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 (Contract Notes, Statements of Account and Receipts) Rules

《證券及期貨（成交單據、戶口結單及收據)規則》草擬本的諮詢總結

Hong Kong
June 2002

香港
2002年6月

Table of Contents

A. INTRODUCTION

1. On 28 September 2001, the Securities and Futures Commission (the "Commission") released a consultation document (the "Consultation Document") on the exposure draft of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (the "Draft Rules").

2. The Consultation Document contained detailed requirements prescribing when intermediaries licensed or registered for different types of regulated activities and their associated entities must issue contract notes, statements of account and receipts and the contents of such documents.

3. The consultation period lasted until 9 November 2001.

4. A summary of comments received on the Draft Rules ("Summary of Comments") is attached as Annex 1.

5. Taking into account the submissions received and following further discussions with commentators, several revisions to the Draft Rules were considered appropriate.

6. The purpose of this report is to provide interested persons with an analysis of the main comments raised during the consultation process and the rationale for the Commission's conclusions. This report should be read in conjunction with the Consultation Document and the Summary of Comments.

B. PUBLIC CONSULTATION

Background

7. The Draft Rules were prepared to ensure that an intermediary's clients receive timely and meaningful information about transactions conducted with or on their behalf consisting of confirmation of transactions, daily statement of financial accommodation provided and margined transactions entered into, and monthly summaries of all activity and holdings in their accounts.

8. From a policy perspective, the Draft Rules are intended primarily to:

    - apply to all intermediaries (and where applicable, their associated entities) that enter into contracts with or on behalf of their clients in the conduct of the intermediaries' regulated activities for which they are licensed or registered, or receive and hold client assets.

- rationalize the existing requirements found in three different ordinances (i.e., sections 75 and 121Z of the Securities Ordinance, section 45A of the Commodities and Trading Ordinance, section 4 of the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules), the Code of Conduct for Persons Registered with the Commission, and the Fund Manager Code of Conduct;

- avoid duplicative documentation where two intermediaries are involved in a transaction with a client;

- allow for consolidation of contract notes with statements of account, where appropriate, in view of the single license regime;

- permit reporting of average pricing in contract notes for dealings in securities and futures contracts; and

- relax existing disclosure requirements in relation to securities margin financing.

Consultation Process

9. In addition to the public announcement inviting comments, the Consultation Document was distributed to all registered intermediaries, various professional bodies and the Financial Services Bureau. The Consultation Document was also published on the SFC website.

10. Sessions were held with industry participants and their legal advisors during and after the consultation period to discuss their comments.

11. 22 submissions were received from practitioners including fund management firms, international brokerage firms, legal firms, industry representative bodies, professional associations and industry regulators. One of the submissions consisted of a survey of the members of the commentator organisation.

12. The overall tone of the comments was positive. Commentators generally welcomed the proposed Rules. Comments varied considerably in range and depth, with some focusing on broad principles and others on points of detail and clarification.

C. CONSULTATION CONCLUSIONS

Application of the Rules

13. The Draft Rules generally required all intermediaries entering into contracts with or on behalf of their clients to provide contract notes to their clients in the course of regulated activities for which they are licensed or registered. For those intermediaries providing financial accommodation or entering into

margined transactions with or on behalf of their clients, the Draft Rules also required that a statement of account including a summary of the terms of the account be provided to clients by the intermediaries or their associated entities. Additionally, all intermediaries or their associated entities were required to provide a monthly statement summarizing all activity in the account, and, subject to some exceptions, receipts for client assets received.

14. We note that prior to these Rules, the requirements for contract notes and statements of account under the relevant ordinances only applied to specific types of licensed or exempt persons (namely securities dealers, futures dealers, securities margin financiers and leveraged foreign exchange traders). However, the Securities and Futures Bill (the "Bill") has expanded the scope of regulated activities an intermediary may now conduct. Therefore, the scope of the Draft Rules would necessarily have to be expanded in tandem in order to cover the inclusion of the newly added regulated activities.

15. The Draft Rules provided limited exemptions for: (a) dealings with clients who were professional investors; (b) intermediaries licensed or registered for asset management; and, (c) situations where duplicative documents could be sent to clients by two intermediaries.

16. We remain of the view that the above is the correct approach, subject to certain revisions of the Draft Rules.

Exemption for Intermediaries Licensed or Registered for Asset Management

17. Concern was expressed by a fund manager that requiring fund managers to send conforming contract notes and statements of account to their collective investment scheme clients (i.e., the appointed trustee or custodian representing the interests of the schemes) for all securities dealings activities of the fund manager on behalf of the scheme is not required under existing law. If now required to do so under the Draft Rules, the commentator objected to the imposition as being unnecessary given current market practices.

18. We note that as a matter of market practice, fund managers of collective investment schemes generally issue some form of confirmation for each trade to the custodian so that the custodian can settle the trade. The custodian will also, in practice, receive a contract note from the execution broker again in order to settle the trade. The custodian then will reconcile the two documents received before settling the trade.

19. In view of the above, intermediaries licensed or registered for asset management when conducting asset management activities will be exempt from the application of these Rules except for the requirement to issue receipts for client assets received from or for the account of any client, and monthly statements of account in relation to managed fund accounts other than collective investment schemes.

20. In order to ensure that discretionary account clients can properly monitor the

activity and position in their accounts, we have extended the monthly reporting requirement to include a list of all relevant contracts entered into during that month and details of the money balance, payable and receivable in respect of the accounts as at month-end.

Exemption for Transactions with Professional Investors

21. The Draft Rules contained an exemption allowing professional investors to waive their right to receive monthly statements of account upon their consent. We specifically sought additional comments on the scope of this exemption. In response, the industry expressed a clear desire to widen the scope.

22. A major concern expressed by many industry participants was that the requirements for detailed contract notes and statements of account would be unnecessary or inappropriate when applied to dealing activities that occur with professional investors and where standard documentation already existed in the international market.

23. The industry cited, as examples, securities dealing transactions such as underwriting of securities, share placements by an underwriter, stock borrowing and lending, and dealing in collateralized over-the-counter stock options. The industry noted that each of these types of activities has its own respective set of documentation and confirmation procedures established in line with accepted international practice.

24. The industry suggested that their concerns could be addressed by providing for general exemption for transactions by intermediaries with or on behalf of professional investors in these Rules. The industry noted that such an exemption would be consistent with paragraph 15 of the current Code of Conduct for Persons Registered with the Commission (the "Code"). Under the said paragraph, there are two categories of professional investors and certain provisions under the Code (including the provision of certain documentation relating to their trades and accounts) will not apply to them if they either affirmatively consent or do not object upon notice.

25. After considering the industry's views, we agree that there ought to be more flexibility to facilitate the market's dealings with and amongst professional investors. Accordingly, an intermediary will not have to comply with these Rules in their dealings with professional investors as long as the professional investors consent to this.

26. In requiring the professional investors' consents, we understand and accept that in some cases, it can be difficult to obtain affirmative written consents from professional investors.

27. We are generally satisfied that affirmative written consents should not be necessary from professional investors as specifically referred to (i.e., under paragraphs (a) to (i)) in the definition in Part 1 of Schedule 1 to the Bill. However, this may not be suitable for other clients who are included as

professional investors only by way of the Securities and Futures (Professional Investor) Rules (the "Professional Investor Rules"). The draft Professional Investors Rules were released for public consultation in February 2002 and have proposed including individuals, corporations and trusts meeting certain minimum asset or portfolio value requirements. The draft Professional Investor Rules also recognized that these particular investors might not necessarily have the same level of market experience and resources as those specifically referred to in the Bill.

28. With the above two considerations in mind, we have revised the Draft Rules so that for those groups of investors who may qualify as professional investors under the Professional Investor Rules, the intermediary must obtain an affirmative written consent for any waivers of the intermediary's obligations under these Rules.

29. For those investors that are specifically referred to in the Bill as professional investors, a consent to waive the requirements of the Rules may be obtained by sending a notice to such investors that unless they object, they will have been deemed to consent to a waiver of the intermediary's obligations under the Rules.

30. We believe this approach adequately affords both classes of professional investors the protections of the Rules while also minimizing any administrative burden imposed upon the intermediary. Besides being consistent with the approach currently adopted by the Code, this approach was accepted as a practicable compromise by the industry participants who sought the exemption.

31. In allowing professional investors to waive the requirement to issue contract notes, one commentator pointed out that this might undermine or conflict with the need for intermediaries to issue contract notes under the Stamp Duty Ordinance (Cap. 117).

32. This is clearly not the intent of the Rules. To avoid confusion on this issue, we have added a specific provision which confirms that these Rules do not affect any separate obligation of an intermediary to comply with the Stamp Duty Ordinance.

Avoidance of Duplication

33. The provision in section 5 of the Draft Rules seeks to avoid duplicate documents from being sent to the same client where two intermediaries (both operating in Hong Kong) are involved in a transaction. One commentator noted that the draft language did not identify sufficiently who would ultimately have responsibility to send documents under those circumstances.

34. We agree and have revised the provision to make it clear that this exemption would apply only where the client is a mutual client of both intermediaries and both of whom or their associated entities (as the case may be) are required to

prepare and serve a contract note or statement of account in accordance with these Rules and they must have agreed in writing as to who will provide the necessary documentation to the client.

Exemption for Intermediaries where a Related Corporation that is a Regulated Entity in an Approved Jurisdiction Provides Equivalent Documents

35. Many market participants with global operations and ultimate holding companies (or head offices) offshore voiced their concern that the Rules covered activities conducted by the intermediary in Hong Kong, but for which documentation such as confirmations and monthly statements, were currently not being sent by the intermediary to the clients but by an offshore related corporation of the intermediary. In most cases, the client's account would be held directly by this offshore related corporation. In other cases, the intermediary, by agreement with the client, would have delegated or subcontracted the responsibility for settlement, custody and providing trade documentation to the offshore related corporation.

36. We understand and accept that for operational efficacy, it makes sense for selected overseas related corporations, typically entities regulated in the UK and US, to be responsible for performing such functions for all broker firms within the group of related companies. To require the intermediary to issue duplicative sets of documentation would require substantial system revamp but with little added benefit for the clients.

37. On this basis, we agree that where a related corporation in the UK or the US (i.e. an approved jurisdiction) that is either

- a person who carries on a business of providing financial or investment services and is regulated in respect of that business in an approved jurisdiction; or

- a bank that is regulated under the law of an approved jurisdiction

is providing contract notes etc. in accordance with and to the extent required by the applicable law in that jurisdiction, we will not require the intermediary to comply with these Rules. We have added a new provision to the Rules accordingly.

38. In light of the addition of such a new provision and the fine-tuning of section 5 of the Draft Rules, we have deleted the previous section 3 exemption for introducing brokers as redundant.

Penalty Provision

Criminal Nature of Penalty

39. The Draft Rules only imposed a penalty for a breach of the Rules without reasonable excuse. Such a breach would constitute a criminal offence and be

subject to a fine of up to $25,000 (level 4 fine).

40. One commentator questioned the appropriateness of imposing criminal penalties for violations of rules that were administrative in nature, even while acknowledging that the penalty prescribed was only a fine. In response, we view the penalty prescribed as appropriate given that any decision as to the action (if any) to be taken in respect of a breach would be made with regard to all the circumstances including advertence and minor nature of the breach.

Addition of Penalty for Intent to Defraud

41. We have added a penalty for a breach of the Rules with intent to defraud which carries a maximum sentence of up to $1,000,000 and 7 years imprisonment (if convicted on indictment) or a fine of up to $500,000 and 1 year imprisonment (on summary conviction). This penalty provision is authorized under Clause 148(4) of the Bill and we consider this to be particularly important and necessary since any violation of these Rules with intent to defraud should be met with the appropriate punishment.

Documentation Contents: Modification of Specific Requirements in Contract Notes, Daily Statements of Account and Receipts

42. A variety of comments were received taking issue with some of the particulars of the content requirements in the contract notes, daily statements of account and receipts.

43. Generally, commentators pointed out:

- Due to physical size of paper generally used for contract notes and receipts, it would be difficult to include legibly all the required information, as well as client's address, onto those documents; and
- Existing established systems (i.e., SWIFT and Oasys Global) could not easily be modified to transmit all the information (especially non-trade specific information) required.

44. Specifically, a few industry members asked that the following requirements be deleted:

- CE number of the intermediary and the addresses of the intermediary and the client from the contract notes under section 4 of the Draft Rules; and
- a list of items accepted as securities collateral, together with applicable margin ratios from the daily statements of account.

45. In response, we have further considered the utility of these and other related details and agree that:

- the CE number of the intermediary is not necessary in any of the documents referred to under the Rules;
- the address of the client should only be included in the daily and the

monthly statements of account; and

- the list of items which the intermediary will accept as securities collateral or security and details of the margin call policy and the circumstances under which the intermediary may liquidate client assets or close the client's open positions should not be required as being part of the daily statements of account, and hence have been deleted from these Rules.

46. The industry also sought clarification as to whether daily statements of account would be required when open positions in margined transactions were being marked to market on a daily basis.

47. For the daily statements of account required in margined transactions, we have now clarified in these Rules that the statement should only be required upon opening and closing of positions.

Disclosure of Average Price Information

General Application

48. The Draft Rules required an intermediary to, upon client request, provide the average price per unit of the securities or futures contracts purchased or sold in contract notes. This provision was intended to be an accommodation to larger firms who previously expressed a need to quote average price upon client's request, but which they were unable to do so under existing law.

49. The market interpreted the Draft Rules, however, as mandating that average pricing to be provided upon clients' request and expressed concern that their existing systems might not be able to accommodate such requests.

50. In response, we have revised the Rules to clarify that the intermediary is not required to, but may provide average pricing to clients.

Leveraged Foreign Exchange Contracts

51. One commentator requested that average pricing be permitted for leveraged foreign contracts.

52. This would not be appropriate. Leveraged foreign exchange contracts are generally traded by the intermediary acting as principal on the trade (and not just acting as the client's agent). They are currently required to state the time of receipt and execution of client orders to enhance the transparency of trade execution. To allow average pricing would conflict with the intent for clients to receive detailed information for these particular types of trades and undermine investor protection.

Providing Underlying Details of Quoted Average Price

53. Where average pricing has been provided to a client, the Draft Rules required the intermediary to provide, within two business days after receiving a request

from the client, details of each underlying sale or purchase. One commentator asked for a longer period of 5 business days instead. Another also requested that a two years time limit be imposed during which a client could make such a request.

54. We agree with the two years limit as this is also consistent with the retention period imposed by these Rules for contract notes and daily statements of account. Accordingly, we have added a two years limitation period during which clients may request the underlying information.

55. We also see no harm to investors in extending the number of days for an intermediary to provide the necessary information, particularly as the information may relate to trades effected up to two years ago. Hence, we have extended the deadline from two business days to five business days in these Rules.

Monthly Statements of Account

56. The Draft Rules required a monthly statement of account to be provided to a client where the client has a balance or the intermediary or the associated entity holds securities or collateral on behalf of the client as at the end of that monthly accounting period.

57. We noted that this was not fully consistent with the current requirement in the Code which requires a monthly statement of account unless, besides there being no outstanding balance or collateral in the account, there is no transaction or any revenue or expense item in the account during the month.

58. To properly reflect our intent of retaining the current requirement, we have revised the Rules to require a monthly statement of account to be provided to a client where the client has a balance or securities or collateral held with the intermediary or the associated entity during that monthly accounting period.

Receipts

Exempted Custodians Holding Securities in a Scripless Form

59. One commentator requested that the requirement for receipts be waived for custodians that hold securities in a scripless form. We agree as the policy intent is to require receipts for securities that are in scrip form only and have added such an exemption in the Rules.

Exemption for Deposits by Clients with a Registered Institution or an Authorized Financial Institution

60. The wording of section 12(2)(a) and (b) of the Draft Rules has been revised to clarify the intent that no receipt is necessary where

- The intermediary is a registered institution or the associated entity is an

authorized financial institution (consistent with the Securities and Futures (Client Money) Rules); or

- client money is deposited directly by the client into a bank (since the client will necessarily receive a receipt from the bank to evidence such a deposit).

Delivery Deadlines and Processes

61. The market had made various comments relating to the delivery requirements including many comments on the deadline for providing daily and monthly statements as well as the manner of acceptable delivery. We have made various changes in the Rules to address the respective comments.

Monthly Statement Delivery Deadlines

62. The Draft Rules required monthly statements of account to be delivered to the client within 7 days after the end of the calendar month. Various commentators asked that a longer period of time (at least 7 to 10 business days, or longer) be granted, as the information might sometimes take a longer period to compile, particularly for asset managers who must wait for information from overseas custodians.

63. Additionally, at least two commentators suggested that the monthly statements of account should not always need to use the calendar month-end as the reference period and that the Rules should be more flexible to accommodate for different monthly cycles, as is currently permitted in the banking industry. This flexibility would allow intermediaries to more efficiently distribute their administrative workload throughout the month and avoid a bottleneck at the end of the month.

64. With respect to the deadline by which monthly statements must be delivered, under sections 75A and 121Z of the Securities Ordinance, the time limit is 7 business days from the month-end for firms providing securities margin financing. The industry does not have an apparent problem meeting this deadline and we therefore agree to change the deadline from 7 days to 7 business days.

65. However, we appreciate that asset managers may need additional time due to practical considerations. We have therefore extended the deadline from 7 to 10 business days for asset managers.

66. We find the suggestion to permit intermediaries to stagger their own month-end cycles to be extremely helpful for administrative facility. We have therefore revised the Rules to allow for intermediaries to determine their own month end dates.

Employee or Officer of an Intermediary Prohibited from Receiving Documents for Clients

67. There were questions seeking clarification on who could take delivery of the prescribed documentation instead of the client where the Rules permitted this delivery to a "person designated by the client in writing." When deliberating on this matter, we felt it appropriate from a policy perspective to add a provision in the Rules to prohibit an employee or officer of an intermediary being designated to receive contract notes, etc., on behalf of the client.

68. We deem this restriction appropriate and necessary to protect the investing public generally. To prevent abuse and the withholding of required documents from the clients, the designated person should be independent of the intermediary.

Manner of Delivery

69. A number of commentators interpreted the Draft Rules to require intermediaries to deliver the necessary documentation by hand where the client requests it. There is also concern that the requirement in the Draft Rules to adopt adequate procedures to ensure successful delivery by alternative means imposes obligation which is difficult for the intermediaries to discharge.

70. We noted that Clause 386 of the Bill provides for the manner of service required for documents required to be issued or served to or on any person for the purposes of that ordinance. As it should be sufficient for the documentation required to be provided under these Rules to be served on the client in accordance with that provision of the Bill, we have deleted those provisions governing the manner of delivery and replaced all references in the Rules to "deliver" with "serve" to link them to the Securities and Futures Ordinance.

Language of Documents

71. The Draft Rules gave clients the option of choosing which language would be used in the prescribed documents. This section evoked several comments from market participants expressing concern that they would need to convert their English based documentation system to Chinese in response to client demand.

72. We have now removed the investors' right to choose the governing language and provided that any document required under the Rules must be in an official language. This gives industry participants discretion to use either English or Chinese based on their business needs. We feel investors would have sufficient choices of alternative intermediaries if they were not satisfied with the language chosen by their intermediary.

Technical Change

73. We have changed all references to an "exempt" status of an intermediary to "registered" and "exempt person" to "registered institution" to reflect the revised terminology used under the Securities and Futures Ordinance. These changes have no substantive effect on the Rules.

D. EFFECTIVE DATE

74. The Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules, will become effective on the day appointed for the commencement of Part VI of the Securities and Futures Ordinance.

Draft Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules
Summary of comments received and SFC's response

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
1.	1	**Commencement**	[HKSbA] A reasonable grace period is needed for implementing the changes.	We propose to post the consultation conclusions with the revised draft Rules on our web site as soon as practicable. This will give intermediaries and their associated entities more time to amend their systems in anticipation thereof.
2.	N/A – formerly section 2	**Interpretation** Meaning of "contract note"	[LSHK] There is a need for clarification whether an informal confirmation, if sent in the form of a document, must include all the contents required for a contract note, if such informal confirmation is followed up by a formal confirmation.	Our intention is to ensure that a formal contract note that meets the requirements of these Rules is provided to the client. Informal confirmations need not conform to the requirements of these Rules so long as there is a conforming contract note that follows. Since "contract note" is intended to be a generic term in these Rules, we have deleted its definition from the interpretation section for being unnecessary.
3.	2	Meaning of "relevant contract"	[LSHK, Linklaters] There is a concern that "relevant contract" can be interpreted widely to cover: (a) underwriting arrangement, (b) placement of shares by underwriter, (c) stock borrowing and lending transaction, and (d) collateralised physical-settled over-the counter stock option transaction. All such transactions are appropriately documented under current market practice. Issue of contract note or daily statement creates additional burden. It is also questioned that this is not consistent with the approach of relaxation proposed in draft SBL Exemption Rules.	To address the concerns, we have added the new s.3(2) so that the Rules do not apply where a client of the intermediary who is a professional investor, provided that (a) where the client is a professional client as specifically defined in Schedule 1 to the Securities and Futures Ordinance ("SFO") itself, the intermediary or associated entity notifies the client that it will not provide contract notes etc. and the client does not object; and

All section numbers in this Summary of Comments have been revised so that they correspond to the section numbers of the draft Rules now being placed before the Subcommittee

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			An exemption from the Rules in respect of transactions with "professional investors" would be one way of addressing these situations.	(b) where the client is a professional client as specified under the Securities and Futures (Professional Investor) Rules, the client agrees in writing not to receive contract notes etc.
4.		Meaning of "relevant contract"	[LSHK] Clarification is sought as to whether these definitions apply to transactions which would not constitute, because of exceptions in Schedule 6 to the Securities and Futures Bill (the "Bill"), "dealing in futures contracts" or "dealing in securities". [HKSbA] "Dealing in securities" is defined in Part 2 of Schedule 6 and it includes the issuing of forms of debentures or advertisements or prospectus. Under this definition of "dealing in securities", it is not thought that contract notes are relevant in issuing debentures or prospectus etc. Similarly, the governing content requirement provision which touches on "dealing in securities" and "or other dealing" poses the same problem as mentioned.	Our intention is not to apply these Rules to transactions which would not constitute "dealing in futures contracts" or "dealing in securities". The position is now made clear by now adopting the definition of "dealing in futures contracts" or "dealing in securities" in Part 2 of Schedule 5 of the SFO. As there is no relevant contract involved in the activity of issuing a prospectus, advertisement or forms of debentures, these Rules do not get triggered and do not apply to those activities.
5.	N/A – formerly section 3	**<u>Exemption</u>** These Rules do not apply to an intermediary in relation to a relevant contract entered into between a person ("A") and either another intermediary ("B") or its equivalent regulated by a jurisdiction outside Hong Kong ("C") in respect of which – (a) the intermediary has merely passed on to A an offer to conduct regulated activity by B or C and -	[LSHK, Linklaters] Many of the international financial institutions in HK organise their business such that a HK registered entity will have a relationship with Asian clients, but another financial institution (usually an overseas affiliate of the H K registered person) will be responsible for executing, clearing and settling trades and providing custody of cash and assets, and will also be responsible for sending out contract notes, statements of account etc. There is a concern that these arrangements may not	It is not our intention to expand the scope of the current requirements under s.75 of the Securities Ordinance ("SO"). Our position has now been clarified by deleting the original s.3 and adding s. 4(2) to the effect that the Rules do not apply to an intermediary or its associated entity where it has an arrangement with a foreign regulated entity in an approved jurisdiction ("C") that C will prepare and serve on

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
		(i) B issues a contract note, statement of account or receipt to A in accordance with these Rules; or (ii) C issues the equivalent of a contract note, statement of account or receipt to A in accordance with the law applicable to it in the jurisdiction in which it is regulated; or (b) the intermediary has merely introduced A to B or C. **<u>Avoidance of duplication</u>**	fall within the scope of the exemption in s.3 of the draft Rules, as the H K registered person is not just passing on an offer from the other entity to conduct regulated activities nor is the Hong Kong registered person merely introducing persons to the other entity. Nor would the "avoidance of duplication" exemption apply since it is only available where the other entity is based in Hong Kong, and is also a registered person, but not where the other entity is based offshore. The exemption should be extended to foreign intermediaries. It is suggested that the exemption is expanded to include the situation where a person regulated by a jurisdiction outside Hong Kong issues a document in accordance with or as required by the law applicable to it.	the client a contract note, statement of account or receipt in accordance with and to the extent required by the law applicable to C in the relevant approved jurisdiction (namely UK and US). Our policy intention to apply "avoidance of duplication" exemption where the other entity is an intermediary in Hong Kong is clarified by amending the text of the original s.5(1) (now s.4(1)) to provide that this exemption would apply only where the client is a mutual client of A and B and both A and B are required to prepare and serve a contract note or statement of account in accordance with these Rules for entering into a relevant contract on behalf of the client.
	4	Where an intermediary ("A") or any associated entity of A knows or has reasonable cause to believe that another intermediary has prepared and delivered to a client of A a contract note, statement of account, or receipt in accordance with these Rules, neither A nor any associated entity of A is required to do so in respect of the same matter.	In certain circumstances, the laws and regulations of the foreign jurisdiction may not require a document to be prepared. In such case it should still not be necessary for the Hong Kong based intermediary to prepare a contract note, statement of account or receipt in accordance with the draft Rules. Alternatively, there should be an exemption from the draft Rules in respect of transactions with "sophisticated or professional investors". This can help to resolve most of the aforesaid problems. It may still be a problem, however, if the client does not agree to give waiver.	To further address any perceived additional burden these Rules may impose, we have revised the Rules to allow professional investors to waive receipt of any documentation required under the Rules (please see our response to comment 3).

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
6.			[LSHK] Since the requirement to prepare a contract note only applies, in any event, in respect of every relevant contract entered into HK by an intermediary with or on behalf of a client of the intermediary, (the original) s.3 as drafted appears unnecessary. In the circumstances described in s.3(a) and (b), the relevant "intermediary" will not be entering into a contract but is merely acting as an "arranger".	Point taken. Please see our response to comment 5.
7.	N/A – formerly section 4	**<u>Information required in all cases</u>** Each contract note, statement of account and receipt must include the following information, where applicable – • the name under which the intermediary or associated entity carries on business and the address of the principal place in Hong Kong at which business is carried on; • the CE number of the intermediary or associated entity; • the name, address and account number of the client; and • the date on which the contract note, statement of account or receipt is prepared.	[Linklaters, JFAM] Relaxation on particulars of disclosure in contract note is asked for the contract notes issued to professional investors (for example only include basic trade details) It is common for trade confirmation to be transmitted by electronic means and the following difficulties are envisaged: (a) existing well established international system e.g. Swift, Oasys Global, cannot cater to transmit all the information required, amendment is needed to accommodate the new rules (b) in particular for data which are not trade specific: address of the intermediary and client, CE no., statement of acting as principal, cash or margin, name of market/exchange, such data is not transmitted in existing electronic system and not considered useful among professional users	Please see our response to comment 3. Point taken. We have reduced to the minimum the amount of non-trade specific information that needs to be included in the contract notes, statements of account and receipts. Furthermore, to give a more logical presentation of the provisions, we have deleted s.4 and absorbed it into the text of the rules relating to contract notes (s.5(3)) and receipts (s.12(3)), and have added the new s.7 in respect of statements of account.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			(c) trade confirmation issued by asset management company to custodian (on discretionary account) does not include name, address and account no. of client.	We have added s.3(1) so that asset managers will only be required to issue monthly statements of account and receipts. As we think it an important control for retail discretionary clients to be able to review the monthly statements for any irregularities, we have added s.11(6)(b)(iii) & (iv) and s.(6)(d) so that asset managers must provide details of the money balance, payable and receivable, and all relevant contracts to their discretionary clients in the monthly statements of account.
8.			[ISD] Due to physical size of paper generally used for contract notes and receipts, it will be difficult to include legibly all the required information, as well as client's address, onto those documents. It is suggested that requirements for inclusion of client's address should be put on Consolidation of Daily Statements of Account but not on contract notes and receipts.	Point taken. We have revised the Rules so that client's address will only be required in the daily and the monthly statements of account.
9.	4	**<u>Avoidance of duplication</u>** Where an intermediary ("A") or any associated entity of A knows or has reasonable cause to believe that another intermediary has prepared and delivered to a client of A a contract note, statement of account, or receipt in accordance with these Rules, neither A nor any associated entity of A is required to do so in respect of the same matter.	[Anonymity] Comments on avoidance of duplication (a) prior written consent from client should be required (b) [CC] Consumer Council thinks that the SFC should ensure that one set of contract notes is actually passed to clients. In other words the execution brokers should be clearly required to issue contract notes.	(a) Client consent should not be necessary as the other intermediary is still subject to the same requirement. (b) Point taken. We have revised this section so that there must be an agreement in writing and that in the new s.4(2), there must also be an arrangement in place. Please also see our response to comment 5. This is contrary to the market practice where the clearing broker is often the entity issuing the contract note to clients.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			(c) [LSHK, Linklaters] An exemption should also be extended to foreign intermediaries who had issued equivalent documents, as in the case in s.3.	(c) Please see our response to comment 5.
10.			[Anonymity] Reference is made to the provision of "prepared and delivered to client". Question is what is regarded as client. In the case of a collective investment scheme, apart from the fund manager, parties appointed to perform day-to-day role and functions in connection with the funds activities usually include custodians, trustees and the administrators. Sometimes, it could happen that the fund management company through a delegation also takes on the role to act as the administrator of a fund. Therefore, question is whether client to be extended to cover the administrator even if it happens to be the fund management company itself.	It is not necessary for a fund to specifically designate a firm to receive contract notes etc from an intermediary. The normal custodial/ administrative agreement would suffice. We have now also replaced "deliver" by "serve" throughout these Rules to correspond to the terminology used in clause 386 of the Bill for better presentation. The definition of "deliver" has been replaced by a definition of "serve" which, in relation to a client, includes service on a designated person. On reflection, clients have not been able to detect trading malpractices and misappropriation of clients' assets because they do not receive contract notes etc. They have in fact authorized their account executives to collect them on their behalf. We need to disallow this as this may seriously undermine the effectiveness of these Rules. We have now defined "designated person" in s.2 to exclude an employee or officer of an intermediary.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
11.			[DHB] In the case of a bank (an exempt dealer) which passes a client's order to a broker for execution, does this mean that the bank needs only to pass to the client the broker's contract note (which conforms with the requirements of the Rules) issued to the client without having to issue a separate contract note in the name of the bank. The bank simply issues a confirmation to the client with the contract note attached.	The bank is required to prepare and serve a contract note if it is entering into the relevant contract on behalf of the client. If the "avoidance of duplication" exemption of s.4 applies and the bank has agreed with the execution broker that the latter will prepare and serve a contract note in accordance with these Rules, then it is not necessary for the bank to do the same in respect of the same matter.
12.	5	**Preparation and provision of contract notes**	[Linklaters] While it is proposed to create an exemption from the need to provide monthly statements of account to professional investors who agree to this in writing, we suggest that an exemption should also apply as regards contract notes for clients who are professional investors. We recognize that the Stamp Duty Ordinance in some circumstances requires contract notes to be produced in any event, but this only relates to "Hong Kong stock", and the contents requirements under s.19 of the Stamp Duty Ordinance are not as detailed as the requirements in the draft Rules. Accordingly, the exemption would still be of benefit, particularly in the case of transactions such as VWAP (value weighted average price) trades. Another possibility might be to allow the contract note requirements to be relaxed where investors wish only to receive monthly statements, with the contract note information being consolidated into the monthly statement.	Point taken. Please see our response to comment 3 above. For the avoidance of doubt, we have revised the Rules to make clear that nothing in these Rules should affect any requirement in the Stamp Duty Ordinance (please see new s.3(3)). This will only be an option where the client is a professional investor.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
13.	5(1)(b)	Contract note can be issued to any other person designated in writing by the client	[Lloyds] The words "in writing" should be deleted as there are occasions where instructions other than in writing are accepted. Similar suggestion for the issuance of statements of account and receipts.	Disagreed. There may not be a sufficient audit trail to resolve any disputes between an intermediary and its clients.
14.	5(1)(b)	Contract note is delivered to clients or any other person designated in writing by the client no later than the end of the second business day after entering into the relevant contract	[CC] Given that the issuance of contract notes are computerized, the Consumer Council has queried the rationale behind the extension of time for providing a contract note to a client from one to two business days.	When the generation of the contract notes can be done on T+1, we cannot expect the service to be made on T+1 all the time. It is not desirable to make law that we know, at the outset, cannot realistically be enforced.
15.	5(3)	Particulars of relevant contract required to be disclosed in the contract note	(a) [Anonymity] details of options contracts should be included e.g. expiry month, option type (put or call). (s.5(3)(c)(i))	Disagreed; these may be too specific and require the Rules to be updated each time there is a new/ modified product. We can rely on "any other particulars sufficient to identify them" to achieve the same result.
			(b) [Anonymity] due to different features in different markets, guideline regarding "opening" or "closing" should be given. (s.5(3)(c)(iv))	Disagreed; these terminologies are commonly used and understood by the market.
			(c) [HKSbA] not clear about the meaning of "performance" in s.5(3)(e)(ii) – the date of settlement or performance, whether it covers "partial performance" as distinct from "total performance".	This means the expiry date as in s.45A of the Commodities Trading Ordinance ("CTO"). There should not be an issue over "partial performance" and "total performance".
			(d) [JFAM] date of settlement for unit trust dealing cannot be determined because there is no contractual settlement. Instead date of payment received is disclosed. (s.5(3)(e)(ii))	S.5(3) only requires particulars to be included where applicable. In this case, it will appear that it is not necessary to include the date of settlement on the contract note.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			(e) [JFAM] commission payable in s.5(3)(f) should only refer to commission payable by client and not include commission payable to intermediary who referred the client. (f) [JFAM] s.5(3)(h) requires disclosure of charges. For unit trust deals, initial/redemption charges payable in connection with the relevant contract are included in the prices which are disclosed on the contract notes. The basis of calculating prices and charges are contained in the offering document of the unit trusts. It is to clarify whether further information is required to be disclosed in the contract note. (g) [JFAM] For asset managers who manage funds on a discretionary basis, the content requirements of the trade confirmations should be agreed between the asset manager and the custodian, as opposed to the draft Rules which are intended to cover the broking industry.	Yes. We understand that the basis of quoting and publishing dealing prices may not be uniform among all fund managers (some gross, and some net of the charges). Investors will be better served if they are not required to always refer back to the fine details in the offering documents. On the balance, we think it sufficient to disclose the percentage of such charge. In more general terms, s.5(3)(h) of the Revised Rules now permits the basis of calculation of such charges be shown instead of the amount of charges. This comment has been superseded by the new s.3(1). Please see our response to comment 7.
16.	5(4)	Contract note should specify whether the client's account is a cash account or a margin account.	[Anonymity] Where an intermediary only maintains cash securities accounts (also include unit trust business where no margin facility is provided) but not securities margin accounts for clients, the intermediary should not be required to specify on the contract note whether the client's account is a cash account or a margin account.	Point taken. We have revised s.5(4)(a) accordingly so that the contract note needs only to indicate where the account is a margin account.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
17.	5(4)(b) 5(5)(a)	Contract note must disclose average price per unit or per futures contract at the request of client	[Anonymity] There is concern that provision of average price to client may result in breach of s.19(2) of the Stamp Duty Ordinance and s.45A(2) of the Commodities Trading Ordinance which both require disclosure of price in contract note.	Please see our response to comment 12.
18.			[LSHK, Linklaters] The wording "at the request of client" is unduly restrictive. As long as client agrees (e.g. sign a letter), this should be sufficient. For professional investors, average price can be used as long as the client is notified and has not objected given additional protection is provided in s.6(7). Exemption for trades of professional investor can also resolve the difficulties posed by cases of VWAP, closing price orders and programme trades. The transaction may be effected partly as agent and partly, so as to achieve the agreed price, as principal.	Generally we believe that average pricing should stem from a client's request and not initiated by the intermediary. Please see our response to comment 3.
19.			[General comment] As not all intermediaries are able to provide average pricing to clients, the giving of average pricing should not be made compulsory at client request.	Point taken. We have now added s.5(7) so that an intermediary may (instead of must) adopt average pricing at the request of a client.
20.			[CC] The Consumer Council supports the requirement that average price could be used if a client so prefers and any change of preference could be made afterwards.	Noted.
21.			[ISD] The meaning of "the average price per unit" is not clear and definition should be included in Interpretation.	Disagreed. We think that the "average price per unit" is sufficiently clear.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
22.	5(4)(c)(i)	Contract note shall indicate if a trade is related to a short selling order, where the intermediary knows this	[JFAM] Clarification as to whether the indication of being related to short selling order is necessary for a broker's contract but not for a trade confirmation issued by an asset management company to a custodian.	This comment has been superseded by the new s.3(1) under which asset managers will no longer be required to issue contract notes or daily statements of account.
23.			[HKSbA] From the wording "the intermediary knows this", it can be implied that this is not applicable where the intermediary does not know that this is related to a short selling order as a matter of fact.	We have revised s.5(4)(c)(i) to refer to "a short selling transaction". An intermediary is required to ascertain whether a sale order is a short selling transaction by virtue of clause 166 of the Bill (now s. 171 of the SFO). The SFC has prescribed the manner on how this is expected to be done in accordance with the relevant codes and guidelines of the SFC.
24.	5(4)(c)(ii)	Contract note shall indicate if a trade is related to a borrowing or lending under a securities borrowing and lending agreement	[Linklaters] This clause, appearing as a sub-subsection of 5(4)(b), seems to be in the wrong place. In the subsection relating to purchases and sales, it requires an indication of whether a transaction is a borrowing or lending under a securities borrowing and lending agreement (which in the definition of "relevant contract" are singled out and therefore, we assume, are not regarded as sales and purchases).	Point taken. We have moved it to s.5(4)(c)(ii) accordingly.
25.	5(5)(c)	If the futures contract has been cleared by another person, the contract note shall disclose the name of that person.	[Linklaters] It is unclear what is meant by s.5(5)(c), which is new and not in s.45A of the CTO.	We understand that for the give-up trades effected on the HKFE, the execution brokers may sometimes issue and disclose the name of the clearing broker in the contract notes. If the contract note is issued by the clearing broker, then this requirement will simply not apply.
26.	5(6)	Additional information to be specified in note contract in respect of a leverage foreign exchange contract	[DHB] Average pricing should also be allowed for contract notes in respect of leveraged foreign exchange contracts.	Disagreed. To permit this would require a relaxation of the existing requirement to state the time of order receipt and execution.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
27.			[HKMA] The Rules should clearly indicate whether they are applicable to authorized institutions in respect of leveraged foreign exchange activities, notwithstanding clause 148(5) of the Bill.	This is not necessary as clause 148(5) of the Bill (now s.152(6) of the SFO) restricts application of the Rules to a registered institution's regulated activities for which they are registered. Given that the Rules should always be read in conjunction with the SFO, it is not necessary to reiterate this in the Rules.
28.	5(6)(a)	For a leveraged foreign exchange contract, the contract note shall disclose, where the intermediary is acting as agent, a statement that it is so acting and the name of the person for whom it is acting;	[LSHK, Linklaters] This clause includes provisions set out in s.4(2) of the Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules. The commentator wants to clarify that this is only intended to apply where the intermediary is acting as agent for the counterparty to the trade, and not where it is acting as agent for the client.	Yes.
29.	5(7)	For contract note which has included an average price as referred to in subsection (4)(b) or (5)(a) and the client requests an analysis of such average price, the intermediary must provide a detailed analysis of each underlying purchase or sale of securities or futures contracts no later than the end of the second business day after the request is received.	[Linklaters] There should be a time limit of 2 years (in line with retention period of contract notes) within which the client must make such a request. Also if the original contract note has been prepared more than, for example, twelve months previously, a longer period to provide the breakdown should be given (for example, it should be delivered no later than the end of the fifth business day after the request was received).	Point taken. We have revised s.5(8) so that clients can only request for an analysis within 2 years of the date of the relevant contract. Point taken. We have agreed to give more time to intermediaries to deliver the analysis and revised s.5(8) so that delivery is required no later than the end of the 5th business day.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
30.	6	**Consolidation of contract notes with daily statements of account**	[Linklaters] This permits intermediaries that are required to deliver daily statements of account under s.8 and s.9 to provide the contract note information in those statements of account, instead of providing separate contract notes. This clause should also apply to an intermediary that voluntarily sends daily statements of account to the client, as long as the statements incorporate the contract note information required by s.5.	There is no prescribed format for a contract note. As such, provided that such statements include the information specified for contract notes in these Rules, the intermediaries are allowed to issue them for the purposes of these Rules.
31.	8	**Preparation and provision of daily statements of account by intermediaries providing financial accommodation**	[HKAB] This section appears to relate to types of facilities other than margined transactions (which is covered in s.9). Financial institutions offer normal banking facilities, which may be secured by shares, bonds, deposits and other assets. The requirements imposed by this clause would require substantial systems changes by such licensees and we suggest that normal banking facilities given by financial institutions be excluded from this clause.	S.8 or s.9 does not apply to authorized institutions offering normal banking facilities. Please see our response to comment 27.
32.			[Lloyds] S.8(3) then states the situations to which s.8 applies. This would catch, for example, the debiting to the account of periodic management fees so that, as written, a statement would have to be sent to the client even though no financial accommodation was involved. In other words, there is a conflict between the heading wording in s.8 and the provisions of s.8(3).	Point taken. We have revised s.8(1) to make clear that this section only applies to intermediaries offering financial accommodation.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
33.			[DHB] A commentator wants to clarify whether a daily statement of account is required to be issued even when there is no transaction on a particular day. [HKAB] Another commentator has questioned whether "daily" should be included in the title of this section as well as s.9 as neither section's application is necessarily on a daily basis.	Assuming that the question refers to a trade transaction, the answer is yes given that daily statements of account will also need to be issued when there is a deposit or withdrawal of securities by margin clients. Please also see the response below. The word "daily" refers to the period such statements cover. This needs to be retained in the title to distinguish from the statements required to cover transactions over a monthly period though these statements will not be issued everyday.
34.			[LSHK] S.8 contains provisions relating both to - daily statements of account which are required in the case of deposits, withdrawals and other adjustments, and - summary of the terms on which financial accommodation is provided. As a drafting matter, it would be clearer if these two matters were dealt with in separate sections.	Point taken. We have deleted the definition of "statement of account" in s.2 and deleted s.8(2)-(3) and 9(1)-(2). We have incorporated information falling within the remit of statements of account (i.e. the old s.8(3)(b)-(d) and s.9(2)(b)-(c)) into the new s.8(2)(g) and s.9(2)(l). Other information will instead be dealt with in the relevant codes and guidelines of the SFC.
35.			[HKMA] The Rules should clearly indicate whether they are applicable to authorized institutions in respect of provision of financial accommodation, notwithstanding clause 148(5) of the Bill.	Please see our response to comment 27.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
36.	N/A - formerly 8(1)(c)	An intermediary is required to deliver daily statement of account when there is a disposal initiated by an intermediary of any client securities and collateral.	[Linklaters] The reference to "client securities and collateral" in s.8(1)(c) is incorrect as it includes "client securities", which are not provided for the purposes of financial accommodation. This is an extension to the existing s.75A(1)(c) of the SO, which only refers to "securities collateral".	We need to extend this to cover client securities because the Securities and Futures (Client Securities) Rules allow intermediaries to dispose of client securities held in safe custody in settlement of any liability owed provided that there is a client agreement in writing.
37.	N/A – formerly 8(2)	An intermediary must - • prepare a summary of the terms on which financial accommodation is provided to a client; and • deliver such summary of terms and details of any subsequent change in such terms to the client; or any other person designated in writing by the client, no later than the end of the next business day after - (a) entering into the arrangement for the provision of financial accommodation by the intermediary; or (b) any change in the terms on which financial accommodation is provided to the client by the intermediary.	[LSHK, Linklaters] The Consultation Document appears to indicate that only the changes of the terms of financial accommodation need to be notified to the client but this is not how s.8(2)(b) is drafted which appears to require a summary of the terms. The wording should clearly state whether summary of terms or only changes are required. It has been suggested that s.8(2)(b) be redrafted from "deliver such summary of terms and details…" to "deliver such summary of terms or, as the case may be, details…" Also, it is not clear whether the client should be notified of any changes as soon as the intermediary makes the decision to make the changes or when those changes are effective. As contract notes are now required to be delivered within two business days after entering into the relevant contract, we question why the summary and any changes have to be provided within one business day.	This has been superseded by our deletion of s.8(2)-(3). Please see our response to comment 34.
38.			[General comment] Some wanted to know if the client should receive a list of securities collateral both at the outset and upon each subsequent change.	Please see our response to comment 37.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
39	8(2)	The daily statement cum summary of terms must include, among others, the following information, where applicable – • a list of items which the intermediary will accept as securities collateral, together with applicable margin ratios; • the client's credit limit; • the expiry date of the arrangement for the provision of financial accommodation.	[BNP] Securities acceptable by intermediaries as collateral, the applicable margin ratios and credit limit change frequently, depending on the market and value of the securities. The requirement to notify clients in advance of what securities will be acceptable, the applicable margin ratios and credit limit could be misleading to clients and will increase the danger of disputes arising between clients and intermediaries if changes thereto subsequently occurs, which invariably will be the case. Intermediaries must be able to preserve their right to determine and change the acceptable securities and applicable margin ratios upon changing market conditions. Bearing in mind the above-mentioned frequent changes, the requirements for the intermediaries to notify clients whenever there is change to the acceptable securities, their applicable margin ratios or credit limit will cause confusion among clients. Further this will not be practicable and will impose a great deal of administrative and logistic burden on intermediaries. For the expiry date of the arrangement, unless the arrangements are of fixed period, it is not possible to predetermine the expiry date.	Point taken. We have deleted the requirement to disclose the list of items which will be accepted by an intermediary as securities collateral. However, details of the nature, credit limit and expiry date of the accommodation are retained for the daily statements since these requirements are in the existing s.75A of the SO and the industry has not raised any questions to date. Disclosure is required only where applicable.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
40.	9	**Preparation and provision of daily statements of account in relation to margined transactions**	[Linklaters] As the definition of "margined transaction" is extremely broad, this requirement, which is substantially similar to the requirements relating to traditional securities margin financing, may impose a substantial burden on compliance departments. Where transactions are marked-to-market on a daily basis, it appears that a statement of account must also be prepared on a daily basis.	Point taken. We have revised s.9(1) to make it clear that a statement of account is only required for that business day when a margined transaction is entered into to open or close a position.
41.	9(2)	The daily statement in relation to margined transactions must disclose the following particulars of summary of terms, where applicable – • list of items acceptable as security; • client's position or trading limit; • expiry of arrangement • margin call policy	[BNP] The disclosure of the required information of summary of terms is not appropriate in view of - advance notice of credit limit to client is misleading in view of the rapid changing market conditions - increase danger of dispute - adversely affect the intermediary right to determine and change applicable credit limit - notification of change of credit limit may cause confusion to client and impose burden on intermediary - usually the arrangement is not provided for a fixed period, not possible to predetermine expiry date.	Disagreed. Disclosure should not undermine the intermediary's ability to change the terms; this is normally provided for in the client agreement. It should be noted that the Rules only require disclosure where intermediaries set such limits and expiry dates. We have however deleted the requirement to provide a list of security or to disclose the margin call policy given that most brokers and financiers currently do not provide such information in the statements of account.
42.	9(2)	The daily statement in relation to margined transactions must include certain specified information, where applicable.	[HKSbA, HKAB] Commentators want to clarify that items (c), (e) and (f) apply to futures, forex or options transactions. Otherwise, they have concern it is difficult to apply in other cases e.g. securities transactions.	We have not proposed any changes given that the subsection requires disclosure of those items only where they are applicable.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
43.	N/A – formerly 9(5)	This section does not apply to an intermediary licensed or exempt for asset management where the intermediary has agreed with a client of the intermediary not to deliver statements of account as referred to in subsection (3) in respect of the client.	[DHB] In relation to a bank (exempt dealer) which carries on fund management activities and is granted an exemption status to do so, it is suggested that there should be clarification as to exactly what type or nature of asset management activities would be exempted. For example, would a unit trust distribution service be exempted.	This comment has been superseded by our disapplying s.9 in the case of asset managers.
44.			[Linklaters] The requirement on agreement from client in writing is too restrictive, more relaxation is asked for.	Please see our response to comment 43.
45.	11(2)	**Preparation and provision of monthly statements of account** Monthly statement of account must be delivered to the client or any other person designated in writing by the client within 7 days of the end of each calendar month.	Various suggestions on relaxation of 7 days delivery period, such as - [Linklaters] 7 business days (in line with s.75A(4) of SO) - [ISD] 7 working days - [Lloyds] 10 business days [Lippo] A securities dealer voiced the difficulty in compliance with 7 days limit given their full range of financial products over different markets. They need 8-9 days to complete preparation of monthly statement: 2-3 days in retrieval of market price and input to the system, 1 day in computer processing and 5 days of printing of statements.	Point taken. We have revised s.11(2) to refer to 7 business days.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
46.			[Anonymity] Rather than restricting the period to send out monthly statements to 7 days after the end of the month, banks suggested that the 7 day period be applied to the end of the monthly statement cycle. This would allow for a range of cut-off dates for monthly statements which cater to client's preference and/or to avoid operational bottleneck at the end of the month.	Point taken. We have added the new s.11(1) to allow for staggering of month-ends by defining "monthly accounting period" in that subsection.
47.	11(4)(d)	The monthly statement of account must include where applicable certain specified information including what happened to the proceeds of any disposals initiated by the intermediary of any client securities and collateral, held for that account during that month.	[HKSbA] In the situation where a disposal is initiated by the intermediary, the proceeds are meant to be entered into that client's account. It is not clear what it is meant by "including what happened to the proceeds". What are the "details" contemplated and in what manner of description should they appear other than accounting?	Given that this disclosure is already required under s.75A and s.121Z of the SO, and the industry has not raised any questions to date, the meaning of the existing wording should be sufficiently clear. We expect to see credit entries made to the account and/or money payment being made to the client.
48.	11(4)(f)	The monthly statement of account must include the following information, where applicable - • the quantity, market price and market value of each description of – (i) client securities and collateral; or (ii) security provided by or on behalf of the client in relation to a margined transaction, held for that account as at the end of that month;	[Anonymity] Accurate and objective market prices are sometimes difficult to obtain for revaluation purposes. Market prices of some securities such as bonds and equity-linked notes may not be readily available. Reconsideration of this requirement is deemed necessary.	Point taken. We have revised s.11(4)(f) to require disclosure of market price and market value where such price or value is readily ascertainable.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
49.	11(4)(i)	The monthly statement of account must include the following information, where applicable - • all floating profit/ loss calculated at the end of that month and the prices used for such purposes;	[HKAB] A commentator wants to clarify that this applies to outstanding futures contracts only, as it is not market practice to track profit and loss for all types of transactions. [Anonymity] It is also recommended that calculation of floating profits and floating losses on monthly statement of account should not be made mandatory. Otherwise, intermediaries may produce misleading information to clients. For instance, in case of bonds, the use of acquired cost instead of amortized cost can result in significant differences in the calculation of floating profits and floating losses.	We have not proposed any changes since disclosure is required only where it is applicable and floating profits and losses are already defined in s.2 to make it clear that they relate to open positions.
50.	11(5)	An intermediary licensed or exempt for asset management must - • prepare a statement of account in respect of a client of the intermediary …, except in relation to its management of a collective investment scheme authorized by the Commission under section 103 of the Ordinance; and • deliver such statement of account to - (i) the client; or (ii) any other person designated in writing by the client, within 7 days of the end of each calendar month.	Suggestions relating to 7 days delivery period - [JFAM] clarify 7 days means 7 calendar days or 7 business days - [Anonymity] propose 7 business days taking into account of long holidays - [General comment] 15 business days for fund managers managing client portfolio with external custodians, as they might need to wait for information from overseas custodians - [JFAM] For a discretionary fund manager, the timeframe for issuing statements is normally agreed with the client and the nature of information requested by the client could take longer than 7 business days to prepare.	We have allowed more time by revising s.11(5)(d) to require delivery within 10 business days of the month-end and provide for the staggering of month-ends in the new s.11(1).

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
51.			[Linklaters, JFAM] The exemption should not be limited to management of HK authorised collective investment schemes. The exclusion should cover discretionary management of any collective investments, including unit trusts and mutual funds (whether authorised or unauthorised), pension and provident funds (consistent with the exclusion in the Code of Conduct for Persons Registered with the SFC).	Point taken. We have revised s.11(5) so that the requirement does not apply to asset management in relation to collective investment schemes.
52.			[JFAM] This clause should refer to 'An intermediary licensed or exempt for asset management or an associated entity of the intermediary'.	Point taken. We have revised s.11(5) accordingly. On a similar point, we have noted that the reference to the associated entity has been omitted from s.3(1) and s.12. This has been added back accordingly. For the avoidance of doubt, we have added the new s.3(4) to clarify the scope of application of these Rules to an associated entity of an intermediary.
53.			[JFAM] The requirement to deliver monthly statements by an intermediary should be consistent with the requirement in the Code of Conduct. After the Code was issued, the SFC agreed with a particular fund house that quarterly statements could be sent to its clients in accordance with the provisions in the Fund Manager Code of Conduct.	Besides the professional investor exemption (please see our response to comment 3), waivers and modifications can be granted upon application under clause 131 of the Bill (now s.134 of the SFO) where the Commission is satisfied that these would not prejudice the interest of the investing public.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
54			[Lloyds] This clause describes statement-issuing requirements for "an intermediary licensed or exempt for asset management". Most intermediaries which are so licensed are also licensed as dealers in securities. As written, this clause will oblige a licensed or exempt asset manager to issue statements, as prescribed, for all its clients including those for which it is acting other than as an asset manager. We do not think that this is intended. We suggest that the wording to the first part of this clause should be amended to: "A licensed or exempt intermediary shall, when acting in its capacity as an asset manager must: - "	We have revised s.11(5) to make clear that this provision is in relation to asset managers in the conduct of asset management.
55	11(6)	The statement of account must include, where applicable, a breakdown of the income credited to and charges levied against that account during that month.	[JFAM] S.11(5)(b) should be amended to 'a breakdown of the income credited to and charges levied by the intermediary against that account during that month'.	It is customary to disclose all charges in the fund accounts, including bank and custodial charges. We have taken the opportunity to revise s.11(6)(c) to require details instead of a breakdown for consistency in the drafting style.
56	N/A – formerly 11(6)	This section does not apply to an intermediary or an associated entity of the intermediary in respect of a client of the intermediary who is a professional investor where the client agrees in writing not to receive such statement of account.	[Linklaters] An intermediary licensed or exempt for asset management is not required to provide a monthly statement if a professional investor agrees in writing not to receive such statements. This is stricter than the current Code of Conduct, which waives the requirement for any intermediary, not just asset managers, to provide professional investors with regular statements of account (except in respect of securities margin financing). It is not necessary under the Code to obtain the consent of the professional investor (except for certain investors to consent to being treated as professionals).	Please see our response to comments 3, 51 and 53.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			The Consultation Document in paragraph 22 refers to a general relaxation in respect of professional investors, therefore we assume the reference to s.11(4) in s.11(6) (which limits s.11(6) to asset managers) is a drafting error. [General comment] On the other hand, some consider that clients with dormant accounts should be able to opt out by client agreement. [CC] The Consumer Council thinks it would be more important to allow investors, whether retail or professional, to have a choice as to whether or not they prefer to receive a monthly statements of account.	Please see also our response to comments 3 and 15. We do not think it appropriate for non-professional clients to opt out of these Rules as they may be persuaded to waive them without understanding the consequences.
57.			[HKAB, JFAM, DHB] There should be further guidelines as to the definition of "professional investor" or on the criteria for classifying a client as professional or sophisticated investor or how to differentiate such investors from other normal investors. Please clarify whether the definition of "professional investor" same as the one in the Code of Conduct.	Please see our response to comment 3.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
58	12(1)	**<u>Preparation and provision of receipts</u>** Subject to subsection (2), on each occasion that an intermediary or an associated entity of the intermediary receives any - (a) client assets; or (b) security provided in relation to a margined transaction, from or for the account of a client of the intermediary, the intermediary must - (c) prepare a receipt specifying - (i) the account into which - (A) the client assets have been deposited; or (B) a security as referred to in paragraph (b) has been deposited; (ii) particulars of the client assets or security as referred to in paragraph (b); and (iii) the date of receipt; and (d) deliver the receipt to - (i) the client; or (ii) any other person designated in writing by the client, no later than the end of the next business day after the day of receipt of the client assets or security as referred to in paragraph (b).	Comments on receipt (a) [Linklaters] Given exemption allowed in subsection (2), the issue of receipt could still prove burdensome where such transactions are marked-to-market and margin is collected on a daily basis. (b) [Linklaters] Although the Consultation Document indicates that when scrip is deposited directly into CCASS the draft Rules will not apply, this does not appear to be reflected in the draft Rules. (c) [Linklaters] Exemption should be extended to transfer of securities by electronic means (d) Clarification whether receipt is required to be issued where (1) [Linklaters] Securities or money received in the course of normal settlement rather than safe custody (2) [Anonymity] The transaction is shown in daily statement (3) [JFAM] Receipt of cheques for settling outstanding unit trust deals where credit is granted on dealing of unit trusts to clients sometimes (4) [Anonymity] Client's presentation of a bank pay-in slip as evidence of direct payment of money into the intermediary's bank account.	(a) The marking to market would not require the issue of receipts though daily collection of margin would. (b) We have revised s.12(2)(e) to cover the situation where securities in a scripless form are transferred into an account maintained with the custodian of the intermediary or associated entity. (c) This should be addressed by our response to comment (b) above. Re (d) : (1) Not necessary where this has been made clear in the contract note. (2) This is already provided for in s.12(2)(c). (3) If receipt of the money is not acknowledged in the contract note for the purchase of units, a receipt should be issued. (4) This is not necessary, please see s.12(2)(b). On reflection, we have revised s.12(2)(b) so that the carve-out does not apply where the payment is made by the intermediary or the associated entity.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
			(e) [JFAM] Clarify whether the receipt need to be obtained back when clients withdraw their stock [JFAM] Receipt is not required to issue on cash received for settlement of a transaction for which a contract note is issued. However, in this subsection, a contract note is required to contain the date of receipt, which is not normally available for a unit trust transaction.	(e) This is not necessary as the objective is to acknowledge receipt on a given day and not to track subsequent movements of client assets. Clients are expected to review their monthly statements of account which reflect their latest positions. We accept that a contract note needs not contain the date of receipt and have revised s.12(2)(c) accordingly.
59.	13	**Duty to provide copies of certain documents** An intermediary or an associated entity of the intermediary must comply as soon as practicable with a request from a client of the intermediary for a copy of contract note, specified statement of account kept by the intermediary or its associated entity or statement of account as of the date of request in relation to transactions within specified period.	(a) [Linklaters] Even though an intermediary is permitted to charge for providing such copies, it may be administratively onerous to produce statements of account other than at month end. It is questioned whether this requirement is really necessary from the perspective of investor protection. (b) [Anonymity] The rule should specify the maximum time period allowed for the intermediary to prepare and make available any contract note or statement of account for client's inspection. (c) [Anonymity] What is the reason for not requiring a copy of a receipt as referred to in s.12 to be delivered by an intermediary for inspection upon a request from a client?	This requirement is no different from what was required under the existing SO. As intermediaries need only provide daily statements of account over the last 2 years, this is not considered to be too burdensome. We are of the view that "as soon as practicable" is more appropriate than setting an absolute deadline. Point taken. We have revised s.13(1)(d) to require a copy of receipt.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
60.	N/A – formerly 14(1)	**<u>Delivery of documents</u>** Any contract note, statement of account or receipt in accordance with these Rules may be made by – (a) hand; (b) post; (c) facsimile; or (d) other mode of electronic transmission.	[JFAM] Hand delivery should not be an option available to clients because this imposes operational burden on intermediaries.	As s.400 of the SFO already provides that all documents required to be issued or served for the purposes of the SFO including the contract notes, statements of account and receipts required to be issued under these Rules, are regarded as duly served if the requirements of that section are met, we have deleted s.14(1)-(3) of the Rules for being unnecessary. Please see also our response to comment 10.
61.	N/A – formerly 14(2)	Adequate procedures must be adopted by the intermediary and the associated entity referred to in subsection (1) to - (a) identify any non-delivery to a client of the intermediary or, where the client has designated another person for delivery in accordance with these Rules, such other person; and (b) ensure successful delivery by alternative means.	(a) There is concern that this section imposes obligation which is difficult for the intermediary to discharge.	Please see our response to comment 60.
62.	N/A – formerly 14(3)	The intermediary and the associated entity referred to in subsection (1) must accord to a client of the intermediary an adequate opportunity to select his preferred mode of delivery from the options set out in subsection (1) and delivery must take place in accordance with that selection, subject to subsection (2).	[Linklaters] When a client should not be required to receive documents by electronic means without expressly consenting to this mode of delivery, it would be unduly burdensome to have different delivery options for different clients..	Please see our response to comment 60.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
63.			[Anonymity] Clarification is required as to whether an intermediary is in breach of any rule if the intermediary follows the instruction of a client who gives specific written instruction not to deliver any contract, statement of account or receipt to him.	Please see our response to comment 56.
64.	14	**Language of documents** The intermediary and the associated entity referred to in subsection (1) must accord to a client of the intermediary an adequate opportunity to select the official language in which he wishes any contract note, statement of account or receipt to be delivered to him, or to a person designated by him in accordance with these Rules, and such document must be delivered in that language.	Comments on selection of language (a) [BNP] clarify whether "official language" means Chinese or English, a definition should be put in the Rules for clarity. One commentator suggested the term should be defined by reference to its ascribed meaning in the Official Languages Ordinance (Cap. 5). (b) [Anonymity] the intermediary has discretion to provide the languages for the clients to choose	Yes, "official language" means Chinese or English. No clarification is needed as this is made clear in the Interpretation and General Clauses Ordinance (Cap. 1). We have revised s.14 to require documents to be in an official language and deleted the original s.14(4) which gives the client an opportunity to select the official language.
65.			[General comment] Opposition to allow client to choose Chinese language (a) some intermediaries' system cannot support Chinese language (b) the SFC should accept pre-printed standard form with both	Please see our response to comment 64.

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
66.	16	**Reporting of non-compliance with certain rules**	[LSHK] An intermediary should only be required to report "material" breach of non-compliance. Otherwise a large volume of insignificant matters will be notified to the SFC. [Linklaters] Deadline of one business day is too prescriptive. Suggestions on amendment of one business day to (1) [Anonymity] as soon as possible (2) [General comment] 7 business days	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. For example, transaction size minimums are difficult to impose as intermediaries come in different shapes and sizes. It is in the interest of client protection to have the regulator informed of a failure to timely and accurately inform clients of the status of their accounts and trades 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.
67.	17	**Penalty** Failure, without reasonable excuse, to comply with any provision of the draft Rules is a criminal offence punishable with a fine of up to HK$25,000.	[Linklaters] While it is important that clients receive prompt and accurate information from intermediaries, the draft Rules are administrative and technical in nature, and most breaches are expected to occur through human error, computer failure, etc. rather than deliberate or reckless misconduct. The SFC will, under the Bill, have extensive disciplinary powers that can be exercised against intermediaries, including the power to fine. It seems unnecessary to provide for non-compliance with the draft Rules to be a criminal offence. While the penalty is simply a fine, nevertheless, having a criminal record may have very serious consequences for an organization or for an individual.	Criminal liability is imposed only when there has been a breach without reasonable excuse or with intent to defraud. Any decision as to the action (if any) to be taken in respect of a breach would be made with regard to all the circumstances including inadvertence or minor nature of the breach. We further note that the penalty provisions are made pursuant to clause 148(3) and (4) of the Bill (now s.152(3) and (4) of the SFO).

Item no.	Section no.	Details of the draft Rules released for public consultation	Respondent's comments	SFC's response
68.	General	Exemption regarding professional clients	[CC] The Consumer Council believes it may not be possible to make a clear distinction between various types of investors. Though some general benchmark, such as the size of their investments and their investment patterns may serve to characterise each class of investors, the distinction is not mutually exclusive: a professional investor could sometimes be a retail investor and vice versa.	This is considered as part of a separate market consultation on the draft Securities and Futures (Professional Investor) Rules.
69.	General	Other suggestions	[ISD] Suggestions - further detailed clarification on Instruction and Requests from clients; - the inclusion of Proforma Statements; and - to consider the replacement of contract note, receipt and statement of account with a Combined Statement with effect from 2003	The Rules now specify that clients' agreement must be obtained in writing wherever appropriate. It is considered more appropriate to specify only the minimum contents (neither the existing SO nor HKEx Rules have ever included any proforma statements). This is already possible, though not made mandatory, under these Rules.

Details of Submissions Received

Date received	Respondent
9 November 2001	BNP Paribus Peregrine (BNP)
15 November 2001	CMG Asia Limited (CMG)
2 November 2001	Consumer Council (CC)
12 November 2001	Dao Heng Bank (DHB)
9 November 2001	Hong Kong Association of Banks (HKAB)
7 November 2001	Hong Kong Monetary Authority (HKMA)
12 November 2001	Hong Kong Society of Accountants (HKSA)
9 November 2001	Hong Kong Stockbrokers Association (HKSbA)
8 November 2001	Institute of Securities Dealers (ISD)
8 November 2001	JF Asset Management (JFAM)
7 November 2001	The Law Society of Hong Kong (LSHK)
14 November 2001	Linklaters and Alliance (Linklaters) representing ▪ Credit Suisse First Boston (Hong Kong) Limited ▪ Goldman Sachs (Asia) L.L.C. ▪ J.P. Morgan ▪ Merrill Lynch (Asia Pacific) Limited ▪ Morgan Stanley Dean Witter Asia Limited ▪ Salomon Smith Barney Hong Kong Limited ▪ UBS Warburg
16 October 2001	Lippo Securities Ltd (Lippo)
9 November 2001	Lloyds TSB (Lloyds)
5 November 2001	(commentator reserved anonymity)
8 November 2001	(commentator reserved anonymity)
9 November 2001	(commentator reserved anonymity)
1 November 2001	(commentator reserved anonymity and contents of submission)
9 November 2001	(commentator reserved anonymity and contents of submission)
12 November 2001	(commentator reserved anonymity and contents of submission)
12 November 2001	(commentator reserved anonymity and contents of submission)
12 November 2001	(commentator reserved anonymity and contents of submission)

Derivation Table of Provisions of the Securities and Futures Bill / Ordinance referred to in the Summary of Comments

Clause/Schedule in the Securities and Futures Bill	Section/Schedule in the Securities and Futures Ordinance
131	134
148(3)	152(3)
148(4)	152(4)
148(5)	152(6)
166	171
386	400
Schedule 1, Part 1	Schedule 1, Part 1
Schedule 6	Schedule 5

Derivation Table of Provisions of the Draft Rules released for Public Consultation and the Draft Rules now being placed before the Subcommittee

Section of the Rules released for public consultation	Heading	Section of the Rules now being placed before the Subcommittee
	PART I – PRELIMINARY	
1	Commencement	1
2	Interpretation	2
3	Application	deleted
	PART II – PREPARATION AND PROVISION OF CONTRACT NOTES, STATEMENTS OF ACCOUNT AND RECEIPTS	
	Division 1 – General rules	
4	Information required in all cases	5(3)(a)-(b), 7, 12(3)(a)-(c)
5	Avoidance of duplication	4(1)
	Division 2 – Contract notes	
6	Preparation and provision of contract notes	
6(1)		5(1)
6(2)		5(2)
6(3)		5(3)
6(4)		5(4) & 5(7)
6(5)		5(5) & 5(7)
6(6)		5(6)
6(7)		5(8)
7	Consolidation of contract notes with daily statements of account	6
	Division 3 – Statements of account	
8	Preparation and provision of daily statements of account by intermediaries providing financial accommodation and their associated entities	
8(1)		8(3)

Derivation Table of Provisions of the Draft Rules released for Public Consultation and the Draft Rules now being placed before the Subcommittee (cont'd)

8(2)		deleted
8(3)		Old 8(3)(b)-(d) incorporated in new 8(2)
8(4)		8(1)
8(5)		8(2)
9	Preparation and provision of daily statements of account by intermediaries in relation to margined transactions	
9(1)		deleted
9(2)		Old 9(2)(b)-(c) incorporated in new 9(2)
9(3)		9(1)
9(4)		9(2)
9(5)		Incorporated in new 3(1)
10	Consolidation of daily statements of account	10
11	Preparation and provision of monthly statements of account	
11(1)		11(2)
11(2)		11(3)
11(3)		11(4)
11(4)		11(5)
11(5)		11(6)
11(6)		Incorporated in new 3(2)
	Division 4 – Receipts	
12	Preparation and provision of receipts	
12(1)		12(1)
12(2)		12(2)
	PART III – MISCELLANEOUS	
13	Duty to provide copies of certain documents	
13(1)		13(1)
13(2)		13(2)
13(3)		13(3)
13(4)		13(4)

Derivation Table of Provisions of the Draft Rules released for Public Consultation and the Draft Rules now being placed before the Subcommittee (cont'd)

14	Delivery and language of documents and retention of copies	
14(1)		deleted
14(2)		deleted
14(3)		deleted
14(4)		14
14(5)		15
15	Reporting of non-compliance with certain rules	16
16	Penalty	17(a)
	New sections in the Rules now placed before the Subcommittee	
	Application of Rules in relation to contract notes required under the Stamp Duty Ordinance, and to an associated entity of an intermediary	3(3)-(4)
	Exemption for intermediaries where a related corporation that is a regulated entity in an approved jurisdiction provides equivalent documents	4(2), schedule 1
	Allowance for the use of different monthly reporting cycles by intermediaries	11(1)
	Addition for penalty for intent to defraud	17(b)

Annex 2

Derivation Table

The table below contains cross references between provisions of the Securities and Futures Bill mentioned in the Consultation Conclusions to section numbers under the Securities and Futures Ordinance as gazetted on 28 March 2002

Clause/Schedule in the Securities and Futures Bill	**Section/Schedule in the Securities and Futures Ordinance**
148(4)	152(4)
386	400
Schedule 1, Part 1	Schedule 1, Part 1