

# **LEGISLATIVE COUNCIL BRIEF**

## **Securities and Futures Ordinance (Cap. 571)**

### **SECURITIES AND FUTURES (PROFESSIONAL INVESTOR) RULES**

#### **INTRODUCTION**

Pursuant to section 397(1) of the Securities and Futures Ordinance (Cap. 571) (the SFO), the Securities and Futures Commission (the SFC) has made the Securities and Futures (Professional Investor) Rules (the Rules) at the **Annex**.

#### **BACKGROUND**

##### **The SFO**

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO has already provided flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the SFC to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council established the Subcommittee on Draft Subsidiary Legislation to be made under the SFO (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of subsidiary legislation, including the *vires* to make them.

## **THE PROPOSALS**

### **Major policy considerations**

4. There are provisions in the SFO including its subsidiary legislation that are designed especially for investor protection. On consideration that “professional investors”, the meaning of which is defined in Part 1 of Schedule 1 to the SFO (paragraph 5 below), are generally regarded as more capable of protecting their interests, the SFO including its subsidiary legislation disapply or modify certain of such investor protection provisions when the relevant regulated activities are targeted at them. By way of illustration, section 175 of the SFO generally prohibits an offer of securities to a person by an intermediary unless the offer is accompanied by an offering document with the detailed information prescribed under law. Such prohibition does not apply where the person is a professional investor as some of the information items prescribed may not be necessary for a more experienced or sophisticated investor, and the professional investor would be in a position to judge and request the information it or he needs. By providing the exception, a sufficient degree of investor protection would still be maintained while reducing the compliance burden to the market.

### **Major features of the Rules**

5. “Professional investor” is defined in Part 1 of Schedule 1 to the SFO to include classes of persons such as intermediaries, authorized financial institutions, insurance companies and recognized exchange companies. Paragraph (j) of the definition empowers the SFC to prescribe by rules under section 397 to include additional classes of persons as “professional investors”, either generally or for the purposes of any provision of the SFO. Generally, the Rules prescribe four additional classes of persons in terms of the value of assets they manage or have, as professional investors for application throughout the SFO including its subsidiary legislation except Schedule 5 to the SFO.

## **THE RULES**

6. Section 2 contains the interpretation provisions which apply throughout the Rules.

7. Section 3 prescribes the following four additional classes of persons as “professional investor” (including also the manner of ascertaining such status) for application throughout the SFO including its subsidiary legislation except Schedule 5 to the SFO –

- (a) any trust corporation having been entrusted under the trust or trusts of which it acts as trustee with total assets of at least HK\$40 million or its equivalent in any foreign currency;
- (b) any individual (either alone or with his spouse or children on a joint account) having a portfolio<sup>1</sup> of at least HK\$8 million or its equivalent in any foreign currency;
- (c) any corporation or partnership having either a portfolio<sup>1</sup> of at least HK\$8 million or total assets of at least HK\$40 million or its equivalent in any foreign currency; and
- (d) any corporation whose sole business is to hold investments and which is wholly owned by an individual who (either alone or with his spouse or children on a joint account) falls within the description in paragraph (b) above.

## **PUBLIC CONSULTATION**

8. The SFC released a consultation document and an exposure draft of the Rules on 1 February 2002 for comment by the public. A total of ten submissions were received. The SFC has considered all the comments received and revised the Rules as appropriate.

9. A draft of the Rules was considered by the Subcommittee at its meetings held on 6 June 2002 and 24 October 2002. No major concerns were expressed by members of the Subcommittee at the meetings.

## **FINANCIAL AND STAFFING IMPLICATIONS**

10. There are no financial or staffing implications for the Government.

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<sup>1</sup> Defined to mean a portfolio comprising securities, certificates of deposit issued by an authorized financial institution or the overseas equivalent, and/or money held by a custodian for him.

## **COMMENCEMENT DATE**

11. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with reference to the subsidiary legislation. We aim to announce the commencement date by the end of 2002.

## **PUBLICITY**

12. The Rules will be published in the Gazette on 29 November 2002. The SFC will issue a press release on the same day.

## **ENQUIRIES**

13. For any enquiries on this brief, please contact Mr Alvin Lok of the Licensing Department of the SFC at 2842 7695 or Ms Vania Cheng of the Legal Services Division of the SFC at 2283 6166.

The Securities and Futures Commission  
25 November 2002