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

Consultation Conclusions on the Draft Securities and Futures (Intermediary Information) Rules

《證券及期貨（中介人資料）規則》草擬本的諮詢總結

Hong Kong
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引言

1. 證券及期貨事務監察委員會(證監會)在 2002 年 7 月 19 日發表《證券及期貨(中介人資料)規則》草擬本的諮詢文件("《諮詢文件》")。諮詢期至 2002 年 8 月 8 日結束。

2. 《草擬規則》列明證監會可以向根據《證券及期貨條例》第 V 部[1]申請牌照的人士索取的資料。《草擬規則》亦述明持牌人、其大股東及註冊機構須具報的改變，以及述明持牌人所呈交的周年申報表須載有哪些資料。

3. 本文件旨在爲對該《諮詢文件》感興趣的人士，分析回應者在諮詢期內提出的意見，及解釋證監會在作出有關總結時的理據。***本文件應與該《諮詢文件》一併閱讀。***

4. 證監會共收到 6 份來自業界人士、法律界專業人士及其他有興趣人士的意見書。所有該等意見書的內容已載於證監會網站之內。

意見摘要及證監會的回應

5. 回應者對《草擬規則》沒有提出反對意見，而有關意見書主要集中於一些細節問題及要求澄清某些事項。因此，《草擬規則》不會作出根本的改動。回應者就《草擬規則》提出的意見摘要及證監會的回應載於附件之內。

6. 證監會在處理牌照申請時，將會致力避免要求申請人提供其過往已經提供過的資料。我們將會在有關表格中闡明這一點(該等表格是在諮詢由業界人士組成的工作小組後擬備的)。此外，證監會將在短期內發出有關發牌方面的過渡指引，以協助目前的註冊人及獲豁免人士順利過渡至新機制。

7. 對於回應者就《諮詢文件》提出的寶貴建議及意見，證監會謹此致謝。

8. 最後，《草擬規則》的名稱將更改爲《證券及期貨(發牌及註冊)(資料)規則》，從而更適當地反映其內容。

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[1] 該條例第 V 部涉及發牌及註冊的事宜。

Summary of comments on Draft Securities and Futures (Intermediary Information) Rules **Annex**
(now renamed as "Securities and Futures (Licensing and Registration) (Information) Rules")

#	Section Reference	Area Commented	Market Comments	SFC's Responses
1.	General comments		**The Law Society of Hong Kong** As a general comment it is not clear whether, and if so which, provisions of the Draft Rules will apply to licensing applications filed before the SFO and the Draft Rules take effect. For example, it is not clear whether an application filed under the SFO's predecessor legislation but not processed prior to the commencement of the SFO would need to be refiled under the SFO in a manner which complies with section 3 of the Draft Rules. On a literal reading of the SFO and the Draft Rules, such an application would need to be refilled (or supplemented). This point is not addressed in the transitional provisions in Schedule 10 paragraph 60 of the SFO (which only deems a pre-SFO application to be an application for the appropriate licence under SFO but which does not address the contents of the application).	The draft Rules should come into effect upon the commencement of the Securities and Futures Ordinance (SFO). As the information required under section 3 of the draft Rules does not differ significantly from those required under the existing regime, in practice, applications not processed prior to its coming into effect should not give rise to material difficulties. The SFC will only require further relevant information (such as those related to associated entities) to be provided, but not the refilling of applications. In addition, the SFC will in due course issue licensing transitional guidelines to assist in the smooth transition of existing registrants and exempt persons to the new regime.
2.	Section 2	Interpretation	**A group of 10 financial institutions** Basic information - section (a)(iii & iv) asks for the Hong Kong ID card number and the passport details of an individual. If a person has a Hong Kong ID card, that information should be sufficient; to ask for passport details is unnecessary and, as passports expire every ten years, there is a high likelihood that changes in passport details will go unreported. A similar situation and problem existed until fairly recently with directors' details required to be filed under the Hong Kong Companies Ordinance. In view of those problems, the Hong Kong Registrar sensibly had the legislation amended to require only Hong Kong ID card number, failing which a passport number. Section 2 (a)(v) - the definition of "basic information" includes "business, residential and correspondence	It may be noted that certain passport details may be required when the SFC wishes to verify with its overseas counterparts information provided by applicants. In addition, the HK ID card does not state the nationality of the holder. However, in view of the comment, we will only request for the nationality but not the passport details where the applicant holds a HK **permanent** ID, and the draft Rules have been accordingly amended. A residential address is often required for the purposes of service of notices or correspondence, in particular

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			address". We suggest that the requirement for residential address be deleted. A "business address, and correspondence address (if different from the business address)" should be sufficient. Section 2 (b)(iv) requires a corporation to provide details of "the addresses of its places of business". For any registered institution (or regional licensed corporation) with a branch network in Hong Kong and/or overseas, this could be a considerable number of addresses. We recommend that this should be confined to the address of its "principal place of business". A fair amount of the information that is required to be provided to the SFC by registered institutions under the Draft Rules will also have to be provided to the Hong Kong Monetary Authority ("HKMA") under other legislation. The duplication of reporting requirements for authorized financial institutions and registered institutions creates a reporting burden as well as an administrative and cost burden for registered institutions. It would be helpful for registered institutions as a whole in Hong Kong if the SFC and the HKMA could issue guidance to registered institutions as to what information has to be provided directly to the SFC, what information has to be provided to the HKMA with the aim, where possible, of reducing the amount of information required to be provided to both regulators.	when the individual concerned has left the employment of his accredited firm. A correspondence address that is not different from his business address may not be helpful in such a case. In the application form for registered institutions, in view of the nature of their operations and that they would be under the primary supervision of the HKMA, the requested business address will be limited to the principal place of business. In respect of licensed corporations, for supervision purposes, all business addresses should be required. This should not give rise to specific difficulties to a "regional licensed corporation" as unlike banks, securities houses do not normally establish branches, but subsidiaries, overseas. The intention is for the SFC to be provided with information relating only to the regulated activities undertaken by the registered institutions, and this is provided in section 2(2) of the draft Rules. We take note of the comment and will discuss with the HKMA with a view to reducing unnecessary burden for registered institutions.

Summary of comments on Draft Securities and Futures (Intermediary Information) Rules **Annex**
(now renamed as "Securities and Futures (Licensing and Registration) (Information) Rules")

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3.	Section 3	Information to be provided with applications to the Commission	**The Law Society of Hong Kong** An entity which is, or becomes, the subject of a regulatory investigation may be under a statutory obligation not to disclose the existence of the investigation. It is submitted that applicants should not be placed under an obligation to breach any law applicable to them.	We have clarified in the draft Rules that the disclosure should only be made to the extent that it is not prohibited by law.
4.	Section 4	Changes to be notified by licensed persons, registered institutions and substantial shareholders	**The Hong Kong Association of Banks** The period for giving notice of any change in information is 7 business days. Given the scope of information to be provided, we would suggest that 14 business days would be more reasonable. **The Law Society of Hong Kong** The applicant's/licensee's obligation under section 4 should be to notify changes of which it is aware – it is not a certainty that the applicant/licensee will be aware of changes in all particulars immediately on occurrence. This comment is subject to the contents of the relevant forms.	The SFC considers prompt notification to be important and is required on investor protection grounds. Under section 135 of the SFO, contravention of the notification requirements constitutes an offence if such was done without reasonable excuse. Licensees or registrants that fail to comply will be considered on a case by case basis, including consideration of any reasonable excuse. (The existing rules also require notification within 7 days.) In addition to the above, the consideration would also include whether the person concerned is aware of the changes.
5.	Section 5	Information to be contained in annual returns	**A group of 10 financial institutions** Section 5(a)(ii) and 5(b)(ii) stipulate that the annual return should include a full description of any change in the information provided to the Commission if a full description of such change has not been provided to the Commission. We would be grateful if the SFC could confirm that subsequent to the notification made in the annual return, a separate notification in writing of the same change as required by Section 4(2) would not then	Duplication of notification is not required.

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			be necessary.	
6.	Schedule 1 Part 1	Information to be provided with applications to the Commission – by corporations	**A group of 10 financial institutions** We suggest that Item 1(b), (d) and (e) be deleted. It is reasonable to ask for basic information in respect of the applicant. Is it necessary to require the basic information in respect of each controller, subsidiary or related corporation conducting regulated activities? We consider that the name should be sufficient. If a subsidiary or related corporation conducts (or proposes to conduct) any regulated activity, then they will have to (or will be required to) apply to the SFC and will supply their "basic information" as an applicant. Furthermore, the applicant company may not know what activities are undertaken by its related corporations, including regulated activities due to the existence of Chinese walls. Such information may be difficult to obtain. Information which is relevant to the application would be the activity of the applicant and if any other member of the applicant's group is also involved in a regulated activity, this information should already be known to the SFC. The disclosure of this information causes unnecessary administrative burden to organisations. For similar reasons, the equivalent Items in Schedule 1 Part 3, Schedule 2 Part 1 and Schedule 2 Part 2 should also be deleted. Item 5(b) refers to the "the extent of his participantship of a recognized exchange company". It is unclear as to whether this clause is meant to apply to the status of membership of the applicant. It would be helpful if the SFC could clarify if what is required are details of whether the applicant is a participant of such an exchange company. This comment applies to Schedule	In assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC. The intention is to ask whether or not the corporation is a trading participant of a recognized exchange company. We have accordingly amended item 5.

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			1 Part 2 Item 3(b), Schedule 2 Part 1 Item 5(b), Schedule 2 Part 2 Item 5(b), Item 3(b) of Part 3 of Schedule 2 and Item 3(b) of Part 4 of Schedule 2. In any event, this Item should be amended to read "the extent of its participation in a recognised exchange company".	
			Items 6(b) and (c) require disclosure of any existing or previous investigation by a regulatory or criminal investigatory body in Hong Kong or elsewhere. We believe that disclosure of this information is problematic. For example, SFC investigations are confidential under the current legislation, and likewise investigations by the ICAC and Commercial Crime Bureau would also be confidential and disclosure would not be permitted under the relevant legislation. We believe it would be preferable to adhere to the current requirements of the SFC which require disclosure of any past censure, disciplinary action or proceedings. In addition, when an investigation is ongoing, it may be prejudicial to the applicant to disclose such information, if the applicant is subsequently cleared as a result of the investigation.	We have clarified in the draft Rules that the disclosure should only be made to the extent that it is not prohibited by law. For the purposes of assessing the fitness and properness of an applicant, it is necessary to require the disclosure of any pending investigation or proceedings, as is currently required.
			Items 6(e) and (f) also require disclosure of the existence of any matters which might render a corporation insolvent or lead to the appointment of a provisional liquidator, while clause (f) which requires a disclosure by an individual of the existence of any matter which may render him insolvent or lead to the appointment of a receiver of his property. We would suggest that these requirements be deleted as they are highly subjective and are difficult for a corporate applicant or individual to assess, as a variety of factors could be taken into account with regard to the insolvency or bankruptcy of an individual or company. It is difficult for the individual or	These matters will be reduced to specific questions (such as whether there has been any unpaid judgement debts or been a party to a scheme of arrangement regarding payment of debts) in the relevant forms. The information requested in this area will not differ substantially from the current requirements.

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			company to determine this at any given point of time. These comments are also applicable to Item 5 of Part 2 of Schedule 1, Item 6 of Part 3 of Schedule 1, Item 6 of Part 1 of Schedule 2, Item 6 of Part 2 of Schedule 2, Item 5 of Part 3 of Schedule 2 and Item 4 of Part 4 of Schedule 2.	
			Furthermore, Item 6(f) should be deleted as Schedule 1 Part 1 does not apply to individuals in any event.	Schedule 1 Part 1 applies to individuals where they are e.g. controllers of a corporate applicant.
			The requirements of Item 7(a) are far too detailed. We recommend that the academic record to be provided should be the highest educational qualification attained by the particular individual, as secondary level educational qualifications would not be relevant if the person in question has a higher qualification. We believe it would also be helpful if the SFC could clarify as to whether they require a certificate to be provided as part of the application process. If certificates are required, we would suggest that only the certificate(s) pertaining to the highest level of education attained should be required. These comments are also applicable to Item 6(a) of Part 2 of Schedule 1.	The forms will only request for information relating to the highest educational qualification attained. This part of the schedule will be amended accordingly. However, in respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he has not obtained a relevant post-secondary qualification. Again, only details of the relevant subjects will be required. The SFC will not normally require any educational certificate to be provided as part of the application process. Instead, reliance will be placed on the accredited corporation to verify that its accredited staff had attained the relevant qualifications asserted.
			Item 10 refers to the need to disclose the business plan of the applicant. Normally this would refer to the commercial strategy of a Licensed Corporation or Registered Institution, however, this item goes on to state "covering internal controls, organisational structure, contingency plans and related matters". Could the SFC expand on what this item is intended to cover and as the term "related matters" has not been defined, please could	It is not the SFC's intention to enquire into the commercial strategy of a regulated corporation. This item intends to cover the competence required of a corporation to carry out its functions effectively and efficiently, as well as to protect its clients' interests. Thus a corporate applicant should be able to satisfy the SFC that its has proper business structures, good internal systems and qualified personnel to enable it to

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			clarification be given.	properly manage the risks it will encounter in carrying on its business as detailed in its business plan. These requirements are outlined in the Guidance Note on Competence.
			We recommend that Item 12 be deleted. Intermediaries maintain a large number of bank accounts which are opened from time to time and regularly as part of an intermediary's business. We believe it would cause significant administrative burden for intermediaries for such information to be disclosed at the outset and also if intermediaries have to notify the SFC each time they open a new bank account and within the required notice period of 7 business days. The rationale behind this requirement may be to assist the SFC in monitoring the activities of unscrupulous intermediaries who may establish new accounts to retain their clients' funds or other assets. However, the implementation of such a requirement will certainly cause a significant administrative burden to other law-abiding intermediaries, as any unscrupulous intermediaries could choose not to notify the Commission when they open a new account. These comments are also applicable to Item 10 of Part 1 of Schedule 2.	The SFC believes that information relating to bank accounts of licensed corporations is necessary for supervision purposes. This is also currently required. However, we note the comments and adopting a pragmatic approach, will state in the forms that the required information will be limited to those concerning segregated trust accounts and major operational accounts.
			The Law Society of Hong Kong Some of the requirements of Schedules 1 and 2 are potentially subjective (e.g. Part 1 paragraph 6, Part 2 paragraph 5, Part 3 paragraph 6 etc. of Schedule 1 and equivalent provisions in Schedule 2). This flexibility is consistent with the discretionary nature of the SFC's licensing powers.	Comment noted and would specify the requirements in the form as far as possible.
			A corporation which has been subject to "investigation by a	Such information would be helpful to the SFC in

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			regulatory body …" (e.g. Schedule 2, Part 1, paragraph 6) but is not found to have been culpable of the relevant act or omission should not be required to make disclosure of that information. To do so would be both unduly burdensome and irrelevant. Also, a "lawful excuse" exception should be provided for. It is submitted that there should be a time-limit for the disclosure of past investigations done (e.g. in the past 5 years) otherwise this is a potentially an onerous obligation, as (i) the applicant's/licensee's present management could be very different from the circumstances pertaining at the time of the investigation and (ii) it may be unduly burdensome for applicants/licensees which have been in existence for a long time and which operate in multiple jurisdictions to obtain this information. **Linklaters on behalf of 6 financial institutions** Paragraph 1 requires "basic information" from a number of different entities, including each related corporation that conducts, or proposes to conduct, any regulated activity that is its principal business. This is not currently required and in relation to an international financial institution would create a serious administrative burden. The Group suggests that this is either deleted or limited to those related corporations that are licensed or registered to carry on regulated activities in Hong Kong, in which case the SFC should already have information on these entities and it should be necessary to provide no more than the name and CE Number. The Group also suggests that this should be limited to related corporations that are actually carrying on business and not those that propose to carry on business, unless it is	assessing the fitness and properness of an applicant for licence. Under section 135 of the SFO, contravention of the notification requirements constitutes an offence if such was done without reasonable excuse. Failure to disclose or notify will be considered on a case by case basis as to whether reasonable excuse could be established. While the SFC does not agree that there should be a time-limit for such disclosure, the lapse of time is a factor for consideration in assessing the fitness and properness of an applicant. This approach is currently adopted by the SFC. In assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC. For practical reasons, we agree that the required information should be limited to those that are actually carrying on business and should not include those that propose to carry on business. We have amended the draft Rules accordingly. Again, information that has

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			limited to those related corporations that have already submitted an application to the SFC, in which case again the SFC should have information on these entities and it should only be necessary to provide a name and brief details of the application being made.	been previously provided will not be requested.
			Paragraph 6 requires certain information to be disclosed that might be relevant to an applicant's fitness or properness. This has been extended to all entities referred to in Paragraph 1, so again would create a substantial administrative burden for international financial services groups if all related corporations remained in paragraph 1. In the Licensed Persons and Registered Institutions Rules, this information was restricted to the directors and responsible officers of the intermediary.	As stated above, in assessing the fitness and properness of a corporate applicant, the SFC would have to look into the fitness and properness of its controllers, as well as its subsidiaries and related corporations that conduct regulated activities. However, in this regard, only relevant information will be requested and this will be specified in the forms. This is the present approach, and as in the past, we will only request information which is not known to the SFC. (It may be noted that the Licensed Persons and Registered Institutions Rules pertain to the notification of changes but not to the provision of information at the time of making applications.)
			Sub-paragraphs (b) and (c) appear to overlap, and it is suggested that sub-paragraph (c) is limited to involvement in management, as sub-paragraph (b) should pick-up being subject to investigations. The Group has similar comments, where applicable, to Parts 2 and 3 of Schedule 1.	Agree, have amended the draft Rules accordingly.
			Regarding the requirements under paragraph 7(a) and Part 2 paragraph 6(a), in practice it is often quite difficult for an applicant to provide full details in relation to the examinations he passed in his secondary level education. The Group believes that where an applicant has acquired tertiary level qualifications, the applicant should not be required to provide academic details of his	The SFC will only request for information relating to the highest educational qualification attained. This part of the schedule will be amended accordingly. However, in respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he

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			secondary education. In addition, currently the SFC only requires an applicant to supply employment records for the last 5 years. This should still be the case under paragraph 7(c) and Part 2 paragraph 6(c) of the Rules. Paragraph 15 (and paragraph 8 of Part 2 of Schedule 1 and paragraph 8 of Part 3 of Schedule 1) gives the SFC wide power to include "such other information as may be required in the form specified". This means the draft Rules are of limited use in providing certainty to the industry as to what information will be required by the SFC. It is suggested that this at least be limited to information that is relevant to the particular application being made, which is what the Group believes the SFC intended.	has not obtained a relevant post-secondary qualification. Again, only details of the relevant subjects will be required. The forms will require the provision of employment records for the last 5 years only. It may be noted that in cases where the individual applicant wishes to act as a responsible officer, employment record up to 8 years may be required to substantiate that he has the requisite competence. The draft Rules have been amended to limit the information required to those relevant to the particular application, as suggested.
7.	Schedule 1 Part 2	Information to be provided with applications to the Commission – by individuals	**The Hong Kong Association of Banks** Item 2 - should the registration or authorisation not be limited to any that are related to regulated activities? Item 6 - any matters that "might reasonably be considered relevant" to the applicant's fitness and properness is unduly broad as failure to include any such matter is a breach of the Rules. We suggest it be changed to read "reasonably considered to be relevant". Sub-item (b) - should "investigation" not be restricted to "investigations of which the applicant was not cleared"?	Yes, and the draft Rules provides so in section 2(2). We do not consider the proposed amendment changes the meaning of the clause. Such information would be helpful to the SFC in assessing the fitness and properness of an applicant

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			Item 6(a) - is the SFC really looking for details of secondary level education if the person attended university? There is no differentiation in the Rules as drafted. Item 7 - We are not sure how the "mental health" of the applicant can be confirmed.	for licence. In the assessment, consideration would be given to whether or not the applicant was cleared. In respect of a person applying for a representative licence, his secondary level educational qualifications would be relevant to demonstrate his fulfilment of the competence requirements where he has not obtained a relevant post-secondary qualification. As per existing requirements, the relevant forms will request the applicant to state whether he has ever been detained in a mental hospital or been a patient as defined under the Mental Health Ordinance.
8.	Schedule 1 Part 3	Information to be provided with applications to the Commission – other applications	**Linklaters on behalf of 6 financial institutions** It should be made clearer which items relate to which application. It is unnecessary to provide all the information set out in Paragraphs 1 and 2 where the applicant is the licensed person and when the application relates to the approval of premises for the keeping of records or documents. The Group would also like to make the comment that given current technological advances and the prevalence of cross-border computer networking capabilities, it would often be impossible or impracticable to identify the precise physical location at any one time of the electronic data constituting an electronic record and hence apply for SFC approval. We believe that where the records are in electronic format and are available from/at premises in Hong Kong, the premises to be approved should be the Hong Kong premises. It should not be necessary to obtain approval for the location of servers or systems, etc. based overseas.	We will only require information that is relevant to the application, and the form will so provide. We agree with the comments, and take the view that approval for the location of servers or systems is not necessary where the records are available at approved premises in Hong Kong. However, it would be incumbent on the licensed corporation to ensure the integrity of the systems and records.

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9.	Schedule 2 Part 1	Notification of changes – by licensed corporations	**Hong Kong Securities Institute** Item 10 (changes in status of bank accounts) – members disagreed. What are the underlying reasons of reporting the Companies' bank accounts to the SFC? Suggestion: This item should be deleted.	The SFC believes that information relating to bank accounts of licensed corporations is necessary for supervision purposes. This is also currently required. However, we note the comments and adopting a pragmatic approach, will state in the forms that the required information will be limited to those concerning segregated trust accounts and major operational accounts.
			A group of 10 financial institutions Item 1(d) should be deleted as this requirement to disclose is repetitive. Any subsidiary of the applicant which is conducting a regulated activity would be registered with the SFC and would have to provide any updated information with regard to itself.	While the SFC would be aware where the subsidiary conducts regulated activities in Hong Kong, this may not be the case where the subsidiary conducts regulated activities overseas.
			Item 2(a)(ii) requires a corporation to notify the SFC of any changes in its CE number. However, as this number is assigned by the SFC to the intermediary, the intermediary should not have to notify the SFC of any changes. The same comments apply for Item 2(a)(ii) of Part 2 of Schedule 2.	The intention is not to request the notification of changes in the CE number, but rather to request for the CE number of the corporation concerned, where it becomes or ceased to be an associated entity.
			Item 8 requires that any significant changes in the business plan of a licensed corporation covering internal controls, organisational structure, contingency plans and related matters are to be notified to the SFC. It is unclear as to whether this requirement is directed specifically at the business plans of the licensed corporation or is intended to be directed at any changes in the internal controls, organisational structure, contingency plans and related matters of the licensed corporation. We believe that intermediaries would have significant problems with	It is not the SFC's intention to request for sensitive or confidential commercial strategies of a regulated corporation. This request is directed at the competence required of a corporation to continue to carry out its functions effectively and efficiently. Thus, a corporate licensee must notify the SFC of any material change in its business structures, internal systems and key personnel that may affect its ability to remain fit and proper. These are not new requirements and they are outlined in the Guidance

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			providing copies of their business plans per se as these are highly confidential documents. Where the intermediary concerned is a public company, its business plan may contain material inside information. We would be grateful if the SFC could clarify this requirement as if the intention is to obtain any information from a licensed corporation with regard to any significant changes concerning its internal controls, organisational structure or contingency plans, this information can be provided to the SFC without reference to the actual business plans of the intermediary which are highly confidential and sensitive. It would be preferable if clause 8 could be clarified. In addition, the words "related matters" are unclear and clarification would be helpful.	Note on Competence.
			Similar comments apply to Item 8 of Part 2 of Schedule 2. In the case of registered institutions, we would read this requirement to apply only in respect of their regulated activities.	Yes, in the case of registered institutions, this requirement only applies in respect of their regulated activities. Section 2(2) of the draft Rules so provides.
			Item 11 should refer to the "licensed corporation" instead of the "licensed person". Similar amendments should be made to clause 13 of Part 1 of Schedule 2.	Agree, and have amended the draft Rules accordingly.
			Linklaters on behalf of 6 financial institutions To the extent relevant the Group has the same comments on the information to be provided under Schedule 2 as it does to Schedule 1. Again of particular concern to the Group is that changes to information on related corporations that conduct regulated activities are required. Also changes that might affect the fitness and properness of an intermediary have been extended to any person referred to in Part 1 of Schedule 2. In the case of substantial shareholders (which fall under the	Noting the concerns, the draft Rules will be amended to require a licensed corporation to notify changes to information relating to itself, its responsible officers, its subsidiaries and its controllers only but not its other related corporations. This would also apply in regard to changes affecting the fitness and properness of such related corporations. This does not overlap with the requirements in Section 4(6), which imposes an obligation on substantial shareholders to report on

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			definition of "controllers") this overlaps with the requirements for substantial shareholders to report such changes in Section 4(6). If the requirement is to be expanded to all persons referred to in Part 1, it is suggested that the reporting requirement should only be triggered once the intermediary becomes aware of such changes to the information initially provided to the SFC.	changes regarding themselves.
10.	Schedule 2 Part 3	Notification of changes – by licensed representatives	**Linklaters on behalf of 6 financial institutions** Two new categories have been added: changes in the type of services to be provided by the licensed representative on behalf of the licensed corporation, and changes to the mental health of the licensed representative. It is suggested that only significant changes in the type of services should be reported, which is consistent with the approach taken for intermediaries. If the licensed representative were undertaking a new regulated activity, the licensed representative would need to apply for a modification to the licence in any case. The Group would like some guidance on what is meant by "changes to the mental health of the licensed representative".	Agree that only significant changes in the type of services should be reported. The draft Rules will be amended accordingly. Changes relating to the mental health would be limited to whether or not the licensed representative had been detained in a mental hospital or been a patient as defined under the Mental Health Ordinance.
11.	Schedule 2 part 4	Notification of changes – by substantial shareholders	**A group of 10 financial institutions** It would be difficult for large international financial groups which have numerous substantial shareholders to comply with some of the requirements of Part 4. While providing changes in basic information in respect of the substantial shareholder(s) should not prove too difficult, the other changes such as Items 2, 3, and 4 to be notified under Part 4 may prove difficult to comply with, insofar as large international financial groups are concerned. It is arguable whether details of changes in registrations or stock exchange memberships of overseas companies in	Noting the concerns, the SFC is willing to dispense with Items 2 (on changes in registration status) and 3 (on changes in exchange membership status). The draft Rules have been amended accordingly. However, Item 4 (on changes which might reasonably be considered relevant the substantial shareholder's fitness and properness) should be retained in the interests of investor protection. This is not a new requirement, as such a change is currently required to be reported in the Annual Return.

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			a company's chain of substantial shareholders would be particularly relevant to that company's licensed status with the SFC in Hong Kong. In order to comply with the requirements of Part 4, intermediaries which are part of large international financial groups would have to set up an elaborate system internally to obtain this information from overseas for notification to the SFC. This would cause an administrative burden. We would urge the SFC to reconsider this requirement insofar as substantial shareholders which are overseas entities are concerned and to limit the notification of such changes to entities which are based in Hong Kong as this would reduce the administrative burden. In particular, Item 5 requires notification to the SFC with regard to changes in the capital and shareholding structure of the substantial shareholders or persons which are interested in the shares etc. Some of these changes may be immaterial but under the current clause as drafted would be required to be reported. Again this would cause undue administrative burden. It would be preferable if the requirements of Item 5 could be changed to only require a notification of any significant changes in the capital or shareholding structure of the substantial shareholder. **Linklaters on behalf of 6 financial institutions** Part 4 sets out the changes relating to a substantial shareholder that must be reported. This is new and was not in the Licensed Persons and Registered Institutions Rules. As mentioned above, this overlaps with the reporting requirement of intermediaries under Section 4(3) and (4).	We note the comment and have amended Item 5 to require only substantial changes in the capital or shareholding structure of the substantial shareholder need to be reported. Part 4, which requires a substantial shareholder to report changes regarding itself, does not overlap with section 4(3) and (4), which requires a licensed corporation or a registered institution to report on changes regarding its controllers.

#	Section Reference	Area Commented	Market Comments	SFC's Responses
12.	Schedule 3	Information in annual returns – from licensed persons	**Linklaters on behalf of 6 financial institutions** Parts 1 and 2 require information to enable the SFC to assess whether a licensed corporation and a licensed representative have complied with the CPT requirements. The Group would like some guidance on what information is specifically required.	The approach will be no different from the one currently adopted. The same specific questions will be asked in the Annual Return form. For corporations, they will be required to state whether or not they have implemented a training programme to meet the training needs of their accredited representatives. For representatives, they will be asked whether or not they had fulfilled the required CPT hours.
13.	Schedule 4	Particulars to be included in public register of licensed persons and registered institutions	**Hong Kong Stockbrokers Association** We specifically have concern on the requirement for each public disciplinary action taken by the Commission against a licensed person or a registered institution to be kept in the register for a period of 5 years from and after the date when the relevant disciplinary action takes effect. We felt that a 5-year period for all types of public disciplinary action regardless of the seriousness of the offence is too harsh and too long. Instead, it will be fairer and more just to set the length of time kept in the public register to be depended on the seriousness of the offence with up to a maximum of 5 years. Moreover, when a bank that participates in the securities dealing business, whether there is any provision for its public disciplinary action record related to securities dealing be published in a similar action. Only if such a provision is present can the public investors be getting a clear and complete picture. Also, this would help maintain a level playing field between the banks and the securities brokers to create a fairer market among the different players.	This issue was debated in the consultation on the Licensed Persons and Registered Institutions Rules. As stated in its consultation conclusion, the SFC, having considered various representations, took the view that the disclosure of a 5-year public disciplinary record was appropriate. The HKMA will include similar public disciplinary records in respect of relevant individuals of registered institutions in its public register. This is provided under the revised section 20 of the Banking Ordinance.

Summary of comments on Draft Securities and Futures (Intermediary Information) Rules (now renamed as "Securities and Futures (Licensing and Registration) (Information) Rules") **Annex**

#	Section Reference	Area Commented	Market Comments	SFC's Responses
			Linklaters on behalf of 6 financial institutions Paragraph (g) of Parts 1 and 2 require a record of public disciplinary action to be kept in the register for a period of 5 years from the date the relevant disciplinary action takes effect. The Group believes the period of 5 years is too long and that it should be reduced to 2 years.	This issue was debated in the consultation on the Licensed Persons and Registered Institutions Rules. As stated in its consultation conclusion, the SFC, having considered various representations, took the view that the disclosure of a 5-year public disciplinary record was appropriate.

List of Respondents

Date received	Respondent
8 August 2002	Hong Kong Association of Banks
8 August 2002	Hong Kong Securities Institute
8 August 2002	A group of 10 financial institutions
8 August 2002	The Law Society of Hong Kong
8 August 2002	Linklaters (on behalf of 6 financial institutions)
21 August 2002	Hong Kong Stockbrokers Association Ltd