



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

**Consultation Conclusions on the
Draft Securities and Futures
(Accounts and Audit) Rules**

《證券及期貨(帳目及審計)規則》
草擬本的諮詢總結

Hong Kong
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香港
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引言

1. 證券及期貨事務監察委員會(“證監會”)在2001年12月21日就《證券及期貨(帳目及審計)規則》(“該規則”)的草擬本發表諮詢文件(“《諮詢文件》”)。
2. 《諮詢文件》載有詳盡規定，訂明有關周年帳目的內容、審計規定及核數師的意見的概括範圍。
3. 諮詢期於2002年1月31日結束。
4. 附件1載有就該規則所接獲的意見的摘要(“《意見摘要》”)。
5. 本會在考慮過所收到的意見書及與評論者進行討論後，認為適宜對該規則作出數項修訂。
6. 該等修訂已獲證監會通過成為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，主要是說明我們為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. 本諮詢總結旨在為對該規則感興趣的人士，分析在諮詢過程中所提出的主要意見，以及解釋證監會在作出有關總結時的理據。本總結應與《諮詢文件》、該規則、《意見摘要》及經修訂的該規則草擬本一併閱讀。

公開諮詢

A. 背景

8. 該規則訂明持牌法團及有聯繫實體須向證監會呈交的周年帳目及有關該等帳目的核數師報告的內容。
9. 該規則就現行規定作出的主要修改如下：
 - 該規則將擴展至適用於所有持牌法團及有聯繫實體；
 - 規定《證券及期貨(財政資源)規則》(“《財政資源規則》”)內訂明的就有關財政年度結束時製備的特定申報表，必須予以審計，然後呈交證監會；

- 在適當的情況下，規定有關核數師須確認持牌法團或有聯繫實體的監控制度是否足夠，以確保其遵從《證券及期貨(客戶款項)規則》(“《客戶款項規則》”)及《證券及期貨(客戶證券)規則》(“《客戶證券規則》”)；及
- 以問卷方式從持牌法團及有聯繫實體取得有關其業務及風險管理的資料。

B. 諮詢過程

10. 除了發出公布邀請公眾提交意見外，證監會亦同時將《諮詢文件》派發予所有註冊人士及多個專業團體。《諮詢文件》亦同時載於證監會的網站。
11. 證監會在諮詢期內及其後曾與業內人士及其法律顧問舉行多次會議，就他們的意見進行磋商。
12. 本會從法律界、會計界及業界，當中有國際經紀行、業界代表組織、專業團體(包括香港會計師公會及香港律師會在內)收到 9 份意見書。其中一份意見書內附有香港證券專業學會向其會員進行的意見調查。
13. 有關意見的整體評語都是正面的。評論者普遍確認有需要製備經審計的年度帳目，而有關意見主要集中於某些新規定對開支成本可能產生某些影響，以及是否有必要制定內部監控指引或指標。

諮詢總結

就有否違反《財政資源規則》一事的核數師意見

14. 該規則規定核數師必須就持牌法團在財政年度內有否違反《財政資源規則》一事作出意見(第 4(1)(g)條)。
15. 香港會計師公會就該項要求表示關注，指出有關規定不適當地擴闊了原先須就有否遵從《財政資源規則》一事作出核數師意見的有關要求。該會認為較適宜的做法，是純粹要求核數師述明，“有關核數師認為看來”有否違反《財政資源規則》的事情，而非述明實際上有否任何該等違規事宜。

16. 有關政策的原意並非要通過這種方式來大幅度擴展有關審計需涵蓋的範圍。因此，我們已修改第 4(1)(g)條，以便有關要求符合現行準則。

該規則指明的規定及格式

17. 若干評論者關注到，根據該規則須呈交的周年帳目，必須載有聲明確認有否遵從多條其他規則的規定，而該等其他規則在諮詢期間尚未定稿或發表。該等規則包括《客戶款項規則》、《客戶證券規則》、《財政資源規則》及《證券及期貨(備存紀錄)規則》(《備存紀錄規則》)以及財務報表及問卷的標準格式。該等評論者表示，他們難以就這些草擬規則全面地評估該等規定所帶來的影響。
18. 鑑於我們進行諮詢的首要目標，是就適用於持牌法團、有聯繫實體及其核數師的在會計及審計方面的一般規定徵詢各界的看法及意見，因此，我們認為評論者仍可在未有某些參考文件的情況下，就該規則所反映出的概括性原則提供寶貴意見。無論如何，目前所有相關規則都已經發表以進行諮詢，因此，有關人士應可概括地了解我們擬設立的規定。至於有關作出報告的較詳盡規定，例如標準格式的財務報表及問卷等，則無需在這次諮詢中一併處理。事實上，我們一直有就該等文件的定稿與業界及專業團體密切聯絡。

需制訂內部監控指引

19. 該規則規定持牌法團或有聯繫實體的核數師必須每年作出意見，述明持牌法團或中介人的有聯繫實體是否備有足夠的監控制度，以確保其遵從《客戶款項規則》及《客戶證券規則》內有關客戶保障的規定(第 4(1)(e)條)。
20. 市場參與者及會計專業人士都要求提供更詳盡的指引，以協助訂立可接納的內部監控制度。一般而言，我們同意有必要就此訂立指引，並且將會與市場參與者及專業團體共同合作，從而制訂出適用的指引，而在 1997 年發表的現行《適用於證券及期貨事務監察委員會的註冊人或持牌人的管理、監督及內部監控指引》，將會作為主要的參考準則。

就內部監控制度的核數師的意見與持牌法團的確認兩者之間有所重疊

21. 若干評論者亦認為，該規則第 4(1)(e)條就有關內部監控制度是否足夠的核數師意見的規定，與持牌法團及有聯繫實體根據第 3(1)(c)及(3)(c)條必須作出類似確認的規定之間，出現重疊之處。

22. 持牌法團或有聯繫實體每年需作出的確認，旨在確保它們已就客戶的款項及證券設立內部監控措施，並且信納有關措施符合有關規定。然而，經再三考慮後，我們認為該等確認可以在有關核數師的意見的背景下加以考慮。要求核數師作出意見，旨在取得有關內部監控制度的獨立評核。因此，為簡化建議的規管性報告規定，我們已剔除《修訂規則》內持牌法團及有聯繫實體必須每年作出確認的規定，從而純粹依賴有關核數師的意見。

該規則的適用範圍

23. 一名評論者希望本會澄清，該規則將會適用於該條例所界定的註冊機構的有聯繫實體。事實上，該規則旨在涵蓋註冊機構的有聯繫實體，而我們已在《修訂規則》中作出該項要求。

核數師的意見涉及的成本開支

24. 若干評論者關注到要求核數師就有關財政年度結束時製備的特定申報表及內部監控制度是否足夠作出意見，可能會對成本開支構成影響。
25. 對於核數師在該規則下必須進行的額外工作，我們相信有關成本開支的增幅將屬輕微，而鑑於需為投資者提供最佳的保障，加上該規則對核數師施加的要求，大部分都已是其目前根據現行規則及本身的專業公告須履行的職責，因此，我們認為該等額外開支仍屬合理的支出。
26. 根據《證券(帳目及審計)規則》第 4 條，核數師須作出意見，說明(就有關財政年度結束時製備的)有關速動資金計算表是否從有關證券交易商的簿冊及紀錄中正確地編製而成。類似的規定亦載於《商品交易(帳目及審計)規則》及《槓桿式外匯買賣(帳目及審計)規則》內。
27. 除上述的法定規定外，香港會計師公會在 1986 年發出的 Industry Auditing Guideline (行業會計指引) 3.404 號題為 “The Audit of The Accounts of Dealers in Securities” (證券商的帳目的審計)的指引亦訂明，有關核數師務必審查證券交易商的會計及內部監控制度，以便就該交易商所備存的簿冊及紀錄作出報告。

核數師須報告的事項

28. 我們已在《修訂規則》中加入新的第 5 條，訂明《客戶款項規則》、《客戶證券規則》及《備存紀錄規則》內若干條文，就《證券及期貨條例》第 157 (3)條“訂明規定”的定義的目的而言，屬於有關的訂明規定。核數師須就涉及上述訂明規定的事宜，向證監會報告由其審計的持牌法團或有聯繫實體沒有遵從有關規定的事情。該項規定與《證券條例》第 89 條相類似，而根據該條的規定，核數師一旦發現違反現行法例中與該等訂明規定相等的規定的證據，即須向證監會作出報告。

技術修訂

29. 我們已將該規則內對《證券及期貨條例草案》條文的所有提述，改為對該條例有關條文的提述。該等修改對於《修訂規則》並無實質影響。

生效日期及過渡性安排

30. 該規則將會自該條例第 VI 部的指定生效日期起實施。

Summary of comments received on Draft Securities and Futures (Accounts and Audit) Rules (the “Rules”)

	Section reference	Details of the Rules	Respondent’s Comments	SFC’s Response
1.		General comments	<p>[HKSbA, LSHK, Linklaters] The absence of the various rules and documents creates difficulty in commenting on the draft Rules in any event, whether the draft Rules impose undue compliance burdens on licensed corporations and their associated entities, whether such persons will be able to obtain confirmations from their auditors in the form required by the draft Rules, and the likely cost increases involved.</p> <p>The other commentator also commented that they were not in the position to comment the draft Rules as the following documents were not available:-</p> <p>3(1)(b) Section 35(1), Financial Resources Rules 3(1)(b)(v) Format and source of data for the analysis 3(1)(c)(i) Section 3 to 6, Client Money Rules Section 4 to 9, Client Securities Rules 3(1)(d) Format and content of questionnaire 4(1)(f)(i) Keeping of Records Rules 4(1)(g) Financial Resources Rules</p>	<p>Our primary objective of the consultation is to seek views and comments on the general accounting and auditing requirements for licensed corporations, associated entities and their auditors. Therefore, we consider commentators would still be able to usefully comment on the general principles reflected in the draft Rules without certain reference documents.</p> <p>All the relevant Rules have been released for consultation so there should be a general understanding of the sort of requirements we have in mind. In addition, we also explained in the consultation document that proforma financial statements and questionnaires were not included in the consultation document as they tend to be detailed in nature. However, we will consult with the industry group and the HKSA before finalizing these documents.</p>

Note: Please refer to the derivation table at the end of this document for cross references to the section numbers under the Securities and Futures Ordinance as gazetted on 28 March 2002.

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
2.	2	<u>Interpretation</u> Meaning of associated entity	[HKSA] The New Policy Initiatives are set out in paragraph 11 of the Introduction of the Consultation Document. However, the commentator asked for clarification in the "Foreword" or "Introduction" of the proposed Rules that they are not applicable to an associated entity, which is an authorized financial institution by virtue of the provision in Section 156(7) of the Securities and Futures Ordinance.	The draft Rules are to be read in conjunction with the Securities and Futures Ordinance (the "Ordinance") generally. In particular, Section 156(7) of the Ordinance specifically excludes authorized financial institutions from the definition of associated entity for the purposes of section 156. Since the Rules are subordinate to the Ordinance it is not necessary to state this again.
3.	Section 156 of the Ordinance		[LSHK] Although Section 156 of the Securities and Futures Ordinance (the "Ordinance") would enable the SFC to prescribe relevant requirements in relation to the annual audited financial statements and other documents to be submitted by associated entities of registered institutions, the draft Rules do not extend to such associated entities.	The draft Rules are also intended to cover an associated entity of a registered institution. In order to clearly address this requirement, we have made relevant changes to the draft Rules accordingly.

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
4.	3(1)(b), (2)(b) and 4(1)(d)	<p><u>Reporting requirements</u></p> <p>Each licensed corporation is required to prepare the returns as specified in the Securities and Futures (Financial Resources) Rules in respect of the end of financial year or the financial year in which it ceases carrying in all of the regulated activities. In addition, auditor of a licensed corporation is also required to express opinion on whether the returns specified in Section 3(1)(b) or Section 3(2)(b) are correctly compiled from the records of the licensed corporation.</p>	<p>[HKSA, HKSI] Additional cost would be incurred as extra work will have to be performed by an auditor to express an opinion on the monthly financial returns. This creates a heavy cost burden on the licensed corporations. If auditors are required to review the financial returns as part of the annual audit, it is obvious that such review would not serve any purpose as the SFC already has a checking mechanism in place and that the use of auditors would add unnecessary costs and a further layer of complexity to the submission process.</p>	<p>We would like to clarify that the draft Rules only require a licensed corporation to submit specified returns at the end of the financial year.</p> <p>In addition, the existing Securities (Accounts and Audit) Rules already require a dealer to include specified returns in the audited financial statements.</p>
5.	3(1)(c), (2)(c) [(2)(c) deleted now], (3)(c) and (4)(c) [(4)(c) deleted now]	<p><u>Reporting on adequacy of internal controls</u></p> <p>The licensed corporation or associated entity must prepare a document in the applicable form confirming that during the financial year, it has adequate systems of control in place to ensure compliance with specified sections of the Securities and Futures (Client Money) Rules and the Securities and Futures (Client Securities) Rules (Section 3(1)(c), (2)(c), (3)(c) and (4)(c)) and to require the auditor to assess such adequacy (Section 4(1)(e)).</p>	<p>[Name of respondent withheld upon request]</p> <p>One commentator generally supported the proposed requirements for certifications that adequate control systems have been put in place. However, the commentator also asked that either the Rules should clearly spell out or SFC should issue separate guidelines to specify the grounds, standards or criteria the SFC expects adequacy of control systems to be assessed by licensed corporations, associated entities or auditors.</p>	<p>The SFC will issue further guidance on internal control to ensure compliance with the Securities and Futures (Client Money) Rules ("Client Money Rules") and the Securities and Futures (Client Securities) Rules ("Client Securities Rules") largely based on the Management, Supervision and Internal Control Guidelines for Persons Registered with or Licensed by the SFC. In fact, a working group has been formed with the HKSA to co-ordinate the development of such guidance.</p>

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
6.			<p>[HKSA] In order to facilitate the licensed corporation or the associated entity to prepare the document on internal controls pursuant to Section 3(1)(c), 3(2)(c) or 3(3)(c) of the proposed Rules, and also to facilitate the auditors' reporting thereon pursuant to Section 4(1)(e) of the proposed Rules, the SFC should establish an industry benchmark on the minimum internal controls that are required to be maintained by the licensed corporation or its associated entity. The proposed industry benchmark should be established after consulting the market well in advance of the implementation the proposed Rules so that both the licensed corporation and its associated entity and the auditors are informed of the requirements.</p>	<p>Please refer to our response to item 5.</p>

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
7.			[LSHK, Linklaters] Sections 3(1)(c), (2)(c), (3)(c) and (4)(c) of the draft Rules do not appear to accommodate the situation where the licensed corporation or associated entity concerned cannot confirm that it had systems of control in place that were adequate to ensure compliance.	We do not agree that the licensed corporation or associated entity could not confirm adequacy of internal control for client assets as under paragraph 4.3 of the Code of Conduct, registered persons are expected to have internal control procedures which can be reasonably expected to protect their operations and their clients from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions. In Section 4(1)(e) of the Rules, the auditor is required to opine as to whether or not systems of control were in place. If the opinion is that they were not then we would draw the appropriate conclusions about the fitness and properness of the licensed corporation involved.
8.			[HKSI] The draft Rules may not be suitable to those small to medium size licensed corporations due to small number of staff. The segregation of duties is not apparent.	Please refer to our response to item 7.
9.			[LSHK, Linklaters] There is a substantial element of duplication between the confirmations required from the licensed corporation or associated entity, and the opinions required from the auditor as prescribed in Section 4(1)(e) and (f) of the draft Rules.	In order to streamline the regulatory reporting requirements, the confirmation requirement by the licensed corporation or the associated entity has been removed from the revised draft Rules. Instead, reliance will be placed on the auditor's opinion alone.

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
10.			<p>[ISDL, HKSbA] The potential scope of the additional requirement for auditors to report on the adequacy of systems of control ensuring compliance of Securities and Futures (Client Money) Rules and Securities and Futures (Client Securities) Rules may result in correspondingly large fee charge. In view of the difficult time currently experienced by most of the registrants, this increase in expenditure is most unwelcome. The commentator urged the SFC and the HKSA to set out appropriate guidelines in limiting the scope of audit.</p>	<p>The Industry Auditing Guideline 3.404 “The Audit of The Accounts of Dealers in Securities” issued by the HKSA in 1986 recognised that it is of great importance for the auditors to review the system of accounting and internal controls of a securities dealer in order to report on whether proper books and records have been maintained by the dealer. Therefore, we do not expect that the proposed requirements will significantly increase the scope of the audit.</p> <p>In addition, we have also considered the possible cost implication that may be incurred by a licensed corporation or associated entity. The draft Rules accordingly only require auditors to give an opinion on internal controls in respect of two specific rules (namely the Client Money Rules and the Client Securities Rules).</p>
11.			<p>[HKSI] It should be clarified that for purposes of Section 11(c) of the Consultation Document, the requirement does not apply to those investment advisors whose advisory activities do not involve handling “client money” and “client securities”. Otherwise, the auditors may carry out excessive or unrelated assessments on the company’s internal control systems, which may complicate the reporting to the SFC.</p>	<p>It is not our intention to require an auditor of a licensed corporation to confirm the adequacy of internal controls to ensure compliance with the Client Money Rules and the Client Securities Rules even when the licensed corporation does not hold any client assets. We have clarified this issue in the revised draft Rules by adding “where applicable”.</p>

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
12.			[HKSI] The SFC should clarify whether client assets held by a licensed corporation which relates to its other business (say insurance premium from clients) should be covered by the draft Rules.	It has been clarified in the Client Money Rules and the Client Securities Rules that they only apply to assets received or held in the course of the conduct of regulated activity. Since the Accounts and Audit Rules cross-refer to these Rules their scope of application is similarly limited.
13.	3(1)(d) [3(1)(d) replaced by 3(1)(c) now]and 3(3)(d) [3(3)(d) replaced by 3(3)(c) now]	<p><u>Business and Risk Management Questionnaire</u></p> <p>Sections 3(1)(d)</p> <p>For the purposes of Section 156(1)(a) of the Ordinance, a licensed corporation must prepare, in respect of each financial year, a business and risk management questionnaire in the applicable form.</p> <p>Section 3(3)(d)</p> <p>For the purposes of Section 156(1)(a) of the Ordinance, an associated entity of a licensed corporation must prepare, in respect of each financial year, a business and risk management questionnaire in the applicable form.</p>	[LSHK, Linklaters] There seems to be considerable scope for overlap between the information required to be provided under the business and risk management questionnaire and the confirmations and opinions required to be provided by licensed corporations, associated entities and auditors under the Rules.	<p>In order for the SFC to better understand the overall business activity of the licensed corporation and the associated entity, the business and risk management questionnaire will ask for more detailed information in relation to their business activity, risk management and internal control.</p> <p>As set out in item 9 above, the confirmation made by the licensed corporation or the associated entity regarding adequacy of internal controls for client money and client securities has been removed from the draft Rules.</p>

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
14.	4(1)(e)	<p><u>Auditors' reporting requirements for adequacy of internal controls</u></p> <p>An auditor's report under Section 156 (1)(b) or (2)(b) of the Ordinance must contain a statement by the auditor as to whether in the auditor's opinion during the financial year, the licensed corporation or the associated entity, as the case may be, had systems of control in place that were adequate to ensure compliance with</p> <p>(i) Sections 4 to 8 of the Securities and Futures (Client Money) Rules; and</p> <p>(ii) Sections 5 to 10 of the Securities and Futures (Client Securities) Rules.</p>	<p>[LSHK, Linklaters] Concern was expressed that the opinions required under Section 4(1)(e) and (f) also may result in potential overlap.</p>	<p>Section 4(1)(f) requires auditors specifically to report on actual compliance while Section 4(1)(e) primarily focuses on the adequacy of internal controls. Therefore, we do not consider there is any duplication.</p>
15.	4(1)(f)	<p><u>Auditors' reporting requirements for statutory compliance</u></p> <p>An auditor's report under Section 156 (1)(b) or (2)(b) of the Ordinance must contain a statement by the auditor as to whether in the auditor's opinion during the financial year, the licensed corporation or the associated entity, as the case may be, has complied with :</p>	<p>[LSHK, Linklaters] The draft Rules requirement that the auditor opine on compliance with the Securities and Futures (Keeping of Records) Rules may be problematic because identifying or discovering transactions which should have been included in the records but have not been may be extremely difficult. We expect that auditors will wish to make various assumptions in giving their opinion that may largely negate the value of this opinion to the SFC.</p>	<p>We do not regard this is a new requirement for an auditor to express opinion on keeping of records and keeping of client's securities and client's money by a licensed corporation. Under Section 4 of the existing Securities (Accounts and Audit) Rules, an auditor is required to give an opinion as to whether the dealer has properly kept the records under sections 81 and 83 of the Securities Ordinance (including keeping of client's securities) and all trust accounts in accordance with section 84 of the Securities Ordinance. Similar</p>

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
		(i) Sections 3 to 8 of the Securities and Futures (Keeping of Records) Rules; (ii) Sections 4 to 8 of the Securities and Futures (Client Money) Rules (iii) Sections 5 to 10 of the Securities and Futures (Client Securities) Rules		requirements also apply under the Commodities Trading (Accounts and Audit) Rules and the Leveraged Foreign Exchange Trading (Accounts and Audit) Rules.
16.	4(1)(g)	<p><u>Auditors' reporting requirements for compliance with the Financial Resources Rules</u></p> <p>An auditor's report under Section 156 (1)(b) or (2)(b) of the Ordinance must contain a statement by the auditor as to whether in the auditor's opinion:</p> <p>“there has been any contravention of the Securities and Futures (Financial Resources) Rules (“FRR”) by the licensed corporation during the financial year.”</p>	<p>[HKSA] Under Section 4(c) of the current Securities (Accounts & Audit) Rules, the auditors are only required to include a statement in the auditors' report “whether there appears to the auditor to have been any contravention of the FRR by the dealer during the financial year” or “whether the auditors are aware of any instances during the year where the dealer has contravened the FRR”. If Section 4(1)(g) of the draft Rules is intended to be a more onerous audit reporting requirement than that in Section 4(c) of the current Securities (Accounts & Audit) Rules, this will have the effect of requiring the auditors to extend the scope of their audit to actively search for any contravention of the FRR.</p>	We have revised the draft Rules so that the auditor is only required to express whether in his opinion there “appears to have been any contravention” of the FRRs. This addresses the concerns of the commentator.

	Section reference	Details of the Rules	Respondent's Comments	SFC's Response
17.	4(2)	<p><u>Format of auditor's report</u></p> <p>A licensed corporation or an associated entity of a licensed corporation, as the case may be, may submit 2 separate auditor's reports in respect of a financial year, one containing a statement by the auditor concerning the matters referred to in Subsection (1)(a) to (c) and the other containing a statement by the auditor concerning the matters referred to in Subsection (1)(d) to (g).</p>	<p>[HKSI] It is a matter of cost, as the existing rule is fair enough to monitor securities dealers and investment advisor.</p>	<p>After considering the comments from the industry participants and professional bodies, the draft Rules reflect a balance between relevant professional development and cost. We allow flexibility for two separate auditor's reports (entirely at the discretion of the licensed corporation or associated entity) to accommodate future professional development and for licensed corporations, associated entities and auditors to determine appropriate reporting arrangements.</p>
18.			<p>[HKSA] Auditors are required to prepare two auditors' reports to satisfy the reporting requirements under the draft Rules. Under the circumstance, it is considered that Section 4 of the draft Rules should not be drafted in the current form such that Subsection (1) prescribes the contents of a "composite" auditors' report while Subsection (2) prescribes that two separate auditors' reports are allowed to be submitted. Section 4 should have been drafted in such a way that it reflects the current professional development, i.e. the preparation of two separate auditors' report.</p>	<p>Please refer to our response to item 17.</p>

List of Respondents

Date received	Respondent
23 January 2002	The Law Society of Hong Kong (LSHK)
25 January 2002	Hong Kong Bar Association (HKBA)
29 January 2002	Hong Kong Society of Accountants (HKSA)
30 January and 7 February 2002	Hong Kong Stockbrokers Association (HKSA)
30 January 2002	Institute of Securities Dealers Limited (ISDL)
31 January 2002	Linklaters and Alliance (Linklaters) representing Goldman Sachs (Asia) L.L.C. and Morgan Stanley Dean Witter Asia Limited
31 January 2002	Hong Kong Securities Institute (HKSI)
31 January 2002	Hong Kong Association of Banks (HKAB)
1 February 2002	(commentator reserved anonymity)

Derivation Table

Clause/Schedule in the Securities and Futures Bill	Section/Schedule in the Securities and Futures Ordinance
152	156
152(7)	156(7)
384	397
Part 1 Schedule 1	Part 1 Schedule 1

經修訂擬稿

《證券及期貨(帳目及審計)規則》

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《證券及期貨(帳目及審計)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 397(1)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 —

“保證金客戶”(margin client) —

- (a) 就獲發牌進行證券交易的法團而言，指獲該法團提供證券保證金融資的客戶；或
- (b) 指獲發牌進行證券保證金融資的法團的客戶；

“監控制度”(systems of control)就持牌法團或中介人的有聯繫實體而言，指(在適用範圍內)其已實施以確保其遵守第 4(1)(e)條指明條文的內部監控及交易、會計、交收及持股制度；

“證券交易” (dealing in securities)具有本條例附表 5 第 2 部給予該詞的涵義。

3. 持牌法團及中介人的有聯繫實體 須擬備的財務報表及其他文件

(1) 為施行本條例第 156(1)(a)條，持牌法團須就每個財政年度擬備的財務報表及其他文件如下 —

(a) 一套按照獲普遍接納的會計原則擬備並由以下各項組成的帳目 —

(i) 損益表；

(ii) 資產負債表；及

(iii) 帳目附註；

(b) (在適用範圍內)以該財政年度最後一天狀況為準的《證券及期貨(財政資源)規則》(2002 年第 號法律公告)第 58 條提述的以下報表 —

(i) 速動資金計算表；

(ii) 規定速動資金計算表；

(iii) 它可用的銀行貸款、墊款、信貸融通及其他財務通融的摘要；

(iv) 對保證金客戶的分析；

(v) 對從保證金客戶收取的抵押品的分析；

(vi) 對滾存結餘現金客戶的分析；

(vii) 對客戶資產的分析；及

(viii) 本身的衍生工具持倉量報告；及

(c) 業務及風險管理問卷。

(2) 為施行本條例第 156(2)(a)條，如持牌法團停止進行所有它獲發牌進行的受規管活動，則該法團須擬備的財務報表及其他文件如下 —

(a) 一套第(1)(a)款提述的帳目；及

(b) 第(1)(b)(i)款提述的速動資金計算表。

(3) 為施行本條例第 156(1)(a)條，中介人的有聯繫實體須就每個財政年度擬備的財務報表及其他文件如下 —

(a) 一套按照獲普遍接納的會計原則擬備並由以下各項組成的帳目 —

(i) 損益表；

(ii) 資產負債表；及

(iii) 帳目附註；

(b) 就該財政年度終結時擬備的對客戶資產的分析；及

(c) 業務及風險管理問卷。

(4) 為施行本條例第 156(2)(a)條，如中介人的有聯繫實體停止作為該法團的有聯繫實體，則該實體須擬備的財務報表及其他文件如下 —

(a) 一套第(3)(a)款提述的帳目；及

(b) 第(3)(b)款提述的對客戶資產的分析。

4. 核數師報告

(1) 為施行本條例第 156(1)(b)或(2)(b)條，持牌法團或中介人的有聯繫實體須呈交的核數師報告須載有一份由有關核數師作出的陳述，說明根據該核數師的意見 —

- (a) 有關損益表及資產負債表是否按照該持牌法團或有聯繫實體(視屬何情況而定)根據《證券及期貨(備存紀錄)規則》(2002 年第 號法律公告)備存的紀錄而擬備，及是否符合本規則的規定；
- (b) 該資產負債表是否真實而中肯地反映該持牌法團或有聯繫實體(視屬何情況而定)在該表所關乎的財政年度終結時的業務狀況；
- (c) 該損益表是否真實而中肯地反映該持牌法團或有聯繫實體(視屬何情況而定)在該表所關乎的財政年度的盈虧狀況；
- (d) (就持牌法團而言)第 3(1)(b)或(2)(b)條(視屬何情況而定)提述的每份報表是否均按該法團的紀錄正確地編製而成，如該等報表並非正確地編製而成的，則指出不正確之處的性質及程度；
- (e) (在適用範圍內)該持牌法團或有聯繫實體(視屬何情況而定)在有關財政年度內是否備有足夠的監控制度以確保遵從 —
 - (i) 《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)第 4、5、6、8(4)、10 及 11 條；及
 - (ii) 《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)第 4(4)、5、10(1)及 12 條；
- (f) (在適用範圍內)在有關財政年度內，該持牌法團或有聯繫實體(視屬何情況而定)是否已遵從 —

- (i) 《證券及期貨(備存紀錄)規則》(2002 年第
號法律公告)第 3、4、5、6、7 及 8 條；
- (ii) 《證券及期貨(客戶款項)規則》(2002 年第
號法律公告)第 4、5、6、8(4)、10 及 11
條；及
- (iii) 《證券及期貨(客戶證券)規則》(2002 年第
號法律公告)第 4(4)、5、10(1)及 12 條；
及
- (g) (就持牌法團而言)該法團是否看來已在有關財政年度
內違反《證券及期貨(財政資源)規則》(2002 年第
號法律公告)。

(2) 持牌法團或中介人的有聯繫實體(視屬何情況而定)可就同一財政年度呈交 2 份獨立的核數師報告，其中一份報告載有有關核數師關於第(1)(a)至(c)款提述事宜的有關核數師的陳述，而另一份報告則載有關於第(1)(d)至(g)款提述事宜的有關核數師的陳述。

5. 核數師須根據本條例第 157 條報告的事項

就本條例第 157(3)條中的“訂明規定”的定義而言，以下條文屬訂明規定 —

- (a) 《證券及期貨(備存紀錄)規則》(2002 年第 號法律
公告)第 3、4、5、6、7 及 8 條；
- (b) 《證券及期貨(客戶款項)規則》(2002 年第 號法律
公告)第 4、5、6、8(4)、10 及 11 條；
- (c) 《證券及期貨(客戶證券)規則》(2002 年第 號法律
公告)第 4(4)、5、10(1)及 12 條。

證券及期貨事務監察委員會主席

2002 年 月 日

註釋

本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 397(1)條訂立。本規則訂明為施行該條例第 156(1)(a)及(2)(a)條，持牌法團及中介人的有聯繫實體須擬備的財務報表及其他文件。本規則亦訂明核數師在根據該條例第 156(1)(b)及(2)(b)條就其審計的持牌法團或有聯繫實體的帳目呈交的報告中須作出陳述的事宜。此外，本規則就核數師根據該條例第 157 條作出報告的目的訂定條文作為有關規定。