



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

Consultation Conclusions on Proposed Enhancements to the Investor Compensation Regime and Related Legislative Amendments

October 2019

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Executive summary

1. On 27 April 2018, the Securities and Futures Commission (**SFC**) issued a consultation paper on proposed enhancements to the Investor Compensation Regime (**ICF regime**) and related legislative amendments (**Consultation Paper**), allowing two months for comments.
2. The proposed enhancements were:
 - (a) to raise the compensation limit from \$150,000¹ to \$500,000 per investor per default, and, consequential to this, to raise the trigger levels for suspending and reinstating the investor compensation fund (**ICF**) levies from \$1.4 billion and \$1 billion, to \$3 billion and \$2 billion respectively;
 - (b) to adjust the coverage of the ICF regime so that it covers the northbound leg of Stock Connect and excludes the southbound leg; and
 - (c) to empower the SFC (in exceptional circumstances) to make interim compensation payments out of the ICF where urgent pay-outs are necessary to manage potential systemic risks in the securities and futures industry or to the financial stability of Hong Kong.
3. We received 10 submissions in response to the consultation. Respondents included individuals, intermediaries and an industry association. A list of the respondents (other than those who requested anonymity) is attached at [Annex 1](#).
4. This paper sets out the SFC's conclusions and responses to the comments received, and should be read in conjunction with the Consultation Paper. In brief:
 - (a) There was strong support for the proposals to increase the compensation limit, raise the trigger levels and adjust the ICF coverage in light of Stock Connect. We will proceed with these accordingly.
 - (b) As for the proposal to empower the SFC to make interim payments in exceptional circumstances, several concerns were raised regarding the detailed arrangements. For this and other reasons (detailed in paragraphs 12 to 14 below), we propose not to pursue this proposal for now.
5. In view of the above, we have proceeded to work with the Government on the drafting of the legislative amendments needed to implement the proposals described in paragraphs 2(a) and 2(b) above and plan to introduce them into the Legislative Council (**LegCo**) in the 2019/20 LegCo year. Subject to LegCo's negative vetting process, we hope to implement these proposals in early 2020.
6. We would like to thank all respondents for their time and effort in reviewing our proposals and submitting comments. The feedback received has been helpful in finalising our proposals.
7. The Consultation Paper, the responses received (other than those from respondents who requested that their submissions be withheld from publication) and this conclusions paper are available on the SFC's website at www.sfc.hk.

¹ Unless stated otherwise, values given in this paper are in Hong Kong dollars.

Comments received and the SFC's responses

Raising the compensation limit and trigger levels for levy suspension and reinstatement

8. We received overwhelming support for the proposal to raise the compensation limit from \$150,000 to \$500,000 and to raise the trigger levels for suspending and reinstating the ICF levies from \$1.4 billion and \$1 billion, to \$3 billion and \$2 billion respectively.
9. Most respondents agreed that the existing compensation limit was too low and raising it to \$500,000 would enhance investor confidence and the overall competitiveness of the Hong Kong market.
10. Two respondents submitted that the proposed \$500,000 limit was not sufficient, with one suggesting that it be raised to \$1 million. We do not believe a higher limit would be appropriate at this stage. The proposed \$500,000 is already more than three times the current limit. It is also on a par with the limit under the Hong Kong Monetary Authority's Deposit Protection Scheme. A higher limit is also likely to present moral hazard concerns. Moreover, a higher limit will translate into higher levy suspension and reinstatement levels, which in turn will likely require an immediate reinstatement of the ICF levies. Taking all of these factors into account, we consider the proposed \$500,000 limit to be appropriate and adequate for now.

Adjusting coverage to cater for Stock Connect

11. Four respondents commented on the proposed expansion of the ICF regime to cover losses relating to northbound trading. All of them supported the proposal, with one noting that it was fair and would enhance investor confidence and interest in northbound trading.

Providing flexibility for the SFC to make interim payments

12. A few respondents commented on the proposal to empower the SFC to make interim compensation payments out of the ICF in exceptional circumstances where urgent pay-outs are necessary to manage potential systemic risks in the securities and futures industry or to the financial stability of Hong Kong. While they generally supported this proposal, they also raised concerns. In particular, they asked about what measures would be taken to ensure this power is exercised openly, fairly and consistently; and, in the event of overpayments, whether the arrangements for recovering overpaid amounts were sufficient and what impact the failure to recover them could have on the ICF.
13. In view of the comments received, we agree that there should be guiding principles for how this power (which could be cast in broader and more general terms in the legislation) is to be exercised. This should provide greater flexibility where needed and avoid the need to define "systemic risk" (which may be challenging).
14. We also agree that it is important to put in place effective arrangements for recovering overpayments. We propose to set these out in rules to be made by the SFC. However, we acknowledge that the relevant rule-making power (ie, section 244 of the Securities and Futures Ordinance) does not provide *expressly* for the

making of rules relating to the recovery of overpayments. In view of this, and given the concerns raised, if this proposal is to be pursued, we believe it may be more prudent to first amend section 244 to expressly empower the SFC to make rules for the recovery of overpayments. This will require more time. In order not to delay the other enhancements to the ICF regime, we will not pursue the interim payment proposal at this time. We will consult the market again before doing so.

Other comments and points to note

15. *Review mechanism:* One respondent commented that it is important to have a mechanism to regularly review various aspects of the ICF regime (such as the adequacy of its scope, the compensation limit, trigger levels for suspending or reinstating the ICF levies) and to make quick adjustments if necessary. We agree that such reviews are necessary, and in fact we do regularly review the regime. However, quick adjustments are not always advisable or practical. A considered approach is necessary to ensure that all relevant factors are taken into account, and that market conditions that appear to necessitate adjustment are not just temporary phenomena. We believe therefore that our current practice of conducting regular broker surveys to obtain up-to-date information for assessing the continued suitability of various aspects of the ICF regime is adequate and should be continued.
16. *Funding source:* One respondent noted that compensation funds in other major jurisdictions are generally funded by market participants and suggested that the SFC also consider adopting a similar approach. We are mindful that the practice in other jurisdictions is different, but then each compensation scheme is also different, eg, in terms of the scope of coverage, the circumstances in which compensation is paid and the source of funding. A direct comparison of only one aspect is therefore not entirely appropriate. In the Hong Kong context, the current arrangement, whereby ICF levies are charged on a transaction basis and paid by buyers and sellers, has worked well since its implementation in April 2003. It is effective and easy to administer, and at minimal costs to investors. We therefore remain of the view that it should be maintained.
17. *Systems change:* One final point to highlight is that the proposals, if implemented, may necessitate some changes to intermediaries' systems. In particular, a reinstatement of the ICF levies, if triggered, will require intermediaries to collect ICF levies from their clients and reflect these on their contract notes. For those intermediaries providing northbound trading services (whether directly or indirectly), the contract notes issued to clients will need to reflect not only the ICF levies collected in respect of transactions effected on the Stock Exchange of Hong Kong Limited, but also transactions effected on the Shanghai Stock Exchange or Shenzhen Stock Exchange via Stock Connect. For intermediaries whose systems do not currently allow for such information to be reflected on contract notes, some system adjustment may be necessary although we do not expect this to be substantial. The SFC will also endeavour to give as much notice as possible to ensure sufficient market readiness before any reinstatement of the ICF levies. It is also worth noting that section 26(1)(b) of the Securities and Futures (Investor Compensation—Levy) Rules requires a period of at least two months between publication in the Gazette of a notice regarding the reinstatement of ICF levies, and their actual reinstatement.

Legislative amendments

18. The enhancements described in paragraph 2(a) and 2(b) above will require amendments to:
- (a) the Securities and Futures (Investor Compensation—Claims) Rules, Cap 571T (**ICF Claims Rules**);
 - (b) the Securities and Futures (Investor Compensation—Levy) Rules, Cap 571AB (**ICF Levy Rules**); and
 - (c) the Securities and Futures (Investor Compensation—Compensation Limits) Rules, Cap 571AC (**ICF Limits Rules**).
19. In accordance with section 398 of the SFO, an indicative draft of the proposed amendments to the ICF Claims Rules was attached to the Consultation Paper.² However, further amendments are needed for the following reasons:
- (a) As discussed in paragraphs 12 to 14 above, we do not propose to pursue the interim payment proposal for now. Accordingly, the amendments to sections 8 and 9, as well as the new sections 8A and 9A, that we previously proposed are no longer necessary.
 - (b) Since the issue of the Consultation Paper, we have been working with the Government on the drafting of the ICF Levy Rules and ICF Limits Rules. As the amendments to these overlap, to some extent, with the amendments to the ICF Claims Rules, it is necessary to align the three for consistency and better clarity. This has necessitated further drafting amendments to the ICF Claims Rules, most notably the addition of various definitions relating to Stock Connect. We have also taken the opportunity to make technical drafting amendments for better alignment with section 244(2) of the SFO which is the provision empowering the SFC to make the ICF Claims Rules.
20. The further amendments to the ICF Claims Rules are marked up in green font at [Annex 2](#) and explained in more detail by way of footnotes to that Annex.

Conclusions and way forward

21. In view of the strong support for the proposals described in paragraphs 2(a) and 2(b) above, we have proceeded to work with the Government on the drafting of the corresponding legislative amendments, and plan to introduce them into LegCo for negative vetting in the 2019/20 LegCo year. Subject to the negative vetting process, we hope the proposed enhancements will come into effect in early 2020. These enhancements will apply in respect of defaults occurring after the enhancements come into effect.
22. The SFC would like to take this opportunity to thank all respondents for their comments.

² Amendments to the ICF Claims Rules are made by the SFC while amendments to the ICF Levy Rules and the ICF Limits Rules are made by the Chief Executive in Council. Pursuant to section 398 of the SFO, in general, a draft of any amendments by the SFC must be exposed for consultation. Accordingly, the Consultation Paper attached an indicative draft of the amendments to the ICF Claims Rules.

Annex 1 – List of respondents

(in alphabetical order)

Respondents whose comments are published on the website of the SFC in full

1. Hon Christopher Cheung Wah-fung, SBS, JP
2. I-Access Investors Limited
3. Institute of Financial Planners of Hong Kong
4. Micus Cheng
5. Mr Li
6. Yuen Wai Tong

Respondents who requested their names to be withheld

7. Anonymous
8. Anonymous
9. Anonymous
10. Anonymous

Annex 2 – Draft amendments to the ICF Claims Rules

SECURITIES AND FUTURES (INVESTOR COMPENSATION—CLAIMS) RULES (Cap. 571, section 244(2))

[1 April 2003]
L.N. 12 of 2003

PART 1 PRELIMINARY

1. (Omitted as spent)
2. Interpretation

In these Rules, unless the context otherwise requires—

appointed day (指定日期) means the date appointed under section 13;

~~*associated person* (相聯者), in relation to a specified person, means—~~
~~(a) a person employed or otherwise engaged by the specified person;~~
~~(b) a person who may receive or hold client assets of the specified person under section 164 of the Ordinance; or~~
~~(c) an employee of the person referred to in paragraph (b);~~

associated person (相聯者) has the meaning given by section 236(2) of the Ordinance;³

claimant (申索人) means a qualifying client who makes a claim under section 4;

default (違責), in relation to a specified person or an associated person of the specified person, means—

- (a) the insolvency, bankruptcy or winding up of the specified person or associated person of the specified person; or
- (b) any breach of trust, defalcation, fraud or misfeasance committed by the specified person or associated person of the specified person, which occurs on or after the appointed day;

northbound link (北向通), in relation to a Stock Connect arrangement, means the facilities provided or arranged by the Stock Exchange Company under the arrangement—

- (a) for routing orders for the sale or purchase of securities for execution on the relevant Stock Connect market; and

³ This is a technical drafting amendment. The original definition of *associated person* essentially echoed the definition in section 236(2) of the SFO albeit using slightly different language. For better consistency, certainty and the avoidance of doubt, the definition now simply refers to the definition in section 236(2).

- (b) for handling matters relating to those securities;

~~*prescribed market* (訂明市場), means a stock market operated by the Shanghai Stock Exchange or the Shenzhen Stock Exchange;⁴~~

~~*prescribed securities* (訂明證券) means any securities which—
(a) are listed or traded or to be listed or traded on a prescribed market; and
(b) are determined by the Stock Exchange Company to be “China Connect Securities” in accordance with the rules of the Stock Exchange Company;⁵~~

qualifying client (合資格客戶), in relation to a specified person, means a person for whom the specified person provides a service but does not include—

- (a) a licensed corporation;
- (b) an authorized financial institution;
- (c) a recognized exchange company, a recognized exchange controller, or a recognized clearing house;
- (d) a person authorized to provide automated trading services under section 95(2) of the Ordinance;
- (e) an insurer authorized under section 8 of the Insurance Companies Ordinance (Cap. 41);
- (f) a manager or operator of a collective investment scheme authorized under section 104(1) of the Ordinance;
- (g) a manager or operator of an arrangement referred to in paragraph (iii) of the definition of *collective investment scheme* in section 1 of Part 1 of Schedule 1 to the Ordinance;
- (h) a person who is authorized, licensed or exempt by a competent authority in a jurisdiction outside Hong Kong for any activity that in the opinion of the Commission is the same as or similar to any of the activities carried on by a person referred to in paragraphs (a) to (g);
- (i) an associated person of the specified person—
 - (i) which is a corporation; or
 - (ii) who has committed any breach of trust, defalcation, fraud or misfeasance or assisted in the commission of a default by the specified person or any other associated person of the specified person;
- (j) the Government or a government of any place outside Hong Kong; and
- (k) a person in his capacity as a trustee or custodian of a person, scheme or arrangement referred to in paragraphs (a) to (j);

related assets (有連繫資產) means money and other property that relate to the—
~~(a) which are entrusted to or received by a specified person or an associated person of the specified person;
(b) to which a claimant is entitled or in which he has a beneficial interest; and
(c) which relates to the—
(i) (a) purchase;
(ii) (b) sale;~~

⁴ See footnote 8 below (and in particular paragraph (iv) there).

⁵ See footnote 8 below (and in particular paragraph (iv) there).

- ~~(iii)~~ (c) holding;
 - ~~(iv)~~ (d) pledge;
 - ~~(v)~~ (e) adjustment;
 - ~~(vi)~~ (f) exercise; or
 - ~~(vii)~~ (g) expiry,
- of specified securities or futures contracts;⁶

securities margin financing (證券保證金融資) has the same meaning as in Part 2 of Schedule 5 to the Ordinance except that paragraph (v) of the definition of that expression does not apply;

~~*specified person* (指明人士) means—~~

- ~~(a) an intermediary licensed or registered for dealing in securities or dealing in futures contracts;~~
- ~~(b) an intermediary licensed for securities margin financing; or~~
- ~~(c) an authorized financial institution which provides securities margin financing;~~

~~*specified person* (指明人士) has the meaning given by section 236(2) of the Ordinance;⁷~~

~~Note—~~

~~See also section 2A.~~

~~*specified securities or futures contracts* (指明證券或期貨合約) means any securities or futures contracts listed or traded or to be listed or traded on a recognized stock market or recognized futures market, or any prescribed securities—~~

- ~~(a) which are entrusted to or received by a specified person or an associated person of the specified person; and~~
- ~~(b) to which a claimant is entitled or in which he has a beneficial interest;~~

~~*specified securities or futures contracts* (指明證券或期貨合約) has the meaning given by section 236(2) of the Ordinance;⁸~~

⁶ This is a technical drafting amendment. The definition of **related assets** is amended by moving the original paragraphs (a) and (b) into the amended sections 4(1)(b) and (c), and renumbering original paragraphs (i) to (vii) as paragraphs (a) to (g). This is tidier as the contents of the original paragraphs (a) and (b) then appear in one provision only rather than in two definitions (i.e. **related assets** and **specified securities or futures contracts**) as is currently the case.

⁷ This is a technical drafting amendment. Paragraphs (a) and (b) of the original definition of **specified person** essentially echoed paragraphs (a) and (b) of its definition in section 236(2) of the SFO, albeit using slightly different language. The current definition in the ICF Claims Rules also includes a further provision to cover banks which provide margin financing. This further provision is added pursuant to paragraph (c) of the definition in section 236(2), but is not described as a prescription made under that paragraph. For better consistency, certainty and the avoidance of doubt: (i) a separate prescription provision (i.e. new section 2A) has now been added to cover banks providing margin financing; and (ii) the definition of **specified person** in the ICF Claims Rules now refers to the definition in section 236(2) and notes the new section 2A.

⁸ This definition has been amended to cater for the following matters:

Note—

See also section 2B.

Stock Connect arrangement (互聯互通安排) means the arrangement between the Stock Exchange Company and the operator of a Stock Connect market that facilitates mutual market access through facilities for routing orders for the sale or purchase of securities and for handling matters relating to those securities;⁹

Stock Connect market (互聯互通市場) means a stock market operated by the Shanghai Stock Exchange or the Shenzhen Stock Exchange;¹⁰

Stock Connect securities (互聯互通證券) means any securities—

- (a) that are listed or traded or to be listed or traded on a Stock Connect market; and
- (b) in respect of which an order for sale or purchase is permitted to be routed through the northbound link of a Stock Connect arrangement under the rules of the Stock Exchange Company;¹¹

Tribunal (審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of the Ordinance.

2A. Prescription of persons for definition of *specified person*

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- (i) The original paragraphs (a) and (b) are now unnecessary as their contents are dealt with under a single provision, i.e. the amended section 4(1)(b) and (c). This is similar to the amendment made to the definition of **related assets** (see footnote 6 above).
 - (ii) The reference to “any securities or futures contracts listed or traded or to be listed or traded on a recognized stock market or recognized futures market” is deleted as this essentially echoes the chapeau and paragraph (a) of the definition of **specified securities or futures contracts** in section 236(2) of the SFO.
 - (iii) The prescription of Shanghai Stock Exchange and Shenzhen Stock Exchange, for the purposes of adjusting the coverage of the ICF regime (as described in paragraph 2(b) of this Conclusions Paper) is now dealt with in new section 2B and a note is added to highlight this. Consequently, and for better consistency, certainty and avoidance of doubt, the term is now simply defined by reference to the definition in section 236(2) of the SFO.
 - (iv) In view of (iii) above, the definitions for **prescribed market** and **prescribed securities** (proposed previously) are no longer necessary. Moreover, only markets are now prescribed rather than both markets and securities. This better aligns with paragraph (b) of the definition of **specified securities or futures contracts** in section 236(2) of the SFO, which provides for the prescription of markets only.

⁹ The term **Stock Connect arrangement** is introduced to refer to: (i) the Stock Connect arrangement between the Stock Exchange of Hong Kong Limited (**SEHK**) and the Shanghai Stock Exchange (**SSE**); and (ii) the Stock Connect arrangement between the SEHK and the Shenzhen Stock Exchange (**SZE**).

¹⁰ The term **Stock Connect market** is introduced to refer to the SSE and SZE.

¹¹ The term **Stock Connect securities** is introduced to refer to those securities that can be traded via the trading links established under Stock Connect. As the list of securities that can be traded under Stock Connect may change over time, the definition here has been cast more broadly. The intention is to cover any securities if, at the relevant time, they are or are to be listed/traded on the SSE or SZE, and orders for them can be routed via the Stock Connect trading links.

An authorized financial institution that provides securities margin financing is prescribed for the purposes of paragraph (c) of the definition of *specified person* in section 236(2) of the Ordinance.¹²

2B. Prescription of markets for definition of *specified securities or futures contracts*

A Stock Connect market is prescribed for the purposes of paragraph (b) of the definition of *specified securities or futures contracts* in section 236(2) of the Ordinance, but only to the extent that the market relates to Stock Connect securities.¹³

PART 2
CLAIMS FOR COMPENSATION

3. Notice inviting claims

- (1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting a qualifying client of the specified person named in the notice who believes he has sustained loss as a result of such default to claim for compensation. Such a notice shall be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.
- (2) A notice published under subsection (1) shall specify a date, not being earlier than 3 months after publication of the notice, on or before which a claim for compensation may be made under section 4.

4. Making a claim for compensation

- ~~(1) Subject to subsection (1A), where a qualifying client of a specified person sustains a loss (7 of 2004 s. 55)~~
- ~~(a) as a result of a default committed on or after the appointed day by~~
- ~~(i) the specified person; or~~
- ~~(ii) an associated person of the specified person;~~
- ~~(b) in relation to~~
- ~~(i) specified securities or futures contracts; or~~
- ~~(ii) related assets;~~
- ~~the qualifying client may claim compensation from the compensation fund in respect of such loss.~~
- (1) Subject to subsections (1AA) and (1A), if—

¹² This is a technical drafting amendment. It prescribes certain banks for the purposes of paragraph (c) of the definition of *specified person* in section 236(2) of the SFO. (See also footnote 7 above.)

¹³ This provision prescribes a market for the purposes of paragraph (b) of the definition of *specified securities or futures contracts* in section 236(2) of the SFO. (See also footnote 8 above.) The provision essentially prescribes the SSE and SZE, but only to the extent that orders for securities listed/traded on those markets can be routed via the Stock Connect trading links. This qualification is necessary to better reflect the fact that not all securities listed/traded on the SSE or SZE can be traded via the Stock Connect trading links, and hence not all securities listed/traded on the SSE or SZE will come within the ICF regime.

- (a) a qualifying client of a specified person sustains a loss, as a result of a default committed on or after the appointed day by—
 - (i) the specified person; or
 - (ii) an associated person of the specified person, in relation to any specified securities or futures contracts or related assets;
 - (b) the specified securities or futures contracts or related assets are entrusted to or received by the specified person or the associated person; and
 - (c) the qualifying client is entitled to, or has a beneficial interest in, the specified securities or futures contracts or related assets, the qualifying client may claim compensation from the compensation fund in respect of the loss.¹⁴
- (1AA) In relation to Stock Connect securities or related assets that relate to Stock Connect securities, a qualifying client must not claim compensation from the compensation fund unless the securities were or were to be—
- (a) purchased; or
 - (b) otherwise acquired, through the northbound link of a Stock Connect arrangement.¹⁵
- (1A) A qualifying client of a specified person shall not claim compensation from the compensation fund in respect of any loss in respect of which he has been paid an amount of compensation from the Deposit Protection Scheme Fund

¹⁴ The amended section 4(1) deals with the following matters:

- (i) The chapeau adds a new proviso in the form of new section 4(1AA).
- (ii) The original section 4(1) is now essentially embodied in the revised section 4(1)(a), except that as a result of the amendments to the definition of **specified securities or futures contracts**, the scope of the revised section 4(1)(a) now includes northbound trading and excludes southbound trading.
- (iii) The new sections 4(1)(b) and (c) are intended to reflect the requirements that were previously incorporated in the definitions of **specified securities or futures contracts** and **related assets**. (See footnotes 6 and 8(i) above.)

¹⁵ The new section 4(1AA) deals with the following matters:

- (i) It aims to clarify the policy intention that only securities acquired, or to be acquired, under Stock Connect should come within the ICF regime. So, for example, where a particular stock could have been acquired under Stock Connect but was in fact acquired under another programme (e.g. QFII), the ICF regime will not apply.
- (ii) The provision refers to both securities “purchased” and securities “otherwise acquired”. The former is included because it is defined in the SFO and expressly covers subscriptions. The latter is included to cover securities that have been acquired otherwise than by purchase (e.g. as a result of a bonus distribution).
- (iii) Another point to note is that the words “were or were to be” are intended to cover the following situations:
 - (A) losses in respect of Stock Connect securities (or their related assets) where the securities were actually purchased/acquired;
 - (B) losses in respect of Stock Connect securities (or their related assets) where the securities ought to have been purchased/acquired but were not in fact purchased/acquired (e.g. due to the defaulting broker’s misappropriation of the purchase monies); and
 - (C) losses in respect of monies placed with the defaulting broker with a view to purchasing/acquiring Stock Connect securities in the future (e.g. if the market conditions and price are suitable), and irrespective of whether the investor had any particular Stock Connect securities in mind at the relevant time.

established by section 14 of the Deposit Protection Scheme Ordinance (Cap. 581). (7 of 2004 s. 55)

- (2) A claim under subsection (1) may include a claim for the costs reasonably incurred in and incidental to the making and proving of the claim.
- (3) A claim under subsection (1) shall be lodged with the Commission—
 - (a) if a notice under section 3(1) has been published, on or before the date specified in the notice; or
 - (b) if no such notice has been published, within 6 months after the day the claimant first became aware of the default giving rise to the claim.
- (4) A claim which is not lodged within the time limit provided in subsection (3) is barred, unless the Commission determines otherwise.

5. Submission of claims

- (1) Subject to subsection (2), a claim under section 4(1) shall be—
 - (a) lodged in the form specified by the Commission under section 402(1) of the Ordinance for the purposes of this section;
 - (b) completed and signed in accordance with such directions and instructions as are included in the form; and
 - (c) accompanied by such documents as are specified in the form.
- (2) The Commission may accept a claim lodged otherwise than in accordance with subsection (1).

PART 3 PROCESSING OF CLAIMS

6. Commission may require records

- (1) The Commission may, by notice in writing served upon a person, require the person to produce to the Commission originals or copies of such records as the Commission may reasonably require—
 - (a) in connection with a claim for compensation made under section 4(1); or
 - (b) for the purpose of assisting—
 - (i) the Commission in the exercise of its rights of subrogation under section 243 of the Ordinance; or
 - (ii) a recognized investor compensation company in the exercise of its rights of subrogation under section 87 of the Ordinance.
- (2) A notice under subsection (1) shall specify the records required and the date by which the person served with the notice is to furnish them to the Commission.

7. Determination by Commission

- (1) The Commission shall, in relation to a claim for compensation, determine—
 - (a) whether there has been a default by the specified person concerned or any associated person of the specified person;
 - (b) the date of the default (if any); and

- (c) whether the claimant is entitled to compensation from the compensation fund.
- (2) If the Commission determines that—
 - (a) there has been a default by a specified person or any associated person of the specified person; and
 - (b) the claimant is entitled to compensation from the compensation fund, the Commission shall determine a provisional amount of compensation in accordance with subsection (3).
- (3) The provisional amount of compensation referred to in subsection (2) shall be determined by the Commission having regard to—
 - (a) the market value, as at the date of the default, of the specified securities or futures contracts and of any related assets that the Commission is satisfied the claimant has lost as a result of the default less—
 - (i) any amount that the Commission is satisfied was due from the claimant to the specified person; and
 - (ii) any specified securities, ~~or~~ futures contracts or related assets that have been returned to the claimant after the date of the default; and
 - (b) any costs that the Commission is satisfied were reasonably incurred by the claimant incidental to the making and proving of his claim for compensation under section 4.

8. Notice of determination

- (1) Subject to subsection (2), where the Commission makes a determination under section 7, it shall issue a notice of determination to the claimant as soon as practicable thereafter.
- (2) The Commission shall not issue a notice of determination specifying a provisional amount of compensation that is less than the compensation claimed unless it has given the claimant a reasonable opportunity of being heard and, where the Commission decides to issue such a notice, it shall give its reasons in the notice of determination.
- (3) Where the Commission determines that compensation should be paid to a claimant, it shall specify the following in the notice of determination—
 - (a) the name of the person found to be in default;
 - (b) the date of the default;
 - (c) the provisional amount of compensation as determined under section 7;
 - (d) any relevant specified securities or futures contracts or related assets; and
 - (e) the amount of compensation payable under these Rules, ~~inclusive of any interim payment of compensation paid to the claimant under section 8A.~~¹⁶

~~8A. Interim payment by Commission~~

- ~~(1) The Commission may make an interim payment of compensation to a claimant in an amount that the Commission considers appropriate, if the Commission has a reasonable cause to believe that—~~

¹⁶ This amendment is now deleted as we do not propose to pursue the interim payment proposal for now.

- ~~(a) there is uncertainty as to the entire amount of compensation payable to the claimant in accordance with these Rules;~~
 - ~~(b) circumstances exist, in Hong Kong or elsewhere, which pose, or may pose, systemic risk in the securities or futures industry, or to the financial stability of Hong Kong; and~~
 - ~~(c) as a result of those circumstances, it is in the interest of the investing public or in the public interest not to delay payment of compensation to one or more claimants (including the claimant) until the uncertainty is resolved.~~
- ~~(2) Where the Commission makes an interim payment of compensation to a claimant pursuant to subsection (1), it must notify the claimant that the payment is an interim payment.~~
- ~~(3) Subsection (1) does not prevent the Commission from making interim payments of different amounts to different claimants or different classes of claimants.¹⁷~~

9. Payment of compensation

- (1) Subject to subsection (2) and section 11, the following amounts shall be paid out of the compensation fund—
- (a) any compensation payable to a claimant as specified in the notice of determination under section 8(3)(e), ~~inclusive of any interim payment of compensation paid to the claimant under section 8A;~~¹⁸
 - (b) any compensation payable following a decision of the Tribunal or the Court of Appeal, under Part XI of the Ordinance; and
 - (c) any costs awarded in favour of a claimant by the Tribunal, or the Court of Appeal, following a decision referred to in paragraph (b).
- (2) The total amount of compensation payable to a claimant under subsection (1)(a) and (b) shall not exceed the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance.
- (3) In determining the total amount of compensation to be paid to a claimant under subsection (1)(a) and (b), and in applying the limits on the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance, the Commission may aggregate separate claims for compensation by a claimant, or a number of claimants, or parts of those claims, if it is satisfied that the separate claims, or parts of those claims, represent the losses sustained by one person arising out of the same default.
- (4) The Commission may pay compensation by instalments if it determines that it is necessary or appropriate to do so.

~~9A. Recovery of payment by Commission~~

- ~~(1) If the amount of compensation paid, whether or not as an interim payment under section 8A, to a claimant from the compensation fund is later found to be greater than the amount of compensation payable to the claimant in accordance with these Rules, the claimant must repay the excess to the Commission in a manner, and within a period, specified by the Commission.~~

¹⁷ New section 8A is now deleted as we do not propose to pursue the interim payment proposal for now.

¹⁸ This amendment is now deleted as we do not propose to pursue the interim payment proposal for now.

- ~~(2) If a claimant contravenes subsection (1) —~~
- ~~(a) the Commission may impose on the claimant a late repayment fee of a sum not exceeding 5% of the amount of the excess that remains to be repaid by the claimant; and~~
- ~~(b) the claimant must pay to the Commission the late repayment fee in a manner, and within a period, specified by the Commission.~~
- ~~(3) Any such excess or late repayment fee repayable or payable by a claimant under this section is recoverable by the Commission as a civil debt due to the Commission.~~
- ~~(4) The Commission may, in relation to the excess or late repayment fee —~~
- ~~(a) determine, if it considers uneconomical to do so, not to recover the excess or late repayment fee from the claimant; or~~
- ~~(b) take such steps as it considers appropriate to recover the excess or late repayment fee from the claimant.~~
- ~~(5) The Commission must, on collecting any such excess or late repayment fee from a claimant, pay it into the compensation fund.¹⁹~~

PART 4
MISCELLANEOUS

10. Financial arrangements

The Commission may arrange for such insurance, surety, guarantee or other financial arrangements as it considers appropriate to facilitate the administration of the compensation fund.

11. Provision where the money available to the compensation fund is insufficient to meet claims

- (1) If, at any time, the Commission determines that the amount of money available to the compensation fund is insufficient to pay the total amount of compensation then payable to the claimants, or likely to become so payable—
- (a) under these Rules; and
- (b) in the circumstances referred to in section 9(1)(b), the amount available to the compensation fund is to be apportioned among the claimants in such manner as the Commission may determine.
- (2) In the event that any amounts referred to in section 9(1) remain unpaid because the Commission has determined that an apportionment shall be made under subsection (1), the amounts are to be paid when there is sufficient money available to the compensation fund.

12. Discharge of claims

Upon payment of the full amount determined to be payable to a claimant under these Rules, the rights of the claimant against the compensation fund in relation to the claim and the default are absolutely discharged.

¹⁹ New section 9A is now deleted as we do not propose to pursue the interim payment proposal for now.

13. Appointed day

The Commission may by notice published in the Gazette appoint a date as the appointed day for the purposes of these Rules.