

**L.N. 229 of 2002****SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS—  
EXCLUSIONS) REGULATION**

(Made by the Chief Executive in Council under  
section 376(1) of the Securities and  
Futures Ordinance (Cap. 571))

**1. Commencement**

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

**2. Interpretation**

In this Regulation, unless the context otherwise requires—

“associated corporation” (相聯法團) has the meaning assigned to it by section 308 of the Ordinance;

“back-to-back contract” (背對背合約) means a contract—

- (a) made between an intermediary and its client, pursuant to a previous agreement made between them, for the sale or purchase of a stock futures contract or a stock options contract;
- (b) the terms of which are identical to those of an exchange contract entered into by the intermediary pursuant to the instructions of the client; and
- (c) entered into by the intermediary—
  - (i) where the intermediary is a purchaser under the corresponding exchange contract, as a seller; and
  - (ii) where the intermediary is a seller under the corresponding exchange contract, as a purchaser;

“client” (客戶), in relation to an intermediary, means a person for whom the intermediary provides a service the provision of which constitutes a regulated activity;

“conditional offer” (有條件要約) means an offer to purchase shares in a listed corporation made by or on behalf of an offeror to the holders of all the shares or all the shares of a particular class in the listed corporation other than (in either case) shares held by or on behalf of—

- (a) the offeror;
- (b) the offeror’s holding company, the offeror’s subsidiary or a subsidiary of the offeror’s holding company; or

- (c) any person who has agreed that no such offer is to be made in respect of the shares he holds,  
subject to the condition that acceptances have to be received in respect of such proportion of the shares for which the offer is made as specified in, or ascertained by reference to, the terms of the offer;
- “exchange contract” (交易所合約) means a contract entered into by an intermediary and another intermediary for the sale or purchase of a stock futures contract or a stock options contract through the trading facilities provided by, and subject to the rules of, the relevant exchange company;
- “listed corporation” (上市法團) has the meaning assigned to it by section 308 of the Ordinance;
- “Official Trustee” (法定受託人) means the Official Trustee appointed under, or the person acting as the Official Trustee by virtue of, section 66 of the Trustee Ordinance (Cap. 29);
- “recognized occupational retirement scheme” (認可職業退休計劃) has the meaning assigned to it by section 2(1) and (2A) of the Inland Revenue Ordinance (Cap. 112);
- “relevant exchange company” (有關交易所公司), in relation to—
- (a) dealings in stock futures contracts, means the Futures Exchange Company; or
  - (b) dealings in stock options contracts, means the Stock Exchange Company;
- “relevant share capital” (有關股本) has the meaning assigned to it by section 308 of the Ordinance;
- “short position” (淡倉) has the meaning assigned to it by section 308 of the Ordinance;
- “stock futures contract” (股票期貨合約) means a stock futures contract specified in column 2 of Schedule 1 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. 220 of 2002);
- “stock options contract” (股票期權合約) means a stock options contract specified in column 2 of Schedule 2 to the Securities and Futures (Contracts Limits and Reportable Positions) Rules (L.N. 220 of 2002);
- “trading day” (交易日) means a day other than—
- (a) a public holiday;
  - (b) a Saturday;
  - (c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); and
  - (d) a day throughout or for part of which trading on a recognized stock market is suspended.

### **3. Prescribed interests and short positions to be disregarded for the purpose of notification**

(1) The following interests, and short positions, in shares comprised in the relevant share capital of a listed corporation are prescribed for the purposes of section 323 of the Ordinance—

- (a) an interest or short position of a person in his capacity as a beneficiary under a trust constituted exclusively for the purposes of a recognized occupational retirement scheme;
- (b) an interest or short position of the Official Trustee held in his official capacity;
- (c) an interest acquired by the offeror as a result of the acceptance of a conditional offer by the shareholders of the listed corporation, being an interest subsisting while the condition of the offer remains unfulfilled; and
- (d) subject to subsection (2), an interest or short position which an intermediary licensed or registered for Type 1 or Type 2 regulated activity has by virtue of its—
  - (i) entering into an exchange contract in the ordinary course of its business as such an intermediary pursuant to the instructions of its client who is a person other than a related corporation of the intermediary; and
  - (ii) designating the exchange contract as being entered into for the account of the client.

(2) For the purposes of subsection (1)(d), an interest or short position shall not be regarded as being prescribed for the purposes of section 323 of the Ordinance unless the intermediary concerned also enters into a back-to-back contract with its client on the same day as entering into an exchange contract pursuant to the instructions of the client.

### **4. Prescribed interests and short positions to be disregarded for the purpose of notification by director and chief executive**

The following interests in shares in or debentures of, and short positions in shares in, a listed corporation or any associated corporation of the listed corporation, are prescribed for the purposes of section 346 of the Ordinance—

- (a) an interest or short position of a person in his capacity as a trustee of any trust, or as a personal representative of any estate, of which the Official Trustee is also a trustee (otherwise than as a custodian trustee) or a personal representative (as the case may be);

- (b) an interest or short position of a person in his capacity as a trustee of, or as a beneficiary under, a trust constituted exclusively for the purposes of a recognized occupational retirement scheme; and
- (c) an interest or short position which a person is taken to have under section 344(3) of the Ordinance, where it is an interest or short position (as the case may be) of the corporation concerned in its capacity as a trustee of any such trust as is referred to in paragraph (b).

**5. Exclusion from requirements for notification in certain circumstances of change in nature of interest**

A person is not required to give notification under section 324 of the Ordinance, where a duty of disclosure arises under section 310(1) of the Ordinance in the circumstances specified in section 313(1)(d) of the Ordinance because of a change in the nature of the person's interest in shares comprised in the relevant share capital of the listed corporation concerned, if the change is due to his entering into a contract for the sale of the shares so comprised in which he is interested, under which he is required to deliver the shares to the purchaser under the contract within 4 trading days after the date of the contract.

CHENG Mei-sze, Maisie  
Clerk to the Executive Council

COUNCIL CHAMBER  
10 December 2002

**Explanatory Note**

This Regulation prescribes certain interests and short positions which are to be disregarded, in addition to the interests and short positions set out in sections 323(1) and 346(1) of the Securities and Futures Ordinance (Cap. 571) ("the Ordinance"), for the purpose of notification by substantial shareholders and directors or chief executives of listed corporations. It also excludes substantial shareholders from the requirement to give notification where they come under a duty of disclosure under section 310(1) of the Ordinance in certain circumstances because of a change in the nature of their interests.