

## **LEGISLATIVE COUNCIL BRIEF**

### **Securities and Futures Ordinance (Cap. 571)**

#### **SECURITIES AND FUTURES (LICENSING AND REGISTRATION)(INFORMATION) RULES**

### **INTRODUCTION**

Pursuant to section 397 of the Securities and Futures Ordinance (Cap. 571 (the SFO), the Securities and Futures Commission (the SFC) has made the Securities and Futures (Licensing and Registration) (Information) Rules (the Rules) at the **Annex**.

### **BACKGROUND**

#### **The SFO**

2. The SFO was enacted in March 2002. It consolidates and modernizes ten existing ordinances governing the securities and futures markets into a composite piece of legislation to keep the regulatory regime on a par with international standards and practices. For effective regulation, the SFO provides flexibility in addressing changing market practices and global conditions by empowering the Chief Executive in Council, the Financial Secretary, the Chief Justice and the SFC to prescribe detailed and technical requirements as necessary by way of subsidiary legislation, to supplement the regulatory framework laid down under the primary legislation.

3. On 22 February 2002, the House Committee of the Legislative Council established the Subcommittee on Draft Subsidiary Legislation to be made under the Securities and Futures Ordinance (the Subcommittee) to study the subsidiary legislation necessary for commencing the SFO. From March 2002 to October 2002, the Subcommittee held 12 meetings and considered a total of 37 sets of draft subsidiary legislation, including the vires to make them.

## **THE RULES**

### **Major policy considerations**

4. The Rules supplement the regulatory regime in Part V of the SFO which requires persons who carry on business in a regulated activity<sup>1</sup> to be licensed, or if it is an authorized financial institution, registered under Part V of the SFO (“registered institutions”). The Rules, which the SFC has prepared in consultation with the Hong Kong Monetary Authority (the HKMA), ensure that the SFC and the HKMA is provided with information required for proper consideration of applications under Part V of the SFO, that the information provided to them is updated to reflect major changes that occur, and that important information on licensed persons and registered institutions is available to the public. In designing the information requirements, the SFC is conscious of the need to strike an appropriate balance between providing investor protection and minimising compliance burden of licensed persons and registered institutions.

### **Major new elements**

5. The information requirements are modeled very closely on existing requirements. The major change is that most of the information requirements are now applicable to registered institutions, as part of the package to remove the exempt status currently enjoyed by banks in respect of their securities operations.

## **THE RULES**

6. Clause 2 of the Rules contains interpretation provisions that apply throughout the Rules.

7. Clause 3 of, and Schedules 1 and 2 to, the Rules prescribe the information that a person applying to the SFC for a licence, registration, approval, modification or waiver under various sections in Part V of the SFO must provide to enable the SFC to consider the application.

8. Clause 4 of, and Schedules 1 and 3 to, the Rules require notification to the SFC and the HKMA of changes in prescribed categories of information previously provided to the SFC under Part V of the SFO.

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<sup>1</sup> There are nine types of regulated activities and they are listed in Part 1 of Schedule 5 to the SFO.

9. Clause 5 of the Rules specifies the information that must be contained in an annual return submitted by a licensed person. .

10. Clauses 6 and 7 of, and Schedule 4 to, the Rules prescribe particulars that are to be entered in the register of licensed persons and registered institutions maintained by the SFC, and provide for their update and correction.

## **PUBLIC CONSULTATION**

11. The Subcommittee considered the draft Securities and Futures (Licensed Persons and Registered Institutions) Rules (the LPRI Rules) at the Subcommittee meeting on 29 April 2002. In the light of Members' comment, the SFC incorporated clauses 9, 5 and 6 of the draft LPRI Rules as clauses 4, 6 and 7 of and Schedules 3 and 4 to, the earlier draft of the Rules. Such merging facilitates compliance through presenting related information requirements in a single piece of subsidiary legislation. The SFC then released a consultation document and an exposure draft of the Securities and Futures (Intermediary Information) Rules<sup>2</sup> on 19 July 2002 for comment by the public. A total of 6 submissions were received. The SFC has considered the comments received and revised the Rules as appropriate.

12. The Subcommittee considered a draft of the Rules at the Subcommittee meetings on 16 September 2002 and 24 October 2002. Comments made by Members of the Subcommittee at the two meetings were reflected in the Rules.

## **FINANCIAL AND STAFFING IMPLICATIONS**

13. There are no financial or staffing implications for the Government.

## **COMMENCEMENT DATE**

14. The Rules will come into operation on the day appointed for the commencement of the SFO, together with other subsidiary legislation necessary for the commencement. We expect this to take place shortly, after completion of the negative vetting procedure through the Legislative Council and allowing the industry a reasonable period of time for making necessary adjustments with

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<sup>2</sup> The draft Securities and Futures (Intermediary Information) Rules is subsequently renamed as the Securities and Futures (Licensing and Registration)(Information) Rules to better reflect the range of persons to which the Rules apply.

reference to the subsidiary legislation. We aim to announce the target commencement date by the end of 2002.

## **PUBLICITY**

15. The Rules will be published in the Gazette on 13 December 2002. The SFC will issue a press release on the same day.

## **ENQUIRIES**

16. For any enquiries on this brief, please contact Ms. Lucinda Wong of the Licensing Department of the SFC at 2840 9479 or Mr. Anthony Wood of the Legal Services Division of the SFC at 2840 9276.

The Securities and Futures Commission  
13 December 2002