

L.N. 185 of 2002**SECURITIES AND FUTURES (UNSOLICITED CALLS—
EXCLUSION) RULES**

(Made by the Securities and Futures Commission under section 397(1)
of the Securities and Futures Ordinance (Cap. 571))

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures Ordinance (Cap. 571).

2. Interpretation

In these Rules, unless the context otherwise requires—
“call” (造訪) has the meaning assigned to it by section 174(7) of the Ordinance;
“Monetary Authority guideline” (《金融管理專員指引》) means the Guideline of the Monetary Authority issued in November 1995 and published in the Gazette under section 7(3) of the Banking Ordinance (Cap. 155) as G.N. 4679 of 1995 on 17 November 1995, as amended and published under that section from time to time;
“recipient” (接收人), in relation to a communication, includes a person who reads or hears the communication;
“unsolicited call” (未獲邀約的造訪) has the meaning assigned to it by section 174(7) of the Ordinance.

3. Excluded unsolicited calls

(1) For the purposes of section 174(3)(a) of the Ordinance, section 174 of the Ordinance does not apply to any agreement—

- (a) to sell securities of a corporation to; or
- (b) to purchase securities of a corporation from,

a person who is already the holder of securities of that corporation.

(2) For the purposes of section 174(3)(d) of the Ordinance, section 174 of the Ordinance does not apply to any unsolicited call that is—

- (a) a permissible communication; or
- (b) made by a registered institution—
 - (i) in relation to a leveraged foreign exchange contract; and
 - (ii) which complies with the requirements under the Monetary Authority guideline that apply to a registered institution.

(3) For the purposes of subsection (2)(a), a permissible communication is any communication that is not made in the course of any of the following acts—

- (a) a visit in person;
- (b) a telephone conversation;
- (c) any other interactive dialogue in the course of which statements and responses to them are exchanged immediately.

(4) In deciding whether or not a communication is made in the course of the act referred to in subsection (3)(c), the court shall have regard to the following factors the presence of any of which indicates a permissible communication—

- (a) the communication is made to more than one recipient in identical terms (save for details of the recipient's identity);
- (b) the communication is made by way of a system which in the normal course constitutes or creates a record of the communication which is available to the recipient to refer to at a later time;
- (c) the communication is made by way of a system which in the normal course does not require the recipient to respond immediately to it.

Andrew Len Tao SHENG
Chairman,
Securities and Futures Commission

25 November 2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 397(1) of the Securities and Futures Ordinance (Cap. 571) for the purposes of section 174(3)(a) and (d) of the Ordinance. They exclude certain agreements and unsolicited calls from the application of section 174 of the Ordinance.