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

Consultation Conclusions on the Draft Securities and Futures (Keeping of Records) Rules

《證券及期貨(備存紀錄)規則》草擬本的諮詢總結

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引言

1. 證券及期貨事務監察委員會(“證監會”)在 2002 年 2 月 15 日就《證券及期貨(備存紀錄)規則》的草擬本(“該規則”)發表諮詢文件(“《諮詢文件》”)。

2. 《諮詢文件》載有詳盡規定，訂明就不同類別的受規管活動獲發牌或註冊的中介人及其有聯繫實體須履行的備存紀錄責任。

3. 諮詢期於 2002 年 3 月 15 日結束。

4. 附件 1 載有就該規則所接獲的意見的摘要(“《意見摘要》”)。

5. 本會在考慮過所收到的意見書及與評論者進行討論後，認爲適宜對該規則作出若干修訂。

6. 該等修訂已獲證監會通過成爲經修訂的該規則草擬本現列載於附件 2。由於經修訂的該規則草擬本仍須待立法會審議通過，所以目前的版本可能並非最終版本。發出該修訂規則的目的，主要是說明我們爲回應市場人士意見而作出的修訂，而並非要進行另一輪諮詢。

7. 證監會謹此感謝就該規則提供意見的人士。

8. 本諮詢總結旨在爲對該規則感興趣的人士，分析在諮詢過程中所提出的主要意見，以及解釋證監會在作出有關總結時的理據。本總結應與《諮詢文件》、該規則、《意見摘要》及經修訂的該規則草擬本一併閱讀。

公開諮詢

A. 背景

9. 本會擬備該規則，旨在確保中介人及其有聯繫實體就其業務及客戶交易備存全面且充分詳細的紀錄，從而確保它們可就其業務營運及客戶資產作出妥善的交代。

10. 該規則規定所有中介人及其有聯繫實體須遵守若干概括性的備存紀錄責任。該規則亦按照中介人從事的受規管活動的類別，向其訂立額外的特定規定。

11. 從政策角度而言，該規則主要旨在：

- 適用於所有中介人及其有聯繫實體，並就從事某些受規管活動的中介人訂立額外的特定規定；及

- 將載於 3 條不同條例的現行規定(即《證券條例》第 83 條及第 XA 部第 5 分部、《商品交易條例》第 45 條及《槓桿式外匯買賣(簿冊、成交單據及業務操守)規則》第 3 條)加以精簡。

B. 諮詢過程

12. 除了發出公布邀請公眾提交意見外，證監會還將《諮詢文件》派發予所有註冊人及多個專業團體。《諮詢文件》亦同時載於證監會的網站。

13. 證監會在諮詢期內及其後曾與業內人士及其法律顧問舉行多次會議，就他們的意見進行磋商。

14. 本會從包括基金管理公司、國際經紀行、律師行、業界代表組織及專業團體在內的從業人士收到 15 份意見書。其中一份意見書內附有香港證券專業學會向其會員進行的意見調查。

15. 有關意見的整體評語都是正面的。評論者普遍確認有需要製備該規則並對此表示歡迎。有關意見不論在廣度及深度方面均有很大差別。有部分回應者針對大原則，而其他則關注各項細節及要求作出澄清。

諮詢總結

顯示已遵守其監控系統的紀錄 (第 3(b)(ix)及 4(b)(v)條)

16. 該規則規定，中介人及有聯繫實體必須備存足夠的紀錄，以顯示其已遵守本身的監控系統、《證券及期貨條例》的所有適用條文及根據該條例訂立的規則。

17. 若干評論者就該項概括性責任的適用範圍表示關注，並要求就根據第 3(b)(ix)及 4(b)(v)條須備存的紀錄的詳情提供進一步指引。

18. 因應上述意見，我們同意目前的規定可能過於廣泛，因而決定修訂該等條文，從而將備存紀錄責任局限於足以顯示以下情況的範圍之內：

(a) 顯示已遵守《證券及期貨(客戶款項)規則》及《證券及期貨(客戶證券)規則》內的某些規定及備有足以確保該等規則獲得遵從的監控系統；及

(b) 確定《證券及期貨(財政資源)規則》獲得遵守(只適用於持牌法團)。

就證券或期貨合約及機構融資提供意見 (第 7 及 8 條)

19. 不少評論者關注到，關乎就證券或期貨合約提供意見及就機構融資提供意見這些受規管活動的額外備存紀錄規定可能過於廣泛，又或認爲這些規定應列作爲操守準則的規定，而並非列作爲該規則的規定。

20. 經仔細考慮後，我們同意該等額外規定應較適宜列作爲《證券及期貨事務監察委員會註冊人操守準則》(“《操守準則》”)及《企業融資顧問操守準則》的規定。因此，我們現已將第 7 及 8 條整條從該規則中刪除。

紀錄保存期 (第 12 條)

21. 該規則訂明的紀錄保存期爲不少於 7 年或 2 年，視乎有關紀錄的性質而定。(第 12 條)。

22. 若干評論者指出，鑑於《操守準則》另外訂明有關交易(即從客戶接獲的買賣指示)的錄音紀錄的保存期爲 3 個月，因此他們要求澄清第 12(2)(a)條所指的 2 年保存期是否同時適用於該等錄音紀錄。其他評論者提出以下較概括性的事宜：如果在《證券及期貨條例》下的其他附屬法例內已訂有較具體的保存期規定，則第 12 條所指的保存期會否仍然適用。

23. 我們擬訂有關規定的意向是: 有關電話會談的錄音紀錄應繼續受限於《操守準則》內的指明期限。因此，我們已修訂”紀錄”一詞的定義，以便該詞不包括該等錄音紀錄在內。

24. 此外，如果有其他附屬法例訂明任何較具體的保存期，該等較具體的保存期將凌駕於該規則所規定的任何一般期限。因此，我們已加入一項特定條款，以澄清上述事宜，並且已剔除有關保存成交單據及戶口結單的規定(第 12(2)(b)至(d)條及附表 1-1(b)(ii)及 2-1(a)(ii))，理由是《證券及期貨(成交單據、戶口結單及收據)規則》已另行涵蓋該等文件。

罰則 (第 14 條)

25. 無合理辯解而違反有關規定。若干評論者對於就無合理辯解而違反有關規定的罰則的性質及程度表示關注。若干評論者認爲該規則大致上屬於廣泛及行政上的規定，而就違反該等規定的行爲施加刑事罰則這個做法，似乎是過度嚴苛，並認爲就意圖詐騙而作出的違規行爲訂立刑事罰則條文的措施已屬足夠。

26. 我們注意到有關的關注，並已就此修訂第 14(a)(i)及(ii)條的罰則條文，剔除了監禁罰則及調低適用罰款的級別，規定無合理辯解而違反有關規定僅會引致第 4 級罰款(現時之最高罰款額爲二萬五千元)。

27. 沒有就不遵守該規則而作出報告。就罰則的基礎而言，我們亦已修訂第 14 條，以包括無合理辯解或意圖詐騙而沒有根據第 13 條就不遵守該規則作出報告的行爲。

技術修訂

28. 鑑於有意見認爲該規則載有重複或重疊條文，因此若干條文的鋪排已作出改動。例如，我們已剔除整個附表 2，並且將有關的規定併入該規則的第 4 條內。此外，附表 1 內某些項目亦已刪除並併入該規則中第 9 條之內。一般來說，在該規則之中，重複的條文或提述已全部剔除。

29. 該等技術性修改對於該規則並無實質影響，純粹爲確保該規則更爲精簡及更易於查閱。

生效日期及過渡性安排

30. 《證券及期貨(備存紀錄)規則》將會自《證券及期貨條例》第 VI 部的指定生效日期起實施。

附件 1

Draft Securities and Futures (Keeping of Records) Rules (the "Rules")
Summary of comments received and SFC's response

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
General Comments				
1.	-	Scope of the Rules	[HKSA, HKSI, Linklaters, Nomura] The Rules are too broad and vague. This may cause ambiguity as to what detailed records are to be kept by the intermediaries and their associated entities. Auditors would also have difficulty in ascertaining whether there are sufficient internal controls in place in respect of record keeping. This is of concern, particularly given that a breach of the Rules, without a reasonable excuse, is a criminal offence.	The Rules are intended to ensure that intermediaries and, where applicable associated entities, keep proper and sufficient records to explain their financial positions and business transactions and to account for their client assets. We acknowledge that some of the requirements are not specific as to the exact types of records required to be kept. This is unavoidable where the circumstances of each case may be different as trading records to be kept by firms of different size and complexity or nature of operations (e.g. online and traditional brokers) must necessarily be different. This is no different from the record keeping requirements in the existing Securities Ordinance, Commodities Trading Ordinance and Leveraged Foreign Exchange Trading (Books, Contract Notes and Conduct of Business) Rules. Nevertheless, we are mindful of the concerns on the level of penalty imposed on a breach without a reasonable excuse and have revised the penalty provision in section 14(a)(i) and (ii) by deleting the imprisonment penalty so that a breach without reasonable excuse will be subject to a fine only. Please refer to our response to comment 38 for details.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
2.	-	Scope of the Rules	[HKSI] It is concerned that daily transaction records of registered investment advisers' non-regulated activities (e.g. MPF and Insurance schemes) will also be subject to the record keeping requirements.	It is not the intention of the Commission to capture unregulated activities under the Rules. We have further clarified this in the Revised Draft Rules.
3.	-	Definition of "record"	[HKSA] The term "records" is not defined and appears to be used in different senses in different contexts under section 3 and Schedule 1 of the Rules, sometimes generically and sometimes more specifically.	"Record" which is used in the Rules as a noun, has the meaning assigned to it in Part 1 of Schedule 1 to the Securities and Futures Ordinance, except that it does not include recording of a telephone conversation.
4.	-	General	[RMIL] The respondent commended the intention to make statutory provision for record keeping in support of good governance in the securities and futures industry.	That is indeed the intention of the Commission.
5.	-	General	[HKID] The respondent supported - • the extension of the Rules to all intermediaries and associated entities for the protection of investors; and • the setting of common record requirements to all regulated activities. The requirements are sufficiently detailed to allow intermediaries to maintain in order to explain their business operations and account for their clients' assets.	Comments noted and acknowledged.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
Specific Comments				
6.	3(b)	General record keeping requirements for intermediaries	[Linklaters] There appears to be overlap between the records required to comply with section 3(b) and those set out in Schedule 1. In many cases, it is unclear whether the records set out in Schedule 1 are sufficient to satisfy section 3(b) as well, or whether section 3(b) is intended to impose additional requirements.	Agree. We have amended the Rules accordingly.
7.	3(b)		[Linklaters] Certain of the provisions of section 3(b) are qualified by the words "where applicable". It is not clear why this qualifies particular provisions and not all of them. It was suggested that the words "where applicable" are moved to the beginning of section 3(b) after the word "sufficient".	We agree with the comment and have amended the Rules accordingly to clarify the requirement for both records in section 3(b) of the exposure draft of the Rules (now section 3(a) of the Revised Draft Rules) and those set out in the Schedule (to the extent that they are not required under section 3(a)).
8.	3(b)(iv)	An intermediary must keep such accounting, trading and other records as are sufficient to – (iv) (where applicable) show separately particulars of each transaction entered into by it or on its behalf to implement any such order or instruction, including particulars identifying with whom and on whose behalf it has entered into such transaction;	[HKSA, Linklaters] Section 3(b)(iv) appears to require an intermediary to keep information on the underlying client. This requirement is broader than the current Client Identity Rule, which only covers Hong Kong products. It should be made clear that this provision is not intended to extend the requirements of the Client Identity Rule. It was suggested that the words "on whose behalf" be replaced by "for which account".	This is not our intention, as we merely require information on the client as the accountholder. We have replaced the words "on whose behalf" by "for which account" in the Revised Draft Rules as suggested.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
9.	3(b)(v) & 3(b)(vi)	An intermediary must keep such accounting, trading and other records as are sufficient to – (v) (where applicable) enable such transactions to be traced through its accounting, trading, settlement and stock holding systems; (vi) account for all client assets that it receives or holds;	[Linklaters] Cash and many securities are fungible and not possible to identify specific cash and securities as belonging to specific transactions or as belonging to specific clients. Also, transactions are often aggregated and executed as one larger transaction. Under section 3(b)(v) and (vi), it should be sufficient to be able to trace that consolidated transaction.	The regulatory intention is that sufficient records must be kept so that all transactions including the movement of client assets, client money may be tracked and retraced if necessary. The fact that intermediaries may often pool their clients' assets for execution purposes does not affect the intermediary's obligation to maintain proper records so that the movement of client assets and the transaction flow can be traced.
10.	3(b)(vii)	An intermediary must keep such accounting, trading and other records as are sufficient to – (vii) enable all movements of such client assets to be traced through its accounting and, where applicable, stock holding systems;	[Linklaters] Question on whether the reference to stock holding systems in Section 3(b)(vii) is to the intermediary's systems (if any), and not third party clearing systems.	The reference is to the intermediary's own systems.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
11.	3(b)(viii)	An intermediary must keep such accounting, trading and other records as are sufficient to – (viii) reconcile each month any differences during that month in its balances or positions with external parties, including – (A) recognized exchange companies; (B) clearing houses; (C) other intermediaries; (D) custodians; and (E) banks, and show how such differences were resolved; and	[Commentator has reserved anonymity] The respondent agreed that all intermediaries should undertake on a monthly basis, a process of reconciling information as to client assets recorded in its systems against information from external parties. However, it is often difficult to actually reconcile differences each month, especially in the fund management industry where the fact that holdings in client portfolios are often of a long term nature (e.g. arising from corporate actions in the underlying stocks, suspension of stocks or the underlying companies going into reconstruction or liquidation.) It believed that the obligation should be to maintain a procedure to perform monthly reconciliations, recording items which do not reconcile and having a proper process of following up on the differences and escalating reports to senior management. It also suggested that the Commission to consider introducing a materiality threshold so that items which do not reconcile but are under that threshold for some period of time can be written off.	The Rules only require intermediaries to keep records as are sufficient to reconcile any differences and show how such differences were resolved. There is no specific timeline for resolving such differences. It is inappropriate for the Commission to introduce any materiality threshold for writing off unreconciled items as this should be considered on a case by case basis after taking into consideration the nature and reasons for the differences and all other circumstances.
12.	3(b)(ix)	An intermediary must keep such accounting, trading and other records as are sufficient to – (ix) demonstrate compliance with its systems of control and all applicable provisions in the Ordinance and any Rules made under the Ordinance;	[HKSA, JFAM, Linklaters] The requirements are not realistic. [Linklaters] It recommended to delete section 3(b)(ix), as there is already an obligation to report non-compliance, and such a general requirement is better found in Codes or Guidelines, such as the SFC's Management, Supervision and Internal Control Guidelines ("MSICG").	Having considered the comments made, the Commission has narrowed the scope of the requirement in what becomes section 3(a)(vi) of the Revised Draft Rules to the following extent: (1) to demonstrate compliance with sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules and sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
			Alternatively, it suggested that section 3(b)(ix) be re-drafted, to either require the intermediary to ensure that its "systems and controls" are in documentary form (along the lines of the requirements in the SFC's Management, Supervision and Internal Control Guidelines) or to require the intermediary to keep a record of any material breaches in complying with its systems of control, and any material breaches of the Ordinances and Rules made thereunder. [HKSA] Given the fact that any non-compliance with the Rules may give rise to criminal sanctions, it is important that the SFC provides further guidance on their expectation as to the records and documents that should be kept. Alternatively, the SFC may specify what they consider to be the key and important "system of control" and provisions in the Securities and Futures Ordinance, and narrow the application of this section to those areas. [HKSbA, HKID] It was suggested to substitute "demonstrate compliance with its systems of control" by "to comply" or "demonstrate compliance with the documentary requirements of its system".	(2) to demonstrate that it had systems of control in place to ensure such compliance; and (3) enable it readily to establish whether the Securities and Futures (Financial Resources Rules) have been complied with. In this connection, we plan to provide guidelines on the minimum levels of controls for the safeguarding of client money and client securities in due course. The obligation to report non-compliance is a separate requirement altogether. Please also refer to our response to comment 38 on penalty for non-compliance.
13.	3(d)	An intermediary must – (d) make entries in those records in accordance with generally accepted accounting principles.	[Linklaters] The requirement should be limited to financial statements. Also, there is no indication of which GAAP should be followed.	Yes, this is limited to accounting records and financial statements. Consistent with the Securities and Futures (Financial Resources) Rules and the Securities and Futures (Accounts and Audit) Rules, we will not prescribe which GAAP our intermediaries may follow.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
14.	4(b)(i)	An associated entity of an intermediary must keep such accounting and other records as are sufficient to – (i) account for all client assets of any intermediary with which it is in a controlling entity relationship that it receives or holds;	[Linklaters] The qualification "with which it is in a controlling entity relationship" that it receives or holds is unnecessary as the definition of "associated entity" in the Bill specifically refers to an entity being in a controlling entity relationship.	We agree with the comment and have amended the Rules accordingly.
15.	4(b)(v)	An associated entity of an intermediary must – (v) demonstrate compliance with its systems of control and all applicable provisions in the Ordinance and any Rules made under the Ordinance;	Similar comments on section 3(b)(ix) also apply in respect of associated entities in section 4(b)(v).	Consistent with our response to comment 12 above, the Commission has revised this provision (which becomes section 4(a)(v) of the Revised Draft Rules) to narrow the scope to demonstrate: (1) compliance with sections 4, 5, 6, 8(4), 10 and 11 of the Securities and Futures (Client Money) Rules and sections 4(4), 5, 10(1) and 12 of the Securities and Futures (Client Securities) Rules; and (2) that it had systems of control in place to ensure such compliance.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
16.	7	An intermediary licensed or exempt for advising on securities or advising on futures contracts must keep such records as are sufficient to explain the basis for any views disseminated, or recommendations made, by it to another person (directly or indirectly) regarding any specific securities or specific futures contracts.	[HKSA, HKSI, Linklaters] The requirement is too board and generic which would appear to apply, for example, to the situation where an analyst is interviewed on the radio and comments on the prospects of a particular company. This may even technically cover oral and casual communications with clients or other persons that are not intended to solicit or to advise such persons to trade. [HKSA] It seems more appropriate to require an intermediary to keep sufficient records to explain the basis for their views or recommendations, if and only if the intermediary knows or has reason to believe that those other persons will rely on their views or recommendations to deal. [Linklaters] Where research reports are prepared on a global basis and sent to investors through an intermediary in Hong Kong this Rule will be impossible to comply with. The commentator suggested that in view of the criminal sanctions attached to the Rules, this Rule should be limited to matters such as keeping copies of research reports and is more appropriately dealt with in Codes and Guidelines. Alternatively, they suggested that section 7 be limited in scope to a person licensed or exempt for advising on securities or futures contracts who makes a recommendation to persons other than professional investors for remuneration, or who gives advice to persons other than professional investors to	The Commission takes note of the comments and has carefully re-considered the issue. As the policy intention is to ensure that sufficient records are kept by advisers to demonstrate compliance with the general principles (e.g. suitability of advice, due diligence and care) under the Code of Conduct, we agree that the corresponding record keeping requirement should be addressed in the Code of Conduct. The Rules have been revised accordingly by deleting the clause in question from the Rules altogether.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
			whom he has assumed an advisory responsibility. [HKSbA, HKSA] The basis of a certain view may be the result of a combination of various sources.	
17.	7		[HSBC, ISD, JFAM] The requirement should only apply to investment advisers but not for fund managers or licensed professionals (dealers and dealer representatives) who provide advice to their clients incidental to their dealing business.	No longer relevant as the provision has been removed from the Revised Draft Rules. Please refer to our responses to comment 16 above.
18.	7		[HKSI] Administration of such a requirement is too burdensome unless the recommendation is supported by a published report by the analyst. Recommendation to different clients can be different because of different client requirements and the need to document such is quite impossible especially when these are mostly in verbal form.	Same as above
19.	7		[HKSbA] Views or recommendations may be made in a face to face meeting, telephone conversation outside the office, or by way of electronic mails. This is not clear what records must then be kept.	Same as above
20.	7		[Nomura] It appears unreasonable to keep copies of all research reports issued in 7 years together with all fundamental data relied on by the analyst.	Same as above

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
21.	8	In addition to the requirements of section 3, an intermediary licensed or exempt for advising on corporate finance must keep such records as are sufficient to show separately and explain any work it has performed in providing corporate finance advice to its clients.	[Linklaters] We consider that matters referred in section 8 would more appropriately be addressed in the Code of Conduct.	The Commission agrees with the comments and has deleted the provision from the Rules accordingly.
22.	9	Additional requirements for providing securities margin financing and financing accommodation and effecting margined transactions	[Linklaters] As a general comment, the requirements appear to overlap with the general rules.	We agree with the comment and have amended the Rules accordingly.
23.	9(1)	This section applies to – (a) an intermediary licensed for providing securities margin financing; (b) an intermediary which provides other forms of financial accommodation; and (c) an intermediary which effects margined transactions with or on behalf of its clients.	[Linklaters] The requirements of section 9 should be limited to those persons licensed to provide securities margin financing and should not be extended to the entities referred to in section 9(1)(b) and (c). If section 9(1)(c) is to remain, it should be limited to an intermediary which effects margined transactions with its clients. The words "or on behalf of" in section 9(1)(c) and (2)(c) should be removed.	We need section 9(1)(b) to cover intermediaries financing IPOs for clients and section 9(1)(c) to cover intermediaries entering into futures and forex contracts with or on behalf of their clients or engaging in securities borrowing and lending business with their clients. We do not agree to remove the words "or on behalf". However, we have added the words "where applicable" in the preamble to section 9(2).
24.	9(2)(a)	In addition to the requirements of section 3, a person referred to in subsection (1) must keep such records as are sufficient to show – (a) all securities deposited with any person under an arrangement that confers on the person referred to in subsection (1) a collateral interest in the securities;	[Linklaters] There is no definition in the Rules or the Bill of "collateral interest".	"Collateral interest" is used in the definition of "securities collateral" in Part 1 of Schedule 1 to the Securities and Futures Ordinance. So, we do not perceive any need to define this for the purpose of these Rules.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
25.	9(2)(c)	In addition to the requirements of section 3, a person referred to in subsection (1) must keep such records as are sufficient to show – (c) particulars of clients to whom it makes available securities margin financing, financial accommodation or with whom or on whose behalf it effects margined transactions, including particulars in respect of each client showing – (i) the market value and margin value of each description of securities collateral; and (ii) the total market value and margin value of securities collateral.	[Linklaters] There is no definition of market value.	We have used "market value" in many other pieces of subsidiary legislation, both existing and those to be made under the Securities and Futures Ordinance. We do not perceive any need to define this for the purposes of these Rules.
26.	10	Additional requirements for carrying on asset management	[Linklaters] The requirement appears to overlap with the general rules under section 3.	We disagree. The provision requires fund managers to keep specific records of their clients' investment portfolio, in particular, any commitments and contingent liabilities which are not covered under the general rules.
27.	11	Forms in which records are to be kept.	[Commentator has reserved anonymity] Guidelines should be issued to clarify any specific requirements which may be expected of keeping records in electronic form.	As a general principal, records kept in electronic form should be readily convertible into written form. Intermediaries are also expected to have all necessary procedures to guard against damage, falsification, and destruction of these records. The Commission has no immediate intention to issue any specific requirements in this respect.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
28.	11		[Nomura] Clarification as to whether data can be stored as part of system record or documents which have been scanned rather than retaining the original paper document. If so, this should be stated clearly in the Rules.	Yes, if they are capable of being readily converted into written form. The Commission does not perceive any need for further clarification.
29.	12	Record retention period	[JFAM] The commentator suggested that for non-trade related items such as contracts with clients, a shorter retention period should be specified after the account is closed. 3 years is suggested to be appropriate period.	The Commission considers that no differentiation should be made to trade or non-trade related items so long as they are all documents or records necessary to explain the business operations of an intermediary.
30.	12(1)	All records referred to in these Rules, except those referred to in subsection (2), must be retained for a period of not less than 7 years.	[Linklaters] Given the broad nature of the Rules it appears that current record retention policies could be extended. For example, under clause 166(8) of the Securities and Futures Bill, documentary assurances for short sales only need to be kept for 1 year and therefore there appears to be a conflict between the Rules and the Bill.	We note the anomaly and have revised the Rules so that the general retention requirements in the Rules will be subject to any specific retention requirements in the Securities and Futures Ordinance or any subsidiary legislation made under the Ordinance. See section 10(3) of the Revised Draft Rules.
31.	12(2)(a)	The following records must be retained for a period of not less than 2 years - (a) records documenting the orders and instructions referred to in <u>section 3(b)(iii)</u>;	[BNP, HKID, Linklaters] The SFC is asked to clarify whether records documenting the orders and instructions include tape recording records which are required to be kept for 3 months under current Code of Conduct.	The intention is to leave the requirement for telephone recording to the Code of Conduct. The Rules have been revised accordingly to exclude the same from the definition of "record" in clause 2.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
32.	12(2)(a)		[Linklaters] It is unclear why only the records referred to in section 3(b)(iii) are permitted to be kept for 2 years.	We consider that it will be sufficient so long as the details of transactions executed are properly recorded and maintained for 7 years. This is in line with the principal behind the 2 years retention requirement for contract notes and statements of accounts as stipulated under the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules.
33.	12(2)(b) & (c)	The following records must be retained for a period of not less than 2 years - (b) each contract note made out to the intermediary as principal; (c) each contract note created by the intermediary as agent; and	[Nomura] The Rule should provide that the retention for a contract note for 2 years is based on the fact that it is not the only record of the transaction retained by the intermediary.	The comment is no longer relevant as this provision has been removed given that the requirement has already been set out in the Securities and Futures (Contract Notes, Statement of Account and Receipt) Rules.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
34.	13	Reporting of non-compliance with these Rules	[HKSbA] The commentator raised objection claiming that the requirement in effect is a mandatory form of self-incrimination. There is also no requirement for reporting breaches of any rule in the Ordinance.	Section 151(2)(d) of the Securities and Futures Ordinance empowers the Commission to make rules to require a person who becomes aware that he does not comply with any specified provision of the Rules that applies to him to notify the Commission within a specified timeframe. Section 151(7) of the Securities and Futures Ordinance further states that a person is not excused from complying with such notification requirement only on the ground that to do so might tend to incriminate the person. Section 166 of the Securities and Futures Ordinance which restricts the use of incriminating evidence in proceeding should allay the commentators' concerns on self-incrimination. Please also refer to our response to comment 38 below.
35.	13		[HKSbA, Linklaters, Nomura] The commentators question whether it is really necessary or appropriate for breaches of the reporting requirement (unless committed with intent to defraud) to give rise to criminal sanctions.	Please refer to our response to comment 38 below.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
36.	13	An intermediary or an associated entity of an intermediary which becomes aware that it is not in compliance with any provision of Part II shall, within 1 business day thereafter, notify the Commission by notice in writing of that fact.	[Commentor has reserved anonymity] The requirement to report non-compliance to the Commission within one business day may be too onerous and the Commission is requested to consider a more flexible and reasonable reporting time frame such as three days. [Linklaters] The deadline of one business day is too prescriptive, particularly for international organizations that require a thorough internal investigation before notifying the regulators of potential non-compliance. [HKSA] One business day may not be sufficient for an intermediary to perform a proper internal review to ascertain the facts. The requirement seems especially onerous given that any non-compliance with the Rules may give rise to criminal sanctions.	For the purpose of investor protection, 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 intermediary can confer as to the reasons for the breach as well as a more detailed timetable for a full report. One business day for reporting non-compliance has been universally applied to other subsidiary legislations made under the Securities and Futures Ordinance, such as the Client Money Rules, Client Securities Rules and Contract Notes, Statements of Account and Receipts Rules. Please also refer to our response to comment 38 above.
37.	13		[HKSA, Linklaters, Nomura] It would be more appropriate to require an intermediary or associated entity to report only material non-compliance.	Materiality of a breach needs to be assessed in view of the circumstances and it is not desirable to set a rigid rule in the law. It is in the interest of investor protection to have the regulator informed of all non-compliance irrespective of the reason therefor. The Commission needs to know as soon as possible that a breach has happened in order to evaluate the implications.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
38.	14	Penalties	[HKSbA, HKSA] Any criminal punishment imposed under section 14(a) is far too excessive if these are technical breaches. [Linklaters] The concerns about the rather broad and open-ended nature of the Rules stems from the fact that any breach of them, without reasonable excuse, is a criminal offence. The Group does not agree that criminal sanctions should attach to the Rules. Linklaters has no objection to imposing criminal sanctions on a person who fails to comply with the record-keeping requirements with intent to defraud. This is set out in section 14(b), but it is not believed that this sub-Rule is necessary, because an offence for record-keeping violations with intent to defraud is already set out in clause147(4) of the Bill. Although clause 147(6) also enables the SFC to provide for a breach of the Rules, committed with intent to defraud, to be a criminal offence, we consider that clause 147(4) is sufficiently wide, and that it is unnecessary to create an additional criminal offence pursuant to the Rules.	It should be noted that whether a breach results in a prosecution depends upon the circumstances of the particular case and the application of the Prosecution Guidelines laid down by the Department of Justice. However, the Commission is also mindful of the concerns and has revised the Rules by deleting the imprisonment penalty so that a breach without reasonable excuse will be subject to a fine only. The penalty level has also been lowered to a fine at level 4 for a breach without reasonable excuse. The level 4 penalty is currently up to $25,000. It should also be noted that section 151(4) of the Securities and Futures Ordinance is concerned with matters affecting the content of records which are kept in compliance with these Rules, not with whether those records are in fact kept.
39.	14		[HKSA] The SFC should provide further clarification on what constitutes "reasonable excuse" for the purposes of the Rules.	"Reasonable excuse" is a concept commonly used in the Laws of the Hong Kong SAR. It is used frequently in the Securities and Futures Ordinance (and in current securities law e.g. section 33(12) of the Securities and Futures Commission Ordinance Cap.24). It will be for the courts to decide what is reasonable in each case.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
40.	Schedule 1- 1(a)	Records to be kept by intermediaries	[Commentator has reserved anonymity] Clarify why there is no record keeping requirements on monies paid by intermediaries.	The Rules have been revised accordingly to capture monies paid by intermediaries.
41.	Schedule 1- 1(a)(iv)	An intermediary must keep records showing particulars of – (iv) all financial accommodation (including securities margin financing) made available to, and all margined transactions effected with or on behalf of, each of its clients, including particulars of …..	[Linklaters] Clarification may be required on the meaning of "made available to" and "or on behalf of". Where an intermediary in Hong Kong is merely acting as an arranger or introducing broker, it should not be required to (and may not have the information to be able to) keep the records set out in paragraph 1(a)(iv).	We have replaced "made available to" with "provided to" and add the words "where applicable" in the preamble to the section such that arrangers and introducing brokers who are not providing the actual financing will not be subject to the requirement.
42.	Schedule 1- 1(a)(x)	An intermediary must keep records showing particulars of – (x) all other accounts held by it; and	[JFAM] Clarification on what constitutes "other accounts". [Linklaters] There is no indication in the Rules or the Bill as to what constitutes "an account" under paragraph 1(a)(x).	Other accounts may include any accounts other than those opened with banks, e.g. accounts with overseas brokers, clearing houses etc.
43.	Schedule 1-1(a)(xi)	An intermediary must keep records showing particulars of – (xi) all off-balance sheet transactions or positions;	[Linklaters] It is unclear in paragraph 1(a)(xi) what records would be required to be kept. To the extent it is those under GAAP, this will already be covered by the requirement in section 3(d) to make entries in accordance with GAAP.	The requirement is intended to cover records showing particulars of the off-balance sheet transactions instead of the corresponding accounting treatment as required under the GAAP.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
44.	Schedule 1(b)	An intermediary must keep copies of certain records	[Instinet] Suggest to include that copies can be kept in electronic form since nowadays companies are operating in an electronic/paperless environment.	This issue has already been catered for in section 11(1)(b), stating that records include those in a form to be readily accessible and readily convertible into written form. If records maintained in electronic form are capable of being 'readily convertible' into written form, then records kept in such manner is in compliance with the Rules.
45.	Schedule 1- 1(b)(i)	An intermediary must keep copies of all – (i) contracts (including client agreements and discretionary account agreements), order forms, confirmations, statements, registers, records, memoranda and correspondence created or received by it in the course of the business for which it is licensed or exempt under the Ordinance;	[JFAM, Nomura, HKSA] The coverage appears to be too wide. There are various suggestions to narrow the scope. [Linklaters] It is unclear what is meant by "memoranda and correspondence"; this should be limited to memoranda and correspondence between an intermediary and its client, that confirm an order or provide a recommendation to a client for which the intermediary assumes an advisory responsibility.	The Commission takes note of the comments and has deleted "order forms, confirmations, statements, registers, records, memoranda and correspondence" as we consider that these are sufficiently covered under section 3, general record keeping requirement.
46.	Schedule 1-1(b)(ii)	An intermediary must keep copies of all – (ii) contract notes, statements of account and receipts required to be created by it under the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (L.N. of 2002);	[Linklaters] The requirement under paragraph 1(b)(ii) was already stipulated in the Securities and Futures (Contract Notes, Statements of Account and Receipt) Rules.	The provision has been deleted in the Revised Draft Rules.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
47.	Schedule 1-1(b)(iv)	An intermediary must keep copies of all – (iv) documents showing particulars of clients who are professional investors and evidencing compliance with the Securities and Futures (Professional Investors) Rules (L.N. of 2002).	[Linklaters] The requirement under paragraph 1(b)(iv) should either be in the Code of Conduct or within the Securities and Futures (Professional Investor) Rules.	The policy intention is to require an intermediary to keep records of its clients who are professional investors such that it can readily establish whether or not these clients do so qualify. The Rules have been amended to clarify our intention.
48.	Schedule 2	Records to be kept by Associated Entities	[Linklaters] Comments on equivalent provisions of Schedule 1 apply equally.	See our response to comments 45 to 46 above.
49.	Schedule 2		[ISD] The definition of associated entity may include remisers who are dealing with registered dealers. In true operational sense, the remisers are not different from sales executives at the dealer. But given the legal identity, remisers may be required to maintain duplicate set of records in order to satisfy the rule. Clarification may be needed to avoid unnecessary duplication of work.	Under Part 1 of Schedule 1 to the Securities and Futures Ordinance, "associated entity" means a company that receives or holds in Hong Kong client assets of the intermediary. The case of a remiser as described will therefore not fall under the definition of "associated entity" and hence the requirement would not be applicable. If the remiser is acting in the capacity of an arranger or introducing broker, it may be required to be licensed with the Commission instead. Above all, we have defined the word "keep" in relation to a record, to include "cause to be kept" in order to allow any other entity to keep records on behalf an intermediary or associated entity in order to avoid any possible duplication.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
Other comments				
50.	-		[Nomura] It is noted that the Rules extend to associated entities. It is not clear how the Commission would expect to enforce the Rules against those entities. The respondent has concern that burden will be placed on intermediaries to enforce rules against associated entities simply because the intermediary is the only entity over which the Commission might have jurisdiction.	This should not be a concern as the Commission has inspection power over associated entities pursuant to section 180 of the Securities and Futures Ordinance. Moreover, penalties for any contravention of the Rules are imposed directly on associated entities under section 14 (now section 12 of the Revised Draft Rules).
51.	-		[Nomura] The respondent also suggested that the Commission confirm that nothing in the Rules is meant to change the rights of privileged that exist or could exist in respect of any document.	Section 380(4) of the Securities and Futures Ordinance provides that nothing in the Ordinance (which includes any rules made under the Ordinance) affects any claims, rights or entitlements which would, apart from the Ordinance, arise on the ground of legal professional privilege.
52.	-		[RMIL] It is recommended that the record keeping function of intermediaries and associated entities be subject to an independent audit, as is the case with financial accounts.	We agree with the principle and therefore under the Securities and Futures (Accounts and Audit) Rules, auditors of a licensed corporation are required to give opinion as to whether the corporation or its associated entity has complied with these Rules.

Item No.	Section No.	Details of the Rules	Respondent's Comments	SFC's Response
53.	-		[Nomura] Clarification as to whether e-mail constitutes an official record. The volume of e-mail in 7 years is enormous and difficult to store or to vet each email in order to work out what was or was not needed for retention purposes. It is also concerned about breach of the guideline on work place surveillance of the Privacy Commissioner. [Linklaters, Nomura] Clarification as to whether documents should be retained even if they are no longer required other than to comply with this Rule. There may be a conflict between the Rules and the prohibitions on keeping personal data for longer than necessary, under the Personal Data (Privacy) Ordinance.	"Record" includes an email. Whether the rules require a particular email to be kept will depend upon the content and sender/recipient of the email. The question of data privacy will be clarified in our Frequently Ask Questions which will be posted on SFC's website.

List of Respondents

Date received	Respondent
11 March 2002	Hong Kong Stockbrokers Association Ltd (“HKSbA”)
12 March 2002	Records Management International Ltd (“RMIL”)
13 March 2002	Instinet Pacific Limited (“Instinet”)
15 March 2002	HSBC Broking Securities (Asia) Limited (“HSBC”)
15 March 2002	Hong Kong Securities Institute (“HKSI”)
15 March 2002	The Institute of Securities Dealers Ltd (“ISD”)
15 March 2002	- (Commentator has reserved anonymity)
15 March 2002	Linklaters (“Linklaters”) representing • Deutsche Securities Asia Ltd • Goldman Sachs (Asia) L.L.C. • J.P Morgan • Merrill Lynch (Asia Pacific) Ltd • Morgan Stanley Dean Witter Asia Ltd • Salomon Smith Barney Hong Kong Ltd • UBS Warburg
15 March 2002	JF Asset Management Ltd (“JFAM”)
18 March 2002	Nomura International (Hong Kong) Ltd (“Nomura”)
16 March 2002	The Hong Kong Institute of Directors (“HKID”)
18 March 2002	- (Commentator has reserved anonymity)
21 March 2002	BNP Paribas Peregrine (“BNP”)
28 March 2002	HK Society of Accountants (“HKSA”)
Respondent with no specific comments on the Rules	
6 May 2002	Hong Kong Bar Association

Derivation Table of Provisions of the Securities and Futures Bill / Ordinance referred to in the exposure draft of the Rules and the summary of comments.

Clause/Schedule in the Securities and Futures Bill	**Section/Schedule in the Securities and Futures Ordinance**
147(2)(d)	151(2)(d)
147(4)	151(4)
147(6)	151(6)
- (New)	151(7)
- (New)	166
166(8)	171(8)
173	180
368(4)	380(4)
Schedule 1, Part 1	Schedule 1, Part 1
Schedule 6, Part 2	Schedule 5, Part 2

附件 2

經修訂擬稿

《證券及期貨(備存紀錄)規則》

目錄

條次 頁次

第 1 部

導言

1. 生效日期 1

2. 釋義 1

第 2 部

備存紀錄

第 1 分部 — 一般規則

3. 中介人的一般紀錄備存規定 3

4. 有聯繫實體的紀錄備存規定 4

第 2 分部 — 關乎中介人的特定規則

5. 進行證券交易的額外規定 7

6. 對進行槓桿式外匯交易的額外規定 7

7. 提供證券保證金融資及財務通融及進行保證金交易的額外規定 8

條次		頁次
8.	就進行資產管理的額外規定	9

第 3 部

雜項條文

9.	備存紀錄的格式	9
10.	紀錄保存期	10
11.	就不遵守本規則某些條文作出報告	10
12.	罰則	10
附表	由中介人備存的紀錄	11

《證券及期貨(備存紀錄)規則》

(由證券及期貨事務監察委員會根據《證券及期貨條例》
(2002 年第 5 號)第 151 條訂立)

第 1 部

導言

1. **生效日期**

本規則自《證券及期貨條例》(2002 年第 5 號)第 VI 部的生效日期起實施。

2. **釋義**

在本規則中，除文意另有所指 —

“按照市值計算差額”(marked to market)指調整未平倉合約的持倉量的估值以反映現時市值的方法或程序；

“紀錄”(record)具有本條例附表 1 第 1 部給予該詞的相同涵義，但該詞的定義並不包括任何電話談話的錄音；

“保證金交易”(margined transaction)指由中介人與其客戶或代其客戶就該中介人獲發牌或獲註冊進行的受規管活動在香港訂立並符合以下說明的合約 —

(a) 該合約並非爲購買、出售、交換證券或進行其他證券交易(包括根據證券借貸協議進行的交易)的市場合約；

(b) 該合約並非爲購買、出售、交換期貨合約或進行其他期貨合約交易的市場合約；或

(c) 該合約屬槓桿式外匯交易合約；

而該合約要求該客戶在並非根據該中介人向該客戶提供財務通融的安排行事的情況下 —

(d) 向該中介人繳付保證金；或

(e) 向該中介人提供擔保以履行該客戶的義務；

“保證金價值”(margin value)就每一種類的證券抵押品而言，指中介人的客戶一般可被容許向該中介人就該特定描述的證券抵押品借取的最高款額(或在其他方面取得其他方式的財務通融)；

“備存”(keep)就任何紀錄而言，包括安排備存；

“期貨合約交易”(dealing in futures contracts)具有本條例附表 5 第 2 部給予該詞的涵義；

“資產管理”(asset management)具有本條例附表 5 第 2 部給予該詞的涵義；

“監控制度”(systems of control)就中介人或其有聯繫實體而言，指其已實施以確保其遵守本條例及根據本條例訂立的任何規則的內部監控及交易、會計、交收及持股制度；

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

第 2 部

備存紀錄

第 1 分部 — 一般規則

3. 中介人的一般紀錄備存規定

中介人須就組成它獲發牌或獲註冊的受規管活動的業務 —

(a) 備存會計、交易及其他紀錄，而該等紀錄須(如適用的話)足以 —

(i) 解釋和反映該等業務的財政狀況及運作；

(ii) 令可以真實和中肯地反映其財政狀況的損益表及資產負債表得以不時擬備；

(iii) 交代它所收到或持有的所有客戶資產；

(iv) 使該等客戶資產的變動能透過其會計及(如適用的話)持股制度而得以追查；

(v) 協調於每一月份它與其任何有聯繫實體及其他各方於該月份所產生的結餘或持倉量的差額及顯示怎樣解決該等差額，該等其他一方包括 —

(A) 認可交易所；

(B) 結算所；

(C) 其他中介人；

(D) 保管人；及

(E) 銀行；

(vi) 顯示已遵守 —

(A) 《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)第 4、5、6、8(4)、10 及 11 條；

(B) 《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)第 4(4)、5、10(1)及 12 條；

(C) 其已設立以確保遵守(A)及(B)分節提述條文的監控制度；及

(vii) 使它能易於確定它是否已遵守《證券及期貨(財政資源)規則》(2002 年第 號法律公告)；

(b) 在附表指明的紀錄不須根據(a)段備存的範圍內，備存(如適用的話)該等紀錄；

(c) 以能利便對該等紀錄進行審計和使該等審計適當進行的方式，備存(a)及(b)段提述的紀錄；及

(d) 按照獲普遍接納的會計原則在(a)及(b)段提述的紀錄中作出記項。

4. 有聯繫實體的紀錄備存規定

中介人的有聯繫實體須就它收取或持有的該中介人的客戶資產 —

(a) 備存會計及其他紀錄，而該等紀錄須(如適用的話)足以 —

(i) 交代該等客戶資產；

(ii) 使所有該等客戶資產的變動能透過其會計及(如適用的話)持股制度而得以追查；

(iii) 分別顯示和交代由它或代它或由它代某人而就該等客戶資產作出的所有收取、支付、交付及其他使用或應用；

(iv) 就每一月份調和它與該中介人及其他各方於該月份所產生的結餘或持倉量的差額及顯示如何解決該等差額，上述其他各方包括 —

(A) 認可交易所；

(B) 結算所；

(C) 其他中介人；

(D) 保管人；及

(E) 銀行；及

(v) 顯示已遵守 —

(A) 《證券及期貨(客戶款項)規則》(2002年第 號法律公告)第 4、5、6、8(4)、10 及 11 條；

(B) 《證券及期貨(客戶證券)規則》(2002年第 號法律公告)第 4(4)、5、10(1)及 12 條；

(C) 它已設立監控制度，以確保遵守(A)及(B)分節提述條文；

(b) (如適用的話)在以下紀錄不須根據(a)段備存的範圍內，備存該等紀錄 —

(i) 由它訂立的合約；

(ii) (在該有聯繫實體就屬專業投資者的中介人的客戶收取或持有客戶資產的情況下)就該等客戶而言 —

(A) 顯示足以確立該等客戶屬專業投資者的詳情的文件；

(B) 《證券及期貨(成交單據、戶口結單及收據)規則》(2002 年第 號法律公告)第 3(2)條提述的任何通知或協議；

(iii) 證明由該中介人的客戶給予它的任何授權(包括《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)或《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)所提述的常設授權，以及該等授權的續期)的文件；

(iv) 證明由《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)或《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)提述的該中介人的客戶給予它的任何指示的文件；

(c) 以能利便就該等客戶資產進行審計和使該等審計適當進行的方式，備存(a)及(b)段提述的紀錄；及

(d) 按照獲普遍接納的會計原則在(a)段提述的紀錄中作出記項。

第 2 分部 — 關乎中介人的特定規則

5. 進行證券交易的額外規定

除第 3 條的規定外，獲發牌或獲註冊進行證券交易的中介人須備存紀錄，而該等紀錄須足以分別顯示由該中介人所訂立的所有包銷交易及分包銷交易的詳情，包括顯示它何時訂立該等交易的詳請。

6. 對進行槓桿式外匯交易的額外規定

除第 3 條的規定外，獲發牌進行槓桿式外匯交易的持牌法團須備存紀錄，而該等紀錄須足以顯示 —

(a) 就每一該等交易而言 —

(i) 其認可對手方的詳情；及

(ii) 已遵守《證券及期貨(認可對手方)規則》(2002 年第 號法律公告)；及

(b) 就每一營業日而言 —

(i) 在每一營業日完結時其本身帳戶及其每一客戶及認可對手方的帳戶的按照市值計算差額的持倉量；

(ii) 就每份由它執行的合約而言 —

(A) 由它向客戶所報的買入價和賣出價；

(B) 合約的執行價；及

(C) 執行合約時由一間聲譽好的財經資訊服務機構向公眾或訂戶公布及傳

播的買入價和賣出價；及

(iii) 由它就一種貨幣相對於另一貨幣的好倉或淡倉所收取或支付的利率差額。

7. 提供證券保證金融資及財務通融及進行保證金交易的額外規定

(1) 本條適用於以下人士 —

(a) 獲發牌提供證券保證金融資的持牌法團；

(b) 提供其他形式的財務通融的中介人；及

(c) 與其客戶或代其客戶進行保證金交易的中介人。

(2) 除第 3 條的規定外，第(1)款提述的人須(如適用的話)備存紀錄，而該等紀錄須足以顯示 —

(a) 其保證金政策、借貸政策及追繳保證金政策；

(b) 根據某項安排存放於任何人的所有證券及客戶抵押品，而該項安排向第(1)款提述的人授予該等證券或客戶抵押品的抵押權益；

(c) 與何人及代何人存放該等證券或客戶抵押品，並分別顯示以下證券或客戶抵押品的數量及市值 —

(i) 作安全保管而存放的證券；及

(ii) 作爲就第(1)款提述的人提供財務通融、證券保證金融資或作出保證金交易的擔保或利便該等提供或作出而存放的證券及客戶抵押品；

(d) 獲它提供證券保證金融資、財務通融的客戶，或與它

或由它代表進行保證金交易的客戶的詳情，包括就每一客戶顯示以下資料的詳情 —

(i) 存放於第(1)款提述的人的每一描述的證券抵押品的市值及保證金價值；

(ii) 該等證券抵押品的總市值及保證金價值；及

(iii) 作出追繳保證金的詳情。

8. 就進行資產管理的額外規定

除第 3 條的規定外，持有客戶資產的獲發牌或獲註冊進行資產管理的中介人須備存紀錄，而該等紀錄須足以顯示就每一客戶而言該客戶的資產及債務(包括任何承擔及或有債務)的詳情。

第 3 部

雜項條文

9. 備存紀錄的格式

(1) 本規則規定的所有紀錄須符合以下規定 —

(a) 以中文或英文書面方式備存；或

(b) 備存紀錄的方式，是能使該等紀錄可隨時得以取覽及可隨時轉爲中文或英文書面形式的。

(2) 中介人及其每一有聯繫實體須採取一切合理必需的程序，以 —

(a) 防止其任何紀錄被捏改；及

(b) 利便揭發任何該等捏改。

10. 紀錄保存期

(1) 除第(2)及(3)款另有規定外，本規則提述的所有紀錄須保存一段不少於 7 年的期間。

(2) 證明附表第 1(d)(i)條提述的命令及指示的紀錄須保存一段不少於 2 年的期間。

(3) 如本條例或根據本條例訂立的任何附屬法例(本規則除外)訂明任何紀錄須由中介人或中介人的有聯繫實體備存一段指明期間，則就該等紀錄而言第(1)及(2)款不適用於該中介人或有聯繫實體。

11. 就不遵守本規則某些條文作出報告

第 2 部適用的中介人或其有聯繫實體如察覺它不遵守該部的任何條文，須在隨後 1 個營業日內，以書面通知將此事告知證監會。

12. 罰則

中介人或其有聯繫實體如 —

(a) 無合理辯解而違反第 3、4、5、6、7(2)、8、9、10 或 11 條，即屬犯罪，一經定罪，可處第 4 級罰款；或

(b) 意圖詐騙而違反第 3、4、5、6、7(2)、8、9、10 或 11 條，即屬犯罪 —

(i) 一經循公訴程序定罪，可處罰款$1,000,000 及監禁 7 年；或

(ii) 一經循簡易程序定罪，可處罰款$500,000 及監禁 1 年。

附表 [第 3 及 10 條]

由中介人備存的紀錄

1. 顯示以下項目詳情的紀錄 —

(a) 它收到的所有款項，不論該等款項 —

(i) 是屬於它的；或

(ii) 已繳進由它或代它備存的帳目，

包括由該中介人運用該等款項的方式的詳情；

(b) 它收到的所有收入，不論該等收入是關乎其所提供服務而收取的費用、佣金、經紀費、酬金、利息或其他收入；

(c) 它招致或付出的所有開支、佣金及利息；

(d) 關乎它所收到或作出的關乎證券、期貨合約或槓桿式外匯交易合約的所有命令或指示，包括以下項目的詳情 —

(i) 由它或代它訂立以履行任何該等命令或指示的每一交易；

(ii) 識別它與何人及代何帳戶訂立該等交易；

(iii) 使該等交易能透過其會計、交易、交收及持股制度而得以追查；

(e) 由它就客戶證券或證券抵押品作出的所有處置，並就每項處置顯示以下詳情 —

(i) 客戶姓名或名稱；

(ii) 處置何時進行；

(iii) 進行處置的中介人的姓名或名稱；

(iv) 爲進行處置而招致的費用；及

(v) 處置的收益及該等收益如何處理；

(f) 其資產及債務，包括承擔及或有債務；

(g) 它擁有的所有證券，並識別 —

(i) 該等證券存放於何人；

(ii) 該等證券何時存放；及

(iii) 該等證券是否作爲貸款或墊支或任何其他用途的擔保而持有的；

(h) 由它持有但並非它擁有的所有證券，並分別識別 —

(i) 該等證券是爲何人持有及存放於何人；

(ii) 該等證券何時存放；

(iii) 存放於第三者作安全保管的證券；及

(iv) 爲向它或任何其他用途提供貸款或墊支而作爲擔保而存放於第三者的證券；

(i) 它持有並分別顯示按照《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)維持的獨立帳戶的所有銀行帳戶；

(j) 它持有的所有其他帳戶；及

(k) 所有資產負債表外的交易或持倉量。

2. 它在組成它獲發牌或獲註冊的受規管活動的業務過程中訂立的合約（包括客戶協議書及全權委託戶口協議書）。

3. 證明以下項目的文件 —

(a) 由客戶給予它的任何授權，包括《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)或《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)所提述的常設授權，以及該等授權的續期；

(b) 由客戶給予它的於《證券及期貨(客戶證券)規則》(2002 年第 號法律公告)或《證券及期貨(客戶款項)規則》(2002 年第 號法律公告)提述的任何指示。

4. 就屬專業投資者的客戶而言 —

(a) 顯示足以確立該等客戶屬專業投資者的詳情的文件；

(b) 《證券及期貨(成交單據、戶口結單及收據)規則》(2002 年第 號法律公告)第 3(2)條提述的任何通知或協議。

證券及期貨事務監察委員會主席

2002 年　　月　　日

註釋

本規則是由證券及期貨事務監察委員會根據《證券及期貨條例》(2002 年第 5 號)第 151 條訂立，並訂明中介人及其有聯繫實體須備存的紀錄及備存該等紀錄的方式。