



Banking Development Department

Our Ref : G16/1C

28 February 2002

Ms Lucinda Wong
Director of Licensing
Securities and Futures Commission
12/F, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

Dear Lucinda,

RE : DRAFT SECURITIES AND FUTURES (PROFESSIONAL INVESTOR) RULES

I refer to the captioned draft Rules currently under public consultation. Our comments are set out below.

- (1) As defined in section 2, "custodian" means a corporation the principal business of which is to act as a custodian of securities or other property for another person, whether on trust or by contract. While authorized institutions (particularly licensed banks) are major custodians in the market, it might not be their principal business to perform such role. It would therefore be desirable if the definition can be adjusted to ensure that authorized institutions can be regarded as custodians for this purpose.
- (2) "Individual", as defined also in section 2, includes a person's spouse and children where a portfolio is held jointly with them. This may beg the question of why other joint accounts do not qualify as professional investors even if the portfolio size threshold is satisfied.
- (3) "Trustee company" under section 3(1)(a) is not defined in the draft Rules. It is uncertain whether this refers to trust companies registered under Part VIII of the Trustee Ordinance (Cap. 29). A definition is desirable to ensure consistency in interpretation.
- (4) Professional investor includes any trustee company having been entrusted with total assets of not less than HK\$40 million (or equivalent), as stated in its most recent audited financial statements. It appears that the size of the entrusted assets may not

be reported in the audited financial statements of a trustee company. It seems therefore necessary to set out another means of ascertaining whether the monetary threshold is met, e.g. making reference to the audited financial statements of the trusts in relation to which the company is the trustee.

- (5) The audited financial statements for verifying the size of the assets entrusted to a trustee company or the asset size of a corporation or partnership must not be more than 16 months old. On the other hand, a current statement of account issued by the custodian of the client is required for verifying the portfolio size of individuals, corporations or partnerships. To ensure consistency it may be desirable to set out explicitly how old a custodian statement will not be considered as current.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Danny Leung', with a stylized flourish at the end.

Danny Leung
Division Head