person designated in writing by the client,

no later than the end of the second business day after entering into the margined transaction.

(4) The statement of account as referred to in subsection (3) must include the following information, where applicable -

(a) the outstanding balance of the client's account (excluding unrealized profits and losses) as at the beginning of the day on which the margined transaction was executed showing details of all movements in the balance of that account during that day;

(b) the quantity of each description of security provided by or on behalf of the client in relation to a margined transaction, which is held for that account as at the end of that day, showing details of all movements of any such security during that day;

- (c) closed contract details, including contract price, profit or loss, different charges and net amount, indicating which closed contracts have been initiated by the intermediary during that day;
- (d) a breakdown of the income credited to and charges levied against that account during that day;
- (e) all floating profits and floating losses calculated as at the end of that day and the prices used for such purposes;
- (f) the net equity in that account as at the end of that day;
- (g) a list of all open positions as at the end of that day;
- (h) the minimum margin requirement for all open positions as at the end of that day;
- (i) the amount of margin excess or margin shortfall as at the end of that day;

(j) the amount of option premium receivable or payable as at the end of that day; and

(k) in the case of a leveraged foreign exchange contract, all interest income and expenses accrued as at the end of that day and the interest rates used for such purposes.

(5) This section does not apply to an intermediary licensed or exempt for asset management in respect of a client of the intermediary where the client agrees in writing not to receive statements of account as referred to in subsection (3).

10. Consolidation of daily statements of account

An intermediary may consolidate a statement of account required to be prepared for a client of the intermediary in accordance with section 8 with a statement of account required to be prepared in accordance with section 9 for the client in respect of the same business day.

11. Preparation and provision of monthly statements of account

(1) Subject to subsections (4) and (6), in the circumstances specified in subsection (2) an intermediary or an associated entity of the intermediary must -

(a) prepare a statement of account in respect of a client of the intermediary in accordance with subsection (3); and

(b) deliver such statement of account to -

(i) the client; or

(ii) any other person designated in writing by the client,

within 7 days of the end of each calendar month.

(2) A statement of account as referred to in subsection (1) is required where -

(a) the intermediary or the associated entity was required to prepare and deliver to the client during that month -

(i) a contract note in accordance
with section 6;

(ii) a statement of account in
accordance with section 8 or 9;
or

(iii) a receipt in accordance with
section 12;

(b) the client has a balance as at the end of
that month that is not nil;

(c) the client has an open position as at the
end of that month; or

(d) the intermediary or the associated entity
holds on behalf of the client as at the end of
that month any -

(i) client securities and collateral; or

(ii) security provided by or on behalf of
the client in relation to a margined
transaction.

(3) The statement of account as referred to in
subsection (1) must include the following information,
where applicable -

(a) the outstanding balance of or the net equity in the client's account as at the beginning and as at the end of that month and details of all movements in the balance of that account during that month;

(b) details of all relevant contracts entered into during that month, indicating those initiated by the intermediary;

(c) details of all deposits, withdrawals, disposals or adjustments as referred to in section 8(1) which have occurred during that month, including what happened to the proceeds of any disposals initiated by the intermediary of any -

(i) client securities and collateral;

or

(ii) security provided by or on behalf of the client in relation to a margined transaction,

held for that account during that month;

(d) details of all other movements during that month of any -

(i) client securities and collateral;

or

(ii) security provided by or on behalf of the client in relation to a margined transaction,

held for that account;

(e) the quantity, market price and market value of each description of -

(i) client securities and collateral;

or

(ii) security provided by or on behalf of the client in relation to a margined transaction,

held for that account as at the end of that month;

(f) the margin ratio and margin value of each description of securities collateral

held for that account as at the end of that month;

(g) a breakdown of the income credited to and charges levied against that account during that month;

(h) all floating profits and floating losses calculated as at the end of that month and the prices used for such purposes;

(i) a list of all open positions as at the end of that month;

(j) the minimum margin requirement for all open positions as at the end of that month;

(k) the amount of margin excess or margin shortfall as at the end of that month;

(l) the amount of option premium receivable or payable as at the end of that month; and

(m) in the case of an intermediary licensed for dealing in securities, whether the client's

account is a cash account or a margin account.

(4) An intermediary licensed or exempt for asset management must -

(a) prepare a statement of account in respect of a client of the intermediary in accordance with subsection (5), except in relation to its management of a collective investment scheme authorized by the Commission under section 103 of the Ordinance; and

(b) deliver such statement of account to -

(i) the client; or

(ii) any other person designated in writing by the client,

within 7 days of the end of each calendar month.

(5) The statement of account as referred to in subsection (4) must include the following information, where applicable -

(a) a valuation of the client's portfolio as at the end of that month providing -

- (i) details of the quantity, market price, cost and market value of each description of securities held for that account as at the end of that month; and
- (ii) a list of all open positions as at the end of that month; and

(b) a breakdown of the income credited to and charges levied against that account during that month.

(6) This section does not apply to an intermediary or an associated entity of the intermediary in respect of a client of the intermediary who is a professional investor where the client agrees in writing not to receive statements of account as referred to in subsection (4).

Division 4 - Receipts

12. Preparation and provision of receipts

(1) Subject to subsection (2), on each occasion that an intermediary or an associated entity of the intermediary receives any -

(a) client assets; or

(b) security provided in relation to a margined transaction,

from or for the account of a client of the intermediary, the intermediary must -

(c) prepare a receipt specifying -

(i) the account into which -

(A) the client assets have been deposited; or

(B) a security as referred to in paragraph (b) has been deposited;

- (ii) particulars of the client assets or security as referred to in paragraph (b); and
- (iii) the date of receipt; and

(d) deliver such receipt to -

- (i) the client; or
- (ii) any other person designated in writing by the client,

no later than the end of the next business day after the day of receipt of the client assets or security as referred to in paragraph (b).

(2) No receipt is required where -

- (a) client money is received by an exempt person or an associated entity of an intermediary that is an authorized financial institution;
- (b) client money is paid directly into the intermediary's bank account by or on behalf of the client of the intermediary;

(c) a contract note as referred to in section 6, or a statement of account as referred to in section 8 or 9, delivered to the client expressly states that it serves as a receipt and includes the information specified in subsection (1)(c); or

(d) scrip is deposited directly with the intermediary's scrip custodian by or on behalf of the client and the scrip custodian has issued a receipt to the client.

PART III

MISCELLANEOUS

13. Duty to provide copies of certain documents

(1) An intermediary or an associated entity of the intermediary must comply as soon as practicable with a request from a client of the intermediary for a copy of -

(a) any specified contract note relating to the client;

(b) any specified statement of account kept by the intermediary or an associated entity of the intermediary in respect of the client;
or

(c) a statement of account as of the date of the request stating the balance of and net equity in the client's account and, where applicable -

(i) details of any -

(A) client securities and collateral; or

(B) security provided by or on behalf of the client in relation to a margined transaction,

held for that account and, in the case of securities collateral, its market value and margin value;

(ii) a list of all open positions;

- (iii) floating profits or floating losses on open positions; and
- (iv) the amount of margin excess or margin shortfall.

(2) If, on an application made by a client of an intermediary, the Commission so directs, the intermediary or an associated entity of the intermediary must make available for inspection by the client during its ordinary hours of business any contract note or statement of account as referred to in subsection (1).

(3) This section does not require an intermediary or an associated entity of the intermediary -

(a) to deliver, or make available for inspection, a copy of -

(i) a contract note as referred to in section 6; or

(ii) a statement of account as referred to in section 8 or 9,

that relates to a matter transacted more than 2 years before the date of the relevant request; or

(b) to deliver, or make available for inspection, a copy of a statement of account as referred to in section 11 that relates to a matter transacted more than 7 years before the date of the relevant request.

(4) An intermediary or an associated entity of the intermediary may impose a reasonable charge for a copy of a document provided under subsection (1).

14. Delivery and language of documents and retention of copies

(1) Subject to subsections (2) and (3), delivery of any contract note, statement of account or receipt required to be delivered to a client of an intermediary by the intermediary or an associated entity of the intermediary in accordance with these Rules may be made by -

- (a) hand;
- (b) post;
- (c) facsimile; or
- (d) other mode of electronic transmission.

(2) Adequate procedures must be adopted by the intermediary or the associated entity as referred to in subsection (1) to -

(a) identify any non-delivery to a client of the intermediary or, where the client has designated another person for delivery in accordance with these Rules, such other person; and

(b) ensure successful delivery by alternative means.

(3) The intermediary or the associated entity as referred to in subsection (1) must accord to a client of the intermediary an adequate opportunity to select his preferred mode of delivery from the options set out in subsection (1) and delivery must take place in accordance with that selection, subject to subsection (2).

(4) The intermediary or the associated entity as referred to in subsection (1) must accord to a client of the intermediary an adequate opportunity to select the official language in which he wishes any contract note, statement of account or receipt to be delivered to him,

or to a person designated by him in accordance with these Rules, and such document must be delivered in that language.

(5) The intermediary or the associated entity as referred to in subsection (1) must retain in its records -

(a) for at least 2 years a copy of every -

(i) contract note as referred to in section 6;

(ii) statement of account as referred to in section 8 or 9; and

(iii) receipt as referred to in section 12; and

(b) for at least 7 years a copy of every statement of account as referred to in section 11.

15. Reporting of non-compliance with certain rules

An intermediary or an associated entity of an intermediary to which these Rules apply which becomes aware that it is not in compliance with any of the provisions of Part II or section 13 or 14 must notify the Commission within one business day.

16. Penalty

An intermediary or an associated entity of an intermediary which, without reasonable excuse, fails to comply with a requirement of these Rules applicable to it, commits an offence and is liable on conviction to a fine at level 4.

Chairman,
Securities and Futures
Commission

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 148(1) of the Securities and Futures Ordinance (of 2001). They prescribe the manner in which contract notes, statements of account and receipts must be prepared by and delivered to clients by intermediaries or their associated entities.