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

SFC
證監會

Consultation Conclusions on the Draft Securities and Futures (Client Money) Rules

《證券及期貨(客戶款項)規則》草擬本諮詢總結

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目錄

引言

1. 2001 年 4 月 12 日，證券及期貨事務監察委員會(“證監會”)就《證券及期貨(客戶款項)規則》草擬本(“《草擬規則》”)發表諮詢文件(“諮詢文件”)。

2. 《草擬規則》載有監管收取及持有客戶款項的詳細規定。根據《草擬規則》，持牌法團及其有聯繫實體必須以信託方式獨立存放所收取的客戶款項，藉以保障投資大眾的利益。

3. 諮詢期在 2001 年 5 月 24 日結束。

4. 附件 1 載有就《草擬規則》接獲的意見的摘要(“意見摘要”)。

5. 在考慮接獲的意見及與評論者討論之後，我們認爲對《草擬規則》進行若干修訂是恰當的做法。

6. 該等修訂已獲證監會通過成爲經修訂的該規則草擬本現列載於附件 2。由於經修訂的該規則草擬本仍須待立法會審議通過，所以目前的版本可能並非最終版本。發出該修訂規則的目的，主要是說明我們爲回應市場人士意見而作出的修訂，而並非要進行另一輪諮詢。

7. 本報告的目的在於向有興趣的人士提供證監會就諮詢期內接獲的主要意見所進行的分析，以及證監會所作出的總結的理據。本報告須與《證券及期貨條例》、《諮詢文件》、《意見摘要》及經修訂的該規則草擬本一併閱讀。

諮詢公眾意見

A. 背景

8. 《草擬規則》旨在確保持牌法團或其有聯繫實體所收取的款項都妥善地獨立存放，以供客戶使用。

9. 就政策的層面而言，《草擬規則》基本上旨在：

(a) 將目前載於 3 條不同法例(即《證券條例》第 84 條及第 XA 部第 6 分部、《商品交易條例》第 46 條及《槓桿式外匯買賣條例》第 23 條)有關如何處理客戶款項的規定合理化；

(b) 擴大規定的適用範圍至適用於所有持牌法團及其有聯繫實體(認可財務機構除外)；

(c) 放寬獨立存放的規定至只限於在香港收取或持有的客戶款項；及

(d) 修訂各條例中目前已存在與收取作交收用途的款項、客戶的轉帳指示及不同時限(即獨立存放及從獨立帳戶提取款項的時限)有關的規定。

10. 基本上，《草擬規則》規定持牌法團及其有聯繫實體必須將客戶款項與持牌法團或其有聯繫實體的款項分開。如果：

(a) 客戶款項是在香港由持牌法團或其有聯繫實體持有或收取；及

(b) 客戶款項不會在未來 2 個營業日內用作交收用途，

則有關款項必須在收取當日後 1 個營業日內存放於一個獨立帳戶。

11. 《草擬規則》亦未有規定將打算用作支付佣金或費用，或直接向持牌法團或有聯繫實體支付的款項，或向上述兩者作出的補還款項的客戶款項獨立存放。

B. 諮詢程序

12. 除發表公布邀請公眾人士發表意見之外，諮詢文件亦發送給所有連接到金融服務網絡的註冊人及不同的專業團體。諮詢文件亦登載於證監會網站。

13. 在諮詢期間，證監會亦與市場參與者及其法律顧問舉行研討會，以討論他們的意見。

14. 證監會共接獲 17 份來自市場從業員的回覆，當中包括基金管理公司、國際經紀行、律師事務所、業界代表團體、專業團體及市場監管機構。

15. 我們所收集的意見整體來說是屬於正面的。評論者普遍對建議規則表示歡迎。然而，有關意見所涵蓋的範圍和深度有相當的差別，當中若干評論者針對大原則發表意見，其餘的則討論若干細節事宜及作出澄清。

16. 在考慮所接獲的意見書及與評論者進行討論之後，我們認爲對原來的《草擬規則》進行若干修訂是恰當的做法。

諮詢總結

17. 以下是因應市場意見而對原來載於諮詢文件的《草擬規則》的主要修改：

澄清適用範圍

18. 若干評論者要求我們澄清《草擬規則》對於持牌法團的相連機構在並非與該持牌法團所從事的受規管活動有關連的情況下而收取的款項，以及對於純粹因爲有權操作客戶銀行帳戶而持有客戶款項的持牌法團的適用範圍。

19. 《草擬規則》已修改爲訂明其適用於持牌法團在進行其獲發牌的受規管活動過程中，由該持牌法團收取或持有或代該持牌法團收取或持有的客戶款項，以及就進行該受規管活動而言，由該持牌法團的有聯繫實體收取或持有或代該實體收取或持有的客戶款項。此外，經修訂的《草擬規則》亦明確規定其並不適用於持牌法團或其有聯繫實體純粹由於管控客戶的銀行帳戶而被視爲"持有"在該帳戶的客戶款項。

客戶授權續期

20. 《草擬規則》規定客戶款項必須按照《草擬規則》的規定或按照《草擬規則》所定義的"客戶授權"給予的授權處理。有關的授權必須以書面方式發出及有效期不得超逾 12 個月，並且必須由客戶以正面的形式重新確認後方可續期。很多評論者關注到行政上，將會很難獲得有關的續期。

21. 我們對該等關注表示理解，並對《草擬規則》作出相應修訂，以容許在客戶沒有提出反對的情形下，有關授權可以透過由持牌法團或有聯繫實體在到期前發出提示通知，及在到期後發出授權續期確認書的方式加以

續期。有關授權可以此方式續期最多 12 個月，而其條款及條件將維持與原來授權的一樣。經修訂的規則草擬本亦容許持牌法團或有聯繫實體就續期指明不超逾 12 個月的有效期。這項規定應可將因續期程序而引致的行政負擔減至最低。

客戶指示

22. 若干評論者要求就"客戶指示"的定義作出澄清。我們的原意是客戶指示屬於向商號發出的一次性指示，要求商號以若干手法處理某個特定金額的客戶款項。相反，"客戶授權"則屬於有關處理一般客戶款項的常設授權。我們已對《草擬規則》作出修訂，以詳細說明兩者的定義。

23. 爲了妥善地保障客戶的權益，及確保客戶指示有恰當的審計線索，根據經修訂的《草擬規則》，所有指示都必須以書面方式發出。

專業投資者的豁免

24. 一名評論者要求將屬於專業投資者的客戶豁除於《草擬規則》的適用範圍，亦有評論者要求如果客戶是專業投資者，則就有關客戶款項的處理事宜而言，應放寬授權續期的規定。

25. 我們認爲專業投資者的款項應與散戶投資者的款項一樣受到類似的保護。然而，我們接受專業投資者給予的授權可能未必需要遵守有關的續期規定。因此，我們放寬有關規定，使專業客戶的授權可以毋須指定有效期。但若該授權指定有效期的話，該有效期可以超過 12 個月。

安排獨立存放客戶款項的期限

26. 《草擬規則》規定持牌法團或其有聯繫實體在香港收取客戶款項 1 個營業日內，必須將客戶款項與商號本身的款項分開，以及將客戶款項存放於在認可財務機構維持的獨立帳戶之內。評論者主要憂慮由於結算從客戶收取的支票需時，要符合有關的期限可能在實行上存在困難。

27. 我們認爲 1 個營業日是實際可行，及爲了對客戶款項提供較佳的保障，是有必要的。我們已修改《草擬規則》以澄清就持牌法團所收取的支票而言，有關期限將於收妥有關支票的收益後開始計算。

轉帳到持牌法團或其相連機構或僱員的帳戶

28. 市場人士要求澄清在哪些情況下不能依據客戶指示或授權將客戶款項調離獨立帳戶。

29. 我們已修訂《草擬規則》，以澄清客戶款項將不能 －

(a) 依據客戶指示或客戶授權而支付給有關商號或其相連機構的任何僱員或高級人員(如該僱員或高級人員是真正的客戶則除外)；或

(b) 依據客戶授權而存入商號或其任何相連機構在香港的非獨立帳戶。

30. 爲了避免出現混淆，從獨立帳戶提取客戶款項將會受到類似的限制約束，除非向持牌法團或其有聯繫實體支付的款項是作客戶的交收用途或應付客戶的保證金規定，或償付客戶欠持牌法團或有聯繫實體的款項。

現金抵押品

31. 若干評論者就在不同交易中提供的現金抵押品是否須被視爲客戶款項及因此而需要獨立存放提出疑問。

32. 我們的政策旨在規定如果客戶對所提供的現金抵押品仍然擁有權益，便需要將現金抵押品獨立存放。然而，如果從客戶方面收取的款項已不屬於《草擬規則》所適用的客戶款項的範圍，持牌法團或其有聯繫實體便毋須遵守《草擬規則》的規定。

有關外匯管制的通知的規定

33. 《草擬規則》規定如果客戶款項(包括以離岸方式持有的款項)須受到外匯管制，持牌法團及其有聯繫實體須在其知悉有關事件後 1 個營業日內通知其客戶。

34. 評論者對這項規定提出多項意見，由要求就何時需作出通知作出澄清，以至質疑是否需要這項條文。回應上述意見時，我們同意這項規定應該更適合以類似《註冊人操守準則》的一般客戶資產保障規定加以處理。因此，我們已刪除《草擬規則》內的這項規定。

其他意見

獨立帳戶

35. 爲回應市場對於客戶帳戶的類別的疑問，我們已作出以下澄清： “獨立帳戶”是指該等指明爲信託帳戶或客戶帳戶，並在認可財務機構或獲證監會認可的人士維持的帳戶。

利息

36. 很多評論者質疑就獨立存放的目的而言，客戶款項所累積的利息是否會被視爲“客戶款項”。在回應這項質疑時，我們已經修訂了《草擬規則》，以澄清除非另有相反的協議，否則客戶款項所孳生的利息屬於客戶款項，並且應該與其他客戶款項一樣以相同的方法處理。客戶放棄的利息，必須在有關利息記入獨立帳戶的貸方或有關持牌法團或有聯繫實體察覺該筆利息已記入獨立帳戶的貸方後的 1 個營業日內，將利息從有關帳戶提取。

生效日期及過渡安排

37. 《證券及期貨(客戶款項)規則》自《證券及期貨條例》第 VI 部指定生效日期起實施。

Summary of comments received on the draft Securities and Futures (Client Money) Rules

	Section reference	**Details of the Rules**	**Respondent's comments**	**SFC's response**
General comments				
1	-	Confinement of application of the Draft Client Money Rules	[commentator has reserved anonymity] The SFC should properly address all potential issues arising from the lack of similar prescribed Rules to guard against risks of client money received or held outside Hong Kong - client money held overseas should be properly safeguarded and clients should be fully aware of the level of protection available to such money.	This topic is more appropriately addressed in the Code of Conduct.
2	-	Confinement of application of the Draft Client Money Rules	[commentator has reserved anonymity] The potential risks in situations where licensed corporations operate branches outside Hong Kong (e.g. Macau and Shenzhen) and which also handle client money overseas should not be undermined, especially those overseas investors trade in securities listed on the Stock Exchange and the new Investor Compensation Fund (the "the ICF") intends to cover loss incurred in relation to trading in HKEx products (disregarding whether client money is held in Hong Kong). A distinction should be drawn between dealing in HKEx and non-HKEx products for purposes of the ICF. Thus, the Rules should require licensed corporations to segregate client money received in respect of dealing in non-HKEx products.	The risks identified are not relevant to these Rules and we are of the view that the proposed segregation is not necessary for ICF purposes.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
3	-	Application to sole proprietors	[commentator has reserved anonymity] It is noted that the Rules apply to licensed corporations but not sole proprietors and partnerships conducting regulated activities. There should be a system or policy in place upon the Bill becoming effective to subject sole proprietors and partnerships to the Rules during the transitional period for the migration to the new licensing regime.	Sections 27, 30 and 53(4) of Part III of Schedule 10 to the Ordinance already provide for partnerships and sole proprietorships to be treated as licensed corporations during the transition period, and that the provisions of the Ordinance shall apply to them.
4	-	General	[LSHK] The Draft Client Money Rules use various terms which are defined in the Securities & Futures Bill, such as "client money" and "client securities". For convenience, it would be helpful if the defined terms were set out in the Explanatory Notes, or in an Introduction or Annex to the Rules. [LTP, Lim] The SFC should define "regulated activity", "associated entity" and "authorized financial institution" and "client money".	This is not considered necessary; subsidiary legislation should always be read in conjunction with the primary legislation. It is not necessary to define terms already defined in Part 1 of Schedule 1 to the Ordinance.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
5	-	General	[JFAM] The general comment on the Client Money Rules is that they are drafted with a focus on the stock broking industry. It is suggested that the SFC should provide clarification regarding the application of the Rules to the asset management industry in Hong Kong. For example, where a fund manager does not normally hold client securities nor client monies albeit that it has discretion from clients to operate their bank accounts and instruct clients' custodians for settlement purposes.	We propose to post answers to frequently asked questions to our website in due course. This is consistent with what we are currently doing when we introduce the revised financial resources rules and the Code of Conduct etc. Section 3(3) of the revised Rules shall make it clear that these Rules do not apply to situations such as this one.
6	-	General	[L&A] It is questioned whether the Rules should apply in respect of money and securities held for professional investors as this type of investors should not require the same protection as retail investors. For example, in the United Kingdom, both under the existing rules and the rules to be made under the Financial Services & Markets Act, market counterparties and other non-private customers can opt-out of the client money rules (and often do so). Also, the more detailed requirements of the custody rules can be disapplied in respect of assets held for market counterparties.	We are of the view that the same principle should apply to protection of client assets, whether the clients are professional investors or otherwise. However, we agree that professional investors should be able to waive the annual renewal requirement for client's authority. In addition, the Rules also allow treatment of client money in accordance with client's written direction or standing instruction.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
Specific comments				
7	2(1)	Interpretation (a) Definition of "client contract"	[L&A] It is unnecessary to define "client contract" as <u>including</u> the types of contract or arrangements specified in the definition. Also, in the situation where the client is a professional, the Code of Conduct does not require a client agreement to be entered into. In any event, we question the need for a definition of "client contract".	We have deleted the term "client contract" from section 2(1) and section 4(1)(d).
8			[L&A] The definition of "client money" in the Ordinance is extremely wide. It includes not just money received by a licensed corporation or an associated entity, but also money received by any corporation that is in a controlling entity relationship with the licensed corporation. Read literally, this would extend, for example, to a situation where a person, who happens to be the client of a securities dealer which is a subsidiary of a licensed bank, puts money into his or her account with the licensed bank, even though this is completely unconnected with the client relationship with the securities dealer. It would also apply where an offshore entity that was in a controlling entity relationship with a Hong Kong licensed corporation was acting as a custodian for its clients who are also clients of the licensed corporation.	A new section 3(1) has been added to the Rules to state expressly that the rules apply to client money received or held in the course of or in relation to the conduct of any regulated activity for which the licensed corporation is licensed. Specifically, in the examples described, these Rules would not apply to the money unless it was received or held in Hong Kong by a licensed corporation or associated entity. Further, pursuant to section 149(7), these Rules do not apply to associated entities that are authorized financial institutions.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
10			[L&A] The definition of "associated entity" should exclude a foreign corporation who has a registered Hong Kong branch under Part XI of the Companies Ordinance if the foreign corporation itself is subject to an acceptable overseas regulatory regime in relation to client money and securities it receives in Hong Kong.	We disagree. In developing the definition of associated entity, the policy intention was that there should be uniform treatment of associated entities holding client assets in Hong Kong. That policy intention remains.
12	2(1)	Interpretation Definition of "client's authority"	[Lim, AP, LTP, LSHK, JFAM, L&A, HKSbA] An annual renewal of "client's authority" is unnecessarily burdensome and costly to the licensed corporation. It is suggested that rather than an annual affirmative renewal by the client, authority could be renewed by the licensed corporation annually notifying the customer that authority will continue unless a reply, objection or revocation is received within a specified period. One commenter pointed out that annual renewal is not necessary given there were already other safeguards in sections 3(3) and 4(1).	The Commission recognizes the market's concern and has revised the Rules in section 8(3) by allowing for either a renewal of that authority by the client in writing or by procedures similar to that suggested.
13			[AP] The need to restrict client's authority in the manner proposed is questioned. SFC is asked to reconsider whether the Rules still need the definition of "client's authority".	We have renamed the term "client's authority" as "standing authority" and elaborated on the meaning of standing authority in section 8 of the revised Rules. We remain of the view that certain basic statutory protection should not be overridden by standing authority provided by clients; they can still waive the protection by giving specific directions.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
14			[L&A, LSHK] The requirements for written client's authority with annual renewal should not be applicable to accounts of "professional investors" (for example, where the client is a fund manager, and cash is being transferred to accounts in the name of different funds that it manages) as defined in the Securities and Futures Ordinance and/or who are professional investors for the purposes of the SFC Code of Conduct.	The Commission remains of the view that, in general, professional investors' money should be offered protection in the same manner as retail investors' money for purposes of these Rules. For fund managers who are managing several funds, particularly funds or unit trusts where the underlying investors are the retail public, it is particularly important that proper and clear transfer instructions are obtained from the fund manager regarding the movement of the money of the funds. However, we agree that professional investors should be able to waive the annual renewal requirement for client's authority and have revised the Rules so that under section 8(2) of the revised Rules, the requirements to specify a period in which standing authority is valid and restrict the period to not more than 12 months shall not apply to authority given by professional investors.
15			[Lim] Please clarify the meaning and possibilities of the word "otherwise" when the draft rules stipulate that client's authority may be renewed in writing or otherwise.	This comment has been superseded by an amendment requiring client authority to be in writing in section 8(1) of the revised Rules.
16			[JFAM] Is the "client's authority" referred to in 2(1) and 3(3)(d) applicable to mutual fund dealing accounts and associated standing settlement instructions by the clients of such accounts?	The requirements in relation to "client authority" would apply to mutual fund dealing accounts and associated settlement instructions.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
18			[commentator has reserved anonymity] In view of the increasing popularity of on-line trading, it is recommended to include other electronic means of communication (e.g., e-mail) for such an authority.) In addition, it is not clear if an authority signed by a client stating that it will remain valid unless otherwise instructed will meet the requirement of para. (c). If not, this will impose heavy administrative burden on the industry. It is, therefore, recommended that the said provisions be modified to allow more flexibility.	An authority in writing can be made in an electronic form provided that there is compliance with the Electronic Transactions Ordinance . The example given by the commentator is not acceptable. Please refer to our response to comment 12 regarding the renewal procedures suggested in the revised Rules. Administrative burden should have been substantially reduced by our allowing renewal in accordance with section 8(3). It is important for investor protection to remind investors of such authority on a yearly basis.
19	2(2)	Interpretation These Rules do not apply to an associated entity that is an authorized financial institution.	[LTP] If "authorized financial institution" refers only to entities that are authorized in Hong Kong, the Draft Rules could cause difficulties. An example would be where a client had an account with the SFC licensed entity and also with a bank which was an affiliate of the entity but which was not an authorized institution in Hong Kong. Even though these extra territorial controls over the client's account with the overseas, non-Hong Kong authorized bank, would not be enforceable, the SFC registered entity would be in breach of the Draft Rules.	We have deleted section 2(2) as section 149(7) of the SFO makes it superfluous. Regarding the scenario quoted in the example, please note that an "authorized financial institution" is defined in Part I of Schedule 1 to the Ordinance as "an authorized institution as defined in section 2(1) of the Banking Ordinance (Cap. 155)". In addition, these Rules only apply to client money held in Hong Kong by the "licensed corporation" or its "associated entity", both as defined under Part I of Schedule 1 to the Ordinance. Besides, please also see our response to comment 8 above.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
20			[commentator has reserved anonymity] These draft Client Money Rules are not intended to apply to an associated entity which is an authorized financial institution. Recognizing the SFC's intention to minimize supervisory overlap with the Hong Kong Monetary Authority (the "HKMA"), there is a concern about ensuring a level playing field between licensed corporations and authorized financial institutions and asked whether, in particular the same or similar segregation requirements are imposed by the HKMA.	The monetary settlement between authorized financial institutions and their clients is usually transacted through the clients' deposit accounts maintained with the authorized financial institutions. The deposit taking activities of authorized financial institutions are subject to a separate regulatory regime with rules and requirements that are not necessarily comparable to the regime governing licensed corporations. It is beyond the scope of these Rules to attempt to equalize these two separate regulatory regimes.
21	3(1)	Payment of client money into segregated accounts	[Lim] We support widening the rules to cover client money held by a nominee company associated to a licensed corporation in order to close the regulatory gap and uphold the spirit of the rules.	We appreciate the support.
22			[L&A] It is assumed that the Client Money Rules are applicable only if the associated entity is receiving assets as part of services being provided by the licensed intermediary to its clients and not, for example, where the associated entity itself provides custodial or other services to the client, without the licensed intermediary assuming any responsibility to the client in relation to those services. It is assumed that cash or assets transferred by the client to the unregulated company would not be regarded as client assets of the intermediary.	Please also see our response to comment 8 above.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
23			[L&A] It is confusing to refer to establishment or maintenance of one or more "segregated trust accounts or client accounts", each of which must be designated as such. It is assumed that only one type of account is being referred to (i.e., an account in respect of which the licensed corporation or associated entity is a trustee for the client).	The assumption is correct. We have revised section 3(1) to clarify that a segregated account must be designated as a trust account or client account.
24			[LSHK] It may be useful for SFC to require that, in order to establish any client account, the licensed corporation or associated entity must obtain an acknowledgment, from the authorized financial institution or other approved institution, that the licensed corporation or associated entity is a trustee in respect of balances maintained in the account and, therefore, that the relevant institution has no rights of consolidation or set-off against the account in respect of other liabilities owing to it by the licensed corporation or associated entity.	This is a good suggestion and we agree that obtaining such an acknowledgment could be useful. However, it is questionable whether such an acknowledgement may be obtained in practice. Additionally, if the account is designated as a trust account or client account, authorized financial institutions will have notice of the trust nature of those accounts and be able to distinguish such accounts from other account(s) belonging to the licensed corporation or its associated entity.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
25	3(2)		[commentator has reserved anonymity] If the new Client Money Rules are limited to applying to client money received or held in Hong Kong as opposed to the current rules which apply to client money held anywhere, the limitation could create loopholes for circumventing the rules by ensuring that client money is received or held outside of Hong Kong.	The rationale behind the change in the scope of application of these Rules from the current rules is set out in paragraph 15 of the Consultation Document. The change is intended to deal with the practical difficulty of compliance with the segregation requirement in respect of client money held overseas, in particular in countries where there is no trust law. Licensed corporations would be required under the Code of Conduct to disclose the potential risks to their clients. If the money has first been received in Hong Kong before remitting to overseas, then that money would be subject to these Rules and the client would then need to make a conscious decision to arrange for his money to be sent offshore.
26			[General comment] It appears that client money either received or held in Hong Kong by a licensed person is required to be segregated and as a result, money received in Hong Kong which is later deposited/held in overseas financial institutions (e.g. Taiwan) will also need to be segregated.	Client money received or held in Hong Kong must be segregated unless it is paid in accordance these Rules, such as in accordance with client's written direction or standing authority. Client money cannot be transferred out of the segregated account except in accordance with section 5(1) of the revised Rules. If pursuant to that section, the money is transferred outside of Hong Kong, no segregation is required under the rules for the money held offshore.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
27			[BNP] Please confirm that the "one business day" rule does not apply to client money paid into and held in our bank account with an overseas branch of a bank as such client money will not be considered "client money received or held in Hong Kong.	Assuming that the client money was initially received outside Hong Kong or, if received in Hong Kong, paid out in accordance with these Rules to the overseas account, we confirm that the "one business day" rule does not apply.
28			[L&A, LSHK] Section 3(2)(d) might be too wide. It could apply to cash collateral provided by way of outright transfer, and to other amounts that are intended as outright payments to the licensed corporation from the client (e.g. payments from a corporate client pursuant to a currency swap). It could also apply to payments that are not connected with services provided by a licensed corporation the provision of which constitutes a regulated activity.	The definition of client money in Part 1 of Schedule 1 to the Ordinance restricts the money to that "received or held on behalf of a client … or in which the client … has a legal or equitable interest…". In the examples cited, if the client does retain a legal or equitable interest in the money provided as cash collateral, such "cash collateral" is client money and, if held or received in Hong Kong, must be segregated. As for other amounts intended as outright payments, whether such money constitutes client money can only be determined based on the relevant legal documentation.
29			[L&A, LSHK] It also seems anomalous that the definition of "client money" in the Ordinance extends to money held by an exempt person in his capacity as such, since the relationship between a bank and its customer is a debtor-creditor relationship	We do not agree. The relevant part of the definition of "client money", insofar as it applies to a registered institution, is defined by reference to the registered institution's conduct of regulated activity, not money received or held by the registered institution in the course of its banking business. In any event, the Rules do not apply to registered institutions.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
30			[ISD, AP] Two commentators welcomed the proposed rules' refinement of the current law by excluding any amount that will be paid out on the date of receipt or within the two following business days to meet the client's settlement obligations or margin requirements. However, the position on monies received with respect to overseas securities are asked to be clarified.	We thank the commentator for the support. As to client money received with respect to overseas securities, the same rules apply, that is the money must still be segregated if not paid out for settlement purposes within 2 business days of receipt.
31			[L&A] One commentator queried if cash is received for settlement of a transaction on T+2 but there is a settlement delay for some reason, should there be a grace period before the cash has to be treated as client money and transferred into a client bank account.	The cash remains as client money until it is applied to settle the transaction and therefore should be segregated if it is foreseeable that it will not or cannot be used for settlement within the following 2 business days.
32			[L&A] A commentator made a point that because many client agreements contain provisions enabling a licensed person to apply cash of a client in settlement of amounts owing by the client of the licensed person to the licensed person or its affiliates, section 3(2) and/or section 3(3) should be amended to permit the licensed person to deduct such amounts from cash received from or on behalf of the client. It should not be necessary to pay such amounts into a client account before withdrawing funds to settle the amounts due.	The client is already free to do this by giving specific directions under section 3(3)(c) or standing authority under section 3(3)(d). We do not think it serves any purpose to specifically permit the proposed deductions in the Rules, especially where the facts and circumstances of each transaction giving rise to a possible deduction scenario as well as the actual terms, validity and enforceability of such agreements between the client and the licensed corporation are particular to each case.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
33			[JFAM] Assuming a licensed intermediary who receives and holds client money for the client's subscription for collective investment schemes. The intermediary will then pay the client money into the designated funds' accounts shortly thereafter. It is usual for settlement to occur after 2 business days particularly if the settlement currency is not in HK$ or US$. Please further clarify how the definition of "client money" in section 3(2) would apply in relation to the above mutual funds' dealing of client money.	Fund subscription money held in the licensed corporation's account is subject to these Rules and such money needs to be segregated if received or held in Hong Kong. Segregation is not required, however, where the client money is required to be paid out to settle a transaction within two business days following receipt.
34			[commentator has reserved anonymity] A query was raised as to how deduction of brokerage from the amount received is possible if it is received from a client and no order has yet been placed by the client. It is suggested that wording such as "where applicable" should be considered for addition to the end of the phrase to clarify the requirement.	In the scenario described, the amount would fall within "all other amounts received from clients" under section 3(2)(d).
35	3(3)		[commentator has reserved anonymity] One commentator supported shortening the period of time before which client money has to be segregated (in Clause 3(2)(ii) and Clause 3(3)) recognizing that the shorter the period of time, the less the exposure of client money.	The Commission agrees and appreciates the support.
36			[L&A] Clarification was sought as to the meaning of "written direction" in Section 3(3)(c).	We have introduced a new section 7 in the revised Rules to elaborate on the meaning of a written direction.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
37			[ISD, HKSbA] The one business day rule may be too short, administratively too burdensome and too drastic for practical compliance, particularly when there are unidentified deposits and it may take two business days to identify the client. Additionally, imposing criminal liability for a breach as a result of occasional operational problems or inadvertence is objectionable. Two or three business days as a time limit for segregation is suggested.	We expect that licensed corporations will have standard controls and procedures enabling them to take reasonable steps to track client deposits and reconcile unknown receipts promptly. The criminal liability imposed under section 8 does not arise unless the failure to comply with section 3 or 4 was without reasonable excuse or with intent to defraud. If despite there being controls and procedures in place it still takes more than 1 business day to identify a particular deposit as being client money, it seems unlikely that criminal liability would arise.
38			[AP] For client money received in the form of a cheque, does "receipt" refer to purely physical possession of the cheque and if so, would the licensed corporation need to deposit its own funds into the segregated account to cover the non-cleared client cheque amount on behalf of its clients in the event the client cheque did not clear on time?	Recognizing that it may take a few days for a cheque to clear, we have amended the Rules to provide that a cheque will be regarded as being received for the purposes of section 4(3)(a) and 4(4) when the proceeds of the cheque are received.
39			[L&A, LSHK} Clarification is sought that the Rules would not cover the situation where (for example) a cheque in New Taiwanese dollars is received by a dealer in Hong Kong from a client, for forwarding to the dealer's Taiwan branch.	In the scenario described, the cheque can be paid in accordance with the client's written direction or standing authority under section 4(4) of the revised Rules.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
40			[AP] When investors effect fund payment through on-line banking, electronic fund payment (such as Payment by Phone Service) or autopay after office hours, the licensed corporation will face an extremely tight segregation schedule in order to follow the Client Money Rules.	We recognize that given certain administrative processing requirements, payments through PPS, or autopay after banking hours may take one business day or so before the funds are actually transferred into the licensed corporation's accounts. When the funds are received by the licensed corporation or the associated entity after normal banking hours, we interpret the timing requirements to start on the following business day.
41			[AP] More time should be allowed in respect of dividends or other income payment.	With respect to dividends and other income payments, as long as such payments have been initially identified as client money, they should first be deposited into the segregated account. Thereafter, the licensed corporation may allocate the exact amount of dividends or other income to their respective client on a client-by-client basis.
42			[General comment] Is it the client's or licensed corporation's decision as to what to do with the client money (i.e., pay it into a segregated account or pay it to the client or pay in accordance with the client's instruction within one business day after the receipt of any client money)?	Section 3(3) permits a licensed corporation to deal with client money in any of the ways specified in (a) to (d).

	Section reference	Details of the Rules	Respondent's comments	SFC's response
43			[AP] As a prudent and conservative approach, most licensed corporations will segregate all client money upon receipt regardless of whether the client money will be paid out for settlement within 2 business days. Moreover, it will be both difficult and administratively cumbersome for the licensed corporation to firstly distinguish whether the client money is for settlement and then adjust the said settlement amount from client payable account before segregation of client money. In case the licensed corporation cannot comply with such technical requirement within one business day without any intention to defraud, we consider it highly unfair to treat it as a criminal offence.	Under section 3(2)(a)(ii), a licensed corporation is not required to segregate client money required to be paid out within the next 2 business days for settlement or margin requirement purposes. If a licensed corporation, however, wishes to segregate such funds for operational convenience, it may certainly do so as those funds will be client money.
44			[HKSbA] After a client has placed an order to the broker for buying shares, he will immediately deposit money into the account. However, if the price does not perform as what the client expects, the order cannot be completed within the day and becomes a standing order on the following trading day. In such circumstances, under the draft Rules, the broker is required to transfer the money in and out of segregated accounts, thereby increasing the burden of the broker in its daily routine.	Assuming that the transaction is in Hong Kong stocks, if the client's order cannot be executed during the day, the money will not be needed for settlement within the next 2 days. Therefore, the money should be segregated. The argument of the order being carried forward to the next trading day can create a situation where client money may be continuously "rolled over" in a house account on a daily basis in order to execute a pending order (for example, a limit order where the price target is never reached). This situation is clearly undesirable from an investor protection point of view.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
45			[HKSbA, Lim] The current practice of depositing client money into segregated accounts within the T+4 limit should be maintained.	We have explained in the Consultation Paper our policy intent to reduce the exposure of client money by shortening of segregation deadline.
46	3(3)(d)		[commentator has reserved anonymity] It is difficult for market practitioners to determine what would be unconscionable and request the SFC to clarify this by highlighting any particular sections in the Ordinance which should be taken into account by market practitioners.	We think that it is clear from section 6 of the Unconscionable Contracts Ordinance (Cap. 458) what amounts to "unconscionable". We therefore do not think the Rules need to be more prescriptive in this respect. If a licensed corporation is in doubt, it should seek professional legal advice.
47			[Lim] Please clarify whether a standing instruction by client to transfer excess cash to a money market fund, is considered as an unconscionable contract.	Each case will depend upon its own particular facts. On the face of it, there is nothing in the circumstance described to indicate that there is anything unconscionable about this client instruction or carrying it into effect. However, if a licensed corporation is in doubt of whether a client instruction or carrying it into effect is unconscionable, it should seek professional legal advice.
48			[LTP] One commentator queried whether Section 3(3)(d)(i) is necessary as one would expect the statutory provisions of the Unconscionable Contracts Ordinance to apply whether or not this is explicitly stated in the draft Rules.	Section 3(3)(d)(i) is necessary to apply the Unconscionable Contracts Ordinance to any "client's authority", in case this might not otherwise fall under that ordinance.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
49	3(4)		[LTP] Does section 3(4)(a) include situations where the client has given specific instructions to remit money to such an account? If so, that would seem to be an inappropriate restriction. If not, what do the words "apply or permit to be applied" mean? If it means unilaterally applying client money, there would be, in any event, a prohibition from doing this.	We agree with the comment and have revised sections 3(3)(d) and 3(4)(a) to clarify this. The restriction only applies to standing authority but not specific directions.
50			[L&A, LSHK] As a drafting point, it is unclear whether section 3(4) is simply intended as a restriction on the ability of a licensed corporation/associated entity to rely on a standing authority from a client pursuant to section 3(3)(d), or whether it is a more general prohibition on transfers of client money to an account of the licensed corporation or to the other persons referred to in section 3(4). We assume that section 3(4) is only intended to apply in respect of transfers effected pursuant to section 3(3)(d), but this should be clarified.	We have revised section 3(3) and 3(4) to clarify this. Please also see response to comment 49.
51			[AP] Section 3(4) should be subject to section 4 so that a licensed corporation may transfer funds from trust accounts to house accounts if it is within the permitted purposes under section 4.	Please see response to comment 49 in relation to the prohibition on transferring client money to a licensed corporation or its associated entity. Subsections (3) and (4) in section 3 are now independent from each other under the revised Rules.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
52	3(5)		[FFHK] All the renowned financial centers in the world have been allowing FCM to "top up" segregated funds by its own house money. In fact, in Hong Kong, it has been the practice of HKFE to allow its FCMs to use its house money to cover shortfall in the customer segregated fund. The new Rules should be revised to allow FCM to top up segregated funds legally.	If client money is dealt with in compliance with these Rules, there should not be any shortfall in the segregated account. The purpose of the Rules is to keep client money separate from the licensed corporation's or the associated entity's own money. To explicitly allow "topping up" a client account with house money and commingling client funds with house funds would undermine this purpose.
53			[Lim] The Commission should consider allowing house money to be paid into trust accounts. Any amount over-segregated will be deducted against the liquid capital so as not to compromise the financial integrity of the licensed corporation. This practice will minimize the technical breaches and violations due to inadvertent clerical errors that occur from time to time.	See our response to comment 49 above.
54			[commentator has reserved anonymity] The practicality of complying with this requirement should be considered in that the SFC might need to allow the licensed corporation to maintain a minimum amount of non-client money in the account in order to avoid the account being closed in the case where the balance falls to zero. Also, the requirement to deduct brokerage from the account daily renders it more necessary to maintain a minimum amount in the account.	We appreciate that this might be a concern in very exceptional situations. Should hardship be encountered in complying with this requirement, the SFC may modify the requirement upon application.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
55			[commentator has reserved anonymity] Clause 3(5)(b) permits payment of an amount that is not client money but aggregated with client money into a trust account. Under section 84(5) of the current Securities Ordinance, only client money to be paid into a trust account. We query whether this expansion under the new Rules is a desirable change. Mixing trust money and the trustee's money has been known to give rise to numerous intractable problems. The Client Money Rules should aim at avoiding such problems by preventing rather than allowing mixing.	The clause has been removed. We also now provide in section 10 of the revised Rules that any non-client money must to be paid out of the segregated accounts.
56	4(1)	Payment of client money out of segregated accounts	[L&A, LSHK] Section 6 of the draft Client Securities Rules permits clients securities or securities collateral to be applied in settlement of any liability owed by or on behalf of the client to an intermediary, its associated entity or a third person. Why should the Client Money Rules be more restrictive as to the circumstances in which money can be applied to meet the client's liabilities?	We do not agree that these Rules are more restrictive than the Client Securities Rules because under these Rules, client money received or held by a licensed corporation or associated entity can be paid in accordance with client's direction or pursuant to client's authority. To apply section 6 of the Client Securities Rules, the licensed corporation also requires client's agreement in writing to allow it to dispose of the client's securities.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
57			[AP] Clause 4(1) allows a licensed corporation to use client money to meet settlement or margin requirements of the licensed corporation in respect of the securities dealing or futures contract trading activities of the client. Since market practice involves licensed corporations using separate affiliates to conduct securities dealing and futures contract trading activities, one suggested that clause 4(1)(c)(i) and 4(d) should be amended to include the client's obligations towards the licensed corporation or its associated entities.	Section 4(1)(c)(i) does not prohibit transfers in accordance with client's authority between segregated accounts of licensed corporations or their associated entities since the licensed corporation or associated entity at the receiving end is also subject to the same requirements in the Rules.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
58			[AP] As one of their risk control measures, licensed corporations would require related parties to enter into a cross-margining arrangement. The current wording of Clause 4(1) does not allow this. As a result, a licensed corporation cannot use the credit balance in Mr. A's account to offset the debit balance in the account of Mr. A Co Ltd, the investment vehicle of Mr. A. Such situation is highly undesirable and not in line with international commercial practice.	With respect to the cross-margining arrangement described, the Commission is unable to comment on the exact nature and enforceability of legal agreements entered into by the licensed corporation and its clients as such agreements will vary on a case by case basis. Given the varying set of facts and circumstances that can be present in each case, we see no reason to amend the Rules to permit automatic rights of setoffs. However, we note that section 4(1) permits client money to be paid according to client's authority or direction. We leave it to the licensed corporation to determine whether client's authority has been obtained in each particular case. In the scenario described, any money moved from Mr. A's company account to Mr. A's personal account or vice versa would require the relevant authority from each of these accountholders as Mr. A's company is a separate legal entity from Mr. A.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
59			[commentator has reserved anonymity] One commentator believed that an active client would not normally want to transfer the money outside Hong Kong except perhaps for the purpose of closing the account or simply discontinuing transaction activities. In this respect, the SFC should consider requiring such client money received in Hong Kong to be kept in Hong Kong subject to the client's written instruction to transfer the money outside Hong Kong. Such an instruction should state the client's reason(s) for doing so. To further safeguard the client, client's written acknowledgement of a risk disclosure statement stating that there are risks associated with transferring client money overseas as such money will no longer be subject to any specific segregation rule or requirement should be obtained.	In the scenario above, be it either overseas clients trading in Hong Kong stocks or Hong Kong clients trading in overseas securities, section 4(1)(b) require a client's direction (similarly, section 4(1)(c) requires a client's authority) to transfer funds offshore from a segregated account. Requiring a client to state his/her reasons for the transfer is not warranted. The Code of Conduct imposes the obligation for licensed corporation to properly safeguard client assets held by it, regardless of the assets' physical location. This is also a matter of investor education for the client to protect his/her assets. With respect to the risk disclosure suggested, this will be considered under the context of requirements under the Code of Conduct.
60			[Lim] The definition of a client's "securities" and "securities collateral" should include implicitly "money". While it is possible to pledge client securities collateral with banks to raise funding for margin financing, by the same analogy, if the dealer has clients' authority, the dealer should be able to use the credit balances of margin clients as working capital for margin financing.	By definition under Part 1 of Schedule I of the Ordinance, "securities" and "securities collateral" do not include "money". In general, we do not think credit balances held for margin clients is in the nature of collateral. In addition, a licensed corporation owes a fiduciary duty to its clients for money held on trust for them and cannot apply the money as if it were his own money.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
61			[L&A] It would be useful to include an express provision in section 4(1), as in the UK rules, that a licensed corporation can cease to treat as client money any unclaimed client money balance if it can be demonstrated that the corporation had taken reasonable steps to trace the client concerned and return the balance.	We do not consider this to be necessary. The circumstances leading to a sum of client money becoming an unclaimed amount varies. Therefore, the treatment of unclaimed client money should best be decided on a case-by-case basis.
62	4(2)		[AP] In the event of over-segregation, it is suggested that the Rules could specify that the licensed corporation's right towards any over-segregated assets in clients' trust accounts would be subordinated to clients' claim. As a result, neither the licensed corporation or its successor or liquidator may assert any right in the trust account unless and until all clients' claims are fully satisfied.	We do not consider this to be necessary. The segregated account should only contain client money. The Rules do not promote nor permit keeping non-client money in the segregated account.
63			[Lim] For consistency, a four business day time limit for the payment of non-client money out of trust account should be applied.	The Rules require segregation of client money within 1 business day of receipt. Payment of non-client money out of the account must also be made within 1 business day. We do not see how a 4-day time limit as suggested would result in consistency.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
64			[L&A] The position in the U.S. is that cash held for customers can be commingled with a broker-dealer's own cash. Customers are protected through the requirement that a broker-dealer maintain a bank account for the benefit of its customers in which it must deposit funds equal to the excess of amounts owing to customers over amounts owed by customers to the broker-dealer.	The Commission understands that in the United States, a special reserve bank account concept is utilized as part of the customer protection – reserves and custody of securities rule under US Securities Exchange Act Rule 15c3-3. While this works in the United States, the US scheme encompasses both securities as well as client money, as well as accounting for the value of other liabilities including securities not received, borrowed securities, failed delivery securities and margin loan shortfalls and excesses, etc. There is also a monthly reporting requirement to the regulator under the US rules. In effect, the US model is not directly applicable nor easily adoptable into our client money rule.
65	5	Payment of interest on client money held in segregated accounts	[Lim] Can brokers retain the interest difference derived from client money, provided it is stated in the client's agreement?	Yes they can, subject to an agreement to that effect. We have added a new section 6(2) to clarify this point and deleted section 3(2)(e).

	Section reference	Details of the Rules	Respondent's comments	SFC's response
66			[L&A, LSHK] The definition of client money deems interest arising on client money itself to be client money, which would appear to mean that (contrary to what is stated in the Client Money Rules) the licensed corporation could not agree with its clients that the licensed corporation could retain some or all of the interest for its own account. It would be more satisfactory if the definition in the Ordinance was amended such that (consistent with the Client Money Rules) it only applied to money held or received (in Hong Kong) by a licensed corporation or an associated entity, and if the reference to "accretions thereto whether as capital or income" were deleted.	We see no reason to change the general definition of "client money" in the manner suggested. Client money is defined to include accretions thereto, which would include interest. As the interest accrued is therefore the client's, the client should be entitled to agree to relinquish such accrued interest to the licensed corporation. However, if the client does not agree, any accrued interest remains client money.
67			[FFHK] The wordings should be revised to ' subject to any agreement with a client to the contrary, a licensed corporation or any associated entity of the licensed corporation is entitled to retain 100% of all amounts derived by way of interest from the retention in an account referred to in section 3(1) of the client money as referred to in section 3(2) received from or on behalf of the client.	See response to comment 65.
68	6	Notification where client money becomes subject to exchange control	[L&A, LSHK, ISD, AP, BNP] Comments were received in respect of the practical difficulties in complying with this requirement, the benefit to investors, the timing of notification.	After considering all the market comments relating to section 6, we have concluded that it is preferable from a policy perspective to delete this requirement.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
69	7	Reporting of non-compliance with certain provisions of the Rules	[BNP] A commentator suggested that a "materiality" threshold or standard be incorporated into section 7 to exempt reporting of minor or immaterial errors of an administrative or calculating nature should be incorporated. The section was viewed as very wide and encompassing and seemed to apply to all non-compliance irrespective of the amount and the reason. It was noted that in actual operations, there would bound to be occasional calculation errors, erroneous entry and discrepancies in reconciliation. Without some materiality standard, the actual reporting would create a tremendous amount of administrative and paper work for all parties. Additionally, it was pointed out that the notification requirement in the Revised Code of Conduct applied to material breaches only.	Materiality of a breach needs to be assessed in view of all the circumstances and it is not desirable to set a rigid rule in the law. Monetary limits are also difficult as the impact of such limits could vary firm by firm. It is in the interest of client protection to have the regulator informed of a failure of segregation of client money irrespective of the reason of that failure. The Commission needs to know as soon as possible that a breach has happened in order to evaluate the implications. After receiving the notification, the Commission and the firm can confer as to the reasons for the breach as well as a more detailed timetable for a full report. We note that rules in the United States require an immediate reporting on any failure to comply with their client money and securities segregation and safe custody rules.
70	8	Penalties	[L&A, LSHK] In principle, criminal liability for conduct committed with intent to defraud is unobjectionable. However, section 8 effectively creates offence of strict liability for matters that are likely to arise through administrative errors, the maximum penalty in Section 8(i)(a), of 2 years imprisonment and a fine of HK$200,000, appears unduly severe.	We disagree that the rule effective creates a strict liability offence. Liability is created only if there is either intent to defraud or a breach without reasonable excuse.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
Other comments on Consultation Document of the Rules				
71	Para. 13	On the revised scope of client money	[HKSbA] The Rules increase the broker's workload and create difficulties if a client sold securities but did not collect his/her cheque promptly or opts to reserve the money for future purchases without notifying the broker beforehand.	The licensed corporation should clarify the client's intentions with the client and transfer the sum to trust account if there is no instruction otherwise.
72			[HKSbA] Some are of the opinion that due to the vast differences between the operations of leveraged forex trading and the sophisticated dealing practices in the securities trading business, it is not advised to draw any comparison between the two industries in this regard.	We disagree. The receipt and payment practice is essentially the same for foreign exchange trading and securities dealing business.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
73	Para. 22	On cash collateral	[L&A, HKSbA, AP] Many commentators generally objected to inclusion of cash collateral within the coverage of the money protection rules while others requested reconsideration of the policy reasons for the inclusion or clarification of the scope of the coverage. It was pointed out that the nature of cash collateral is different from that of trust money (e.g. whether there is any legal implication if cash collateral is required to be paid into a trust account as required for client money), it may not be appropriate to apply the Rules to cash collateral. Standard practices and transactions were highlighted for the Commission's consideration as examples of why the Rules should not extend to cash collateral. For example, for transactions such as stock loans and derivatives, it is usual for cash collateral to be taken by way of outright transfer, so that the transferee is free to use the money for its own purposes and simply owes a debt for the amount of the collateral to the transferor. It was further pointed out that client agreements will often contain provisions enabling a licensed person to apply cash (particularly cash collateral) of a client, in settlement of amounts owing to the licensed person or its affiliates by the client, howsoever the debt from the client has arisen. Licensed corporations or its associated entities may receive cash collateral pursuant to financial transactions such as a swap. One commentator considered the these entities should have rights to apply the cash collateral in accordance with an agreement signed between the client and the company.	See our response to comment 28.

	Section reference	Details of the Rules	Respondent's comments	SFC's response
74			[L&A] If the cash collateral is held on trust for the client, a client's trustee in bankruptcy or liquidator may be entitled to require repayment of the collateral notwithstanding that the client still had actual or contingent obligations to the licensed corporation in respect of which the collateral had been provided, unless the Client Money Rules specifically protect the licensed corporation from having to pay out the collateral in these circumstances.	In the event of a client bankruptcy, the liquidator would be entitled under the Bankruptcy Ordinance to identify and seize all assets of the bankrupt client and conduct an orderly liquidation. Whether the licensed corporation is legally entitled to the cash collateral would be determined by the liquidator based on a number of considerations including the contractual terms of the underlying transaction between the client and the licensed corporation, the nature of the debt, and priority of the creditor. The Commission is not in a position to exempt client assets from the potential reach of the liquidator nor is it the intention of these Rules to do so.

List of Respondents

Date Received	Respondent
24 May 2001	Hong Kong Stockbrokers Association (HKSbA)
24 May 2001	- (commentator has reserved anonymity)
24 May 2001	Hong Kong Trustees Association (HKTA)
24 May 2001	JF Asset Management Ltd (JFAM)
24 May 2001	Albert Pun (AP)
24 May 2001	Law Society of Hong Kong (LSHK)
24 May 2001	Linklaters & Alliance representing (L&A) - Credit Suisse First Boston (Hong Kong) Ltd - Deutsche Securities Asia Ltd - Dresdner Kleinwort Wasserstein - Goldman Sachs (Asia) L.L.C. - J.P. Morgan - Merrill Lynch (Asia Pacific) Ltd - Morgan Stanley Dean Witter Asia Ltd - Salmon Smith Barney Hong Kong Ltd - UBS Warburg
24 May 2001	Lloyds TSB Pacific Ltd (LTP)
24 May 2001	Lim Wah Sai (Lim)
24 May 2001	Institute of Securities Dealers Ltd (ISD)
25 May 2001	BNP Paribus Peregrine Securities Ltd (BNP)
25 May 2001	- (commentator has reserved anonymity and contents of submission)
30 May 2001	- (commentator has reserved anonymity and contents of submission)
31 May 2001	Fimat Futures (Hong Kong) Ltd (FFHK)

13 June 2001	- (commentator has reserved anonymity)
26 June 2001	- (commentator has reserved anonymity and contents of submission)
Respondent with no specific comments on the draft Rules	
31 May 2001	Prudential Assurance Company Ltd

附件 2

經修訂擬稿

[參考：《證券及期貨條例》第 149 條]

《證券及期貨(客戶款項)規則》

目錄

《證券及期貨(客戶款項)規則》

(由證券及期貨事務監察委員會根據《證券及期貨條例》
(2002 年第 5 號)第 149 條訂立)

1. 生效日期

本規則自《證券及期貨條例》(2002 年第 5 號)第 VI 部的生效日期起實施。

2. 釋義

在本規則中，除文意另有所指外 —

"相連法團"(linked corporation)就持牌法團的有聯繫實體而言，指符合以下說明的法團 —

(a) 該有聯繫實體屬該法團的控權實體；

(b) 該法團屬該有聯繫實體的控權實體；或

(c) 某人士屬該法團的控權實體，而該人士亦屬該有聯繫實體的控權實體；

"書面指示"(written direction)具有第 7 條給予該詞的涵義；

"常設授權"(standing authority)具有第 8(1)條給予該詞的涵義；

"獨立帳戶"(segregated account)指根據第 4(1)及(2)條開立和維持的獨立帳戶。

3. 適用範圍

(1) 除第(2)及(3)款另有規定外，本規則適用於符合以下說明的持牌法團的客戶款項 —

(a) 在進行該法團獲發牌進行的任何受規管活動的過程中，由該法團或代該法團收取或持有；或

(b) 與進行該受規管活動有關的，由該法團的有聯繫實體或代該實體收取或持有。

(2) 本規則不適用於由任何持牌法團或由任何持牌法團的有聯繫實體在香港以外地方收取或持有的該法團的客戶款項。

(3) 本規則不適用於符合以下說明的持牌法團的客戶款項 —

(a) 維持於以該法團的客戶的名稱開立的銀行帳戶的；及

(b) 只因該法團或該法團的有聯繫實體 —

(i) 能夠將該客戶款項移轉給它自己的；或

(ii) 在其他方面對該客戶款項有控制權或支配權，

以致由該法團或有聯繫實體持有的。

4. 將客戶款項存入獨立帳戶

(1) 持牌法團或其任何有聯繫實體如收取或持有第(3)款提述的該法團的客戶款項，則須按照第(2)款在香港爲客戶款項開立和維持一個或多於一個獨立帳戶，每個帳戶均須指定爲信託帳戶或客戶帳戶。

(2) 第(1)款提述的獨立帳戶須在以下機構開立和維持 —

(a) 認可財務機構；或

(b) 證監會爲施行本條而就一般或個別個案批准的任何其他人士。

(3) 持牌法團或其任何有聯繫實體須按照第(4)款處理它收取或持有的該法團的下列客戶款項款額 —

(a) 代該法團的客戶收取的與證券交易或期貨合約交易有關的所有款額，但 —

(i) 須減去與該等交易有關連的佣金及其他恰當費用；

(ii) 該法團在收取上述款額當日或隨後的 2 個營業日內，爲履行該客戶須就該等交易遵從關於交收或保證金的規定的義務所支付的任何款額則除外；及

(iii) 用以補還該法團在收取上述款額當日之前的任何時候，爲履行該客戶須就該等交易遵從關於交收或保證金的規定的義務所支付的任何款額則除外；

(b) 從獲該法團提供財務通融以利便取得和(如適用的話)繼續持有證券的該法團的客戶收取，或代該客戶收取的所有款額，但用以減低該客戶對該法團的欠款的款額則除外；

(c) 從該法團的客戶或代該客戶收取的與槓桿式外匯買賣有關的所有款額，但須減去與該項買賣有關連的佣金及其他恰當費用；

(d) 從該法團的客戶或代該客戶收取的所有其他款額，但以下項目除外 —

(i) (a)(i)、(ii)及(iii)段提述的款額；

(ii) (b)段提述的用以減低持牌法團的客戶就財務通融對該法團的欠款的款額；及

(iii) (c)段提述的佣金及其他恰當費用。

(4) 持牌法團或其任何有聯繫實體須在收取第(3)款提述的該法團的客戶款項款額後的一個營業日內 —

(a) 將該款額存入獨立帳戶；

(b) 將該筆從有關客戶或代有關客戶收取的款額支付予有關客戶；

(c) 在不抵觸第(6)款的規定下，按照書面指示支付該款額；或

(d) 除第(5)款另有規定外並在不抵觸第(6)款的規定下，按照常設授權支付該款額。

(5) 持牌法團或其任何有聯繫實體不得在下述情況下根據第(4)(d)款支付該法團的客戶款項款額 —

(a) 如它支付有關款額即會屬《不合情理合約條例》(第458章)所指的不合情理，猶如有關的常設授權屬該條例所指的合約一樣；或

(b) 如該常設授權授權向該法團或有聯繫實體在香港的帳戶，或向任何和該法團有控權實體關係或以該有聯繫實體屬爲相連法團的法團在香港的帳戶支付款額，而該帳戶並非獨立帳戶。

(6) 持牌法團或其有聯繫實體不得將該法團的任何客戶款項支付予或准許將該等款項支付予 —

(a) 其任何高級人員或僱員；或

(b) 和該持牌法團有控權實體關係或以該有聯繫實體屬爲相連法團的法團的任何高級人員或僱員，

除非該高級人員或僱員是該持牌法團的客戶，且該客戶款項是從該人員或僱員或代該人員或僱員收取的。

5. 從獨立帳戶提取客戶款項

(1) 凡持牌法團或有聯繫實體持有在獨立帳戶內的該法團的客戶款項款額，須將該款額一直保留在該帳戶內，直至以下情況出現爲止 —

(a) 該筆代該法團的客戶持有的款額已支付予該客戶；

(b) 在不抵觸第(3)款的規定下，按照書面指示支付；

(c) 除第(2)款另有規定外並在不抵觸第(3)款的規定下，按照常設授權支付；

(d) 該筆代該法團的客戶持有的款額須用於履行該客戶須就該法團代其進行的證券交易或期貨合約交易遵從關於交收或保證金的規定的義務；或

(e) 該筆代該法團持有的款額須用以支付以下款項 —

(i) 該客戶就該法團進行該法團獲發牌進行的任何受規管活動而欠該法團的款項；或

(ii) 該客戶就該有聯繫實體爲該客戶或代該客戶收取或持有客戶款項而欠該有聯繫實體的款項。

(2) 持牌法團或其任何有聯繫實體不得在下述情況下根據第(1)(c)款支付該法團的客戶款項款額 —

(a) 如支付有關款額即會屬《不合情理合約條例》(第 458 章)所指的不合情理，猶如有關的常設授權屬該條例所指的合約一樣；或

(b) 如常設授權授權 —

(i) 在第(1)(d)或(e)款列明以外的情況下向該法團或有聯繫實體在香港的帳戶支付款項；或

(ii) 向任何和該法團有控權實體關係或以該有聯繫實體屬爲相連法團的法團在香港的帳戶支付款項，

而該帳戶並非獨立帳戶。

(3) 第(1)款提述的持牌法團或其有聯繫實體不得將該法團的任何客戶款項支付予或准許將該等款項支付予 —

(a) 其任何高級人員或僱員；或

(b) 和該持牌法團有控權實體關係或以該有聯繫實體屬爲相連法團的法團的任何高級人員或僱員，

除非該高級人員或僱員是有關客戶而該客戶款項是代他持有的。

6. 如何對待在獨立帳戶內持有的客戶款項的利息

(1) 除第(2)款另有規定外，持牌法團或其任何有聯繫實體如持有該法團的客戶款項，均須按照第 5(1)條處理在獨立帳戶內持有的客戶款項所產生的利息款額。

(2) 代持牌法團的客戶持有客戶款項的持牌法團或有聯繫實體，如因與該客戶訂立的協議而有權保留在獨立帳戶內的利息款額，則該法團或有聯繫實體須在 —

(a) 該利息記入該帳戶的貸方；或

(b) 該法團或有聯繫實體察覺該利息已記入該帳戶的貸方，

(兩者以較遲者爲準)後一個營業日內從該帳戶提取該利息款額。

7. 關於客戶書面指示的規定

就第 4(4)(c)或 5(1)(b)條而言，書面指示指符合以下說明的書面通知 —

(a) 關於該條提述的持牌法團的客戶款項款額的；

(b) 由該法團的客戶給予該法團或其有聯繫實體的，而 —

(i) 該客戶款項款額是從該客戶或代該客戶收取的；或

(ii) 該客戶款項款額是代該客戶持有的；

(c) 指示該法團或有聯繫實體以特定方式支付該客戶款項款額的；及

(d) 該通知在書面指示關乎的客戶款項已由該法團或有聯繫實體按所指示的方式支付後失效。

8. 關於客戶常設授權的規定

(1) 就第 4(4)(d)或 5(1)(c)條而言，常設授權指符合以下說明的書面通知 —

(a) 由持牌法團的客戶給予該法團或該法團的有聯繫實體；

(b) 授權該法團或有聯繫實體以一種或多於一種指明方式處理 —

(i) 不時從該客戶或代該客戶收取的客戶款項；或

(ii) 不時代該客戶持有的客戶款項；

(c) (除第(2)款另有規定外)指明該授權的不超過 12 個月的有效期；及

(d) 指明該授權可以何方式撤銷。

(2) 第(1)(c)款不適用於由持牌法團的屬專業投資者的客戶給予該持牌法團或有聯繫實體的常設授權。

(3) 在有效期屆滿前沒有被撤銷的常設授權可續期一次或多於一次，每次續期 —

(a) (如給予該授權的持牌法團的客戶不屬專業投資者)不得超過 12 個月；或

(b) (如給予該授權的持牌法團的客戶屬專業投資者)時間長短不限，

但有關續期只可按以下方式作出 —

(c) 給予該授權的持牌法團的客戶的書面要求；

(d) 藉以下程序 —

(i) 在該授權的有效期屆滿前 14 日或之前，獲給予該授權的持牌法團或有聯繫實體向給予該授權的持牌法團的客戶發出書面通知，提醒該客戶該授權的有效期即將屆滿，並通知該客戶除非他提出反對，否則該授權會在屆滿時按該授權指明的相同條款及條件續期，而續期期間爲 —

(A) 該授權指明的相等期間；

(B) 任何不超過 12 個月的指明期間(如該持牌法團的客戶不屬專業投資者)；或

(C) 任何期限的期間(如該持牌法團的客戶屬專業投資者)；及

(ii) 該客戶沒有在該授權屆滿前反對該授權續期。

(4) 凡常設授權按照第(3)(d)款續期，有關持牌法團或有聯繫實體(視屬何情況而定)須在該授權屆滿後的 1 星期內，將該授權續期的確認書給予該法團的客戶。

9. 收取支付客戶款項的支票

就第 4(3)(a)及(4)條而言，收取支付客戶款項款額的支票的持牌法團或其有聯繫實體，只在收到該支票的收益時方被視爲已收取該款額。

10. 從獨立帳戶提取客戶款項以外的款項的規定

持牌法團或其任何有聯繫實體如察覺它在獨立帳戶內持有並非該法團的客戶款項的款額，須在它察覺此事的一個營業日內，從該帳戶提取該款額。

11. 就沒有遵守本規則的某些條文作出報告

第 4(1)、(4)或 5(1)條適用的持牌法團或其有聯繫實體須在察覺本身沒有遵守該條後的一個營業日內，以書面通知將此事告知證監會。

12. 罰則

(1) 任何持牌法團或其有聯繫實體無合理辯解而違反第 4 或 5 條，即屬犯罪 —

(a) 一經循公訴程序定罪，可處罰款$200,000 及監禁 2 年；或

(b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

(2) 任何持牌法團或其有聯繫實體意圖詐騙而違反第 4 或 5 條，即屬犯罪 —

(a) 一經循公訴程序定罪，可處罰款$1,000,000 及監禁 7 年；或

(b) 一經循簡易程序定罪，可處罰款$500,000 及監禁 1 年。

(3) 任何持牌法團或其有聯繫實體無合理辯解而違反第 6、8(4)、10 或 11 條，即屬犯罪，一經定罪，可處第 3 級罰款。

(4) 任何持牌法團或其有聯繫實體意圖詐騙而違反第 6、8(4)、10 或 11 條，即屬犯罪，一經定罪，可處第 6 級罰款。

證券及期貨事務監察委員會主席

2002 年 月 日

註釋

本規則是由證券及期貨事務監察委員會根據《證券及期貨條例》(2002 年第 5 號)第 149 條訂立的。本規則訂明持牌法團及其有聯繫實體對待和處理在香港收取或持有的客戶款項的方式。其中有條文規定須在收取客戶款項後一個營業日內將款項存入指定爲信託帳戶或客戶帳戶的獨立帳戶。本規則亦就以下各項指明規定：從上述帳戶提取款項、對待存於上述帳戶內的客戶款項的利息，以及自行就沒有遵守規則作出報告。本規則亦就違反各別條文訂明罰則。

Derivation table of provisions of the Draft Rules released for public consultation and the revised Draft Rules

Section of the Draft Rules released for public consultation	Heading	Section of the revised Draft Rules
1	Commencement	1
2	Interpretation	2
2(1)	"client contract"	Deleted
	"client authority"	Renamed as "standing authority" and details of definition now incorporated in new s.8
2(2)		Deleted
3	Payment of client money into segregated accounts	
3(1)		4(1)&(2)
3(2)(a) to (d)		4(3)
3(2)(e)		Incorporated in new s.6(1)
3(3)		4(4)&(5)(a)
3(4)		4(5)(b)&(6)
3(5)		Deleted
4	Payment of client money out of segregated accounts	5
4(1)		5(1)(a) to (d), (e)(i)
4(2)		Deleted
5	Payment of interest on client money held in segregated accounts	Deleted
6	Notification where client money becomes subject to exchange control	Deleted
7	Reporting of non-compliance with certain provisions of the Rules	11
8	Penalties	12
8(1)(a)		12(1)
8(1)(b)		12(2)
8(2)(a)		12(3)
8(2)(b)		12(4)

	Brief description of new sections in the revised Draft Rules	Section of the revised Draft Rules
	Definition of "linked corporation"	2
	Definition of "segregated account"	2
	Definition of "standing authority"	2
	Definition of "written direction"	2
	Application	3
	Exclusion of amounts already excluded under s.4(3)(a), (b) and (c) from the coverage of s.4(3)(d)	4(3)(d)(i) to (iii)
	Payment of client money out of segregated account to associated entity for money owed by client to associated entity	5(1)(e)(ii)
	Restrictions on payment of client money out of segregated account according to clients' standing authority	5(2)
	Restrictions on payment of client money out of segregated account according to clients' written directions	5(3)
	Treatment of interest on client money held in segregated accounts	6
	Requirements in respect of a client's written direction	7
	Requirements in respect of a client's standing authority	8
	Receipt of cheques for client money	9
	Requirement to pay money other than client money out of segregated accounts	10