

Securities and Futures (Investor Compensation—Levy) Rules

(Cap. 571 sub. leg. AB)

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Securities and Futures (Investor Compensation—Levy) Rules

(Cap. 571, section 244(1))

(Enacting provision omitted—E.R. 3 of 2017)

[1 April 2003] *L.N. 12 of 2003*

(Format changes—E.R. 3 of 2017)

Part 1

Preliminary

1. *(Omitted as spent—E.R. 4 of 2017)*

2. **Interpretation**

In these Rules, unless the context otherwise requires—

Claims Rules (《申索規則》) means the Securities and Futures (Investor Compensation—Claims) Rules (Cap. 571 sub. leg. T); *(L.N. 131 of 2019)*

Exchange Company (交易所)—

- (a) in relation to a levy payable under Part 2, means the Stock Exchange Company;
- (b) in relation to a levy payable under Part 3, means the Futures Exchange Company;

exemption notice (豁免付款公告) means a notice published under section 25(1); *(L.N. 108 of 2005)*

Hong Kong securities (香港證券) means any securities that are listed or traded, or to be listed or traded, on a recognized stock market; (*L.N. 131 of 2019*)

levy (徵費) means a levy payable under Part 2 or Part 3;

Mini-Hang Seng China Enterprises Index Futures Contract (小型恒生中國企業指數期貨合約) means a futures contract entitled “Mini-Hang Seng China Enterprises Index Futures Contract” for which the contract specifications are set out in the rules of the Futures Exchange Company; (*L.N. 122 of 2008*)

Mini-Hang Seng Index Futures Contract (小型恒生指數期貨合約) means a futures contract entitled “Mini-Hang Seng Index Futures Contract” for which the contract specifications are set out in the rules of the Futures Exchange Company;

Mini-Hang Seng Index Options Contract (小型恒生指數期權合約) means a futures contract entitled “Mini-Hang Seng Index Options Contract” for which the contract specifications are set out in the rules of the Futures Exchange Company;

net asset value (淨資產值), in relation to the compensation fund, means the balance after deducting the total liabilities of the compensation fund from its total assets and, for the purposes of this definition, net asset value may be a negative figure; (*L.N. 108 of 2005*)

northbound link (北向通) has the meaning given by section 2 of the Claims Rules; (*L.N. 131 of 2019*)

remittance (轉付) means a payment, by way of remittance, by the Exchange Company to the Commission under section 13;

securities market maker permit (證券莊家執照) means a permit which is issued to an exchange participant by the Stock Exchange Company in accordance with the rules of the Stock Exchange Company to carry out market making activities in respect of certain securities; (*L.N. 122 of 2008*)

southbound link (南向通), in relation to a Stock Connect arrangement, means the facilities provided or arranged by the operator of the relevant Stock Connect market under the arrangement—

- (a) for routing orders for the sale or purchase of securities for execution on a recognized stock market operated by the Stock Exchange Company; and
- (b) for handling matters relating to those securities;
(*L.N. 131 of 2019*)

Stock Connect arrangement (互聯互通安排) has the meaning given by section 2 of the Claims Rules; (*L.N. 131 of 2019*)

Stock Connect market (互聯互通市場) has the meaning given by section 2 of the Claims Rules; (*L.N. 131 of 2019*)

Stock Connect securities (互聯互通證券) has the meaning given by section 2 of the Claims Rules; (*L.N. 131 of 2019*)

stock futures contract (股票期貨合約) means a futures contract entitled “Stock Futures Contract” for which the contract specifications are set out in the rules of the Futures Exchange Company; (*L.N. 108 of 2005*)

termination of exemption notice (終止豁免公告) means a notice published under section 26(1). (*L.N. 108 of 2005*)

(*L.N. 122 of 2008*)

2A. Rounding of levy amounts

If, in accordance with any other provision of these Rules, the amount of a levy would, but for this section, include a fraction of a cent, the amount is to be rounded to the nearest cent.

(*19 of 2015 s. 32*)

Part 2

Levy Payable in respect of Sale or Purchase of Securities

(L.N. 131 of 2019)

3. Application of Part 2

- (1) This Part applies only to—
 - (a) a sale or purchase of Hong Kong securities—
 - (i) that is recorded on a recognized stock market or notified to a recognized exchange company under its rules; and
 - (ii) the order for which is not routed through the southbound link of a Stock Connect arrangement; and
 - (b) a sale or purchase of Stock Connect securities, the order for which is routed through the northbound link of a Stock Connect arrangement. *(L.N. 131 of 2019)*
- (2) This Part is subject to the provisions in Part 5. *(L.N. 108 of 2005)*

4. Securities

Subject to sections 5 and 7A, for the purposes of the compensation fund, a levy is payable to the Commission— *(L.N. 122 of 2008; L.N. 131 of 2019)*

- (a) for a sale of securities—by the seller at the rate of 0.002% of the consideration for the sale; and
- (b) for a purchase of securities—by the purchaser at the rate of 0.002% of the consideration for the purchase.

(L.N. 131 of 2019)

5. No levy on stock options

For the purposes of the compensation fund, no levy for a sale or purchase of a stock option is payable to the Commission.

(L.N. 131 of 2019)

6-7. *(Repealed L.N. 122 of 2008)*

7A. No levy on sale or purchase of securities by securities market maker permit holders

(L.N. 131 of 2019)

For the purposes of the compensation fund, no levy is payable to the Commission for the sale or purchase of securities by an exchange participant, if the exchange participant— *(L.N. 131 of 2019)*

- (a) holds a securities market maker permit in respect of the securities that is in force at the time of the sale or purchase; and
- (b) makes the sale or purchase in the course of making a market for the securities.

(L.N. 122 of 2008)

Part 3

Levy Payable in respect of Sale and Purchase of Futures Contracts

8. Application of Part 3

- (1) This Part does not apply in relation to a sale and purchase of a futures contract unless it is traded on a recognized futures market. *(L.N. 108 of 2005)*
- (2) This Part is subject to the provisions in Part 5. *(L.N. 108 of 2005)*

9. Futures contracts

Subject to sections 10 and 11, for the purposes of the compensation fund, a levy for a sale and purchase of a futures contract shall be payable to the Commission—

- (a) by the seller in the amount of \$0.50; and
- (b) by the purchaser in the amount of \$0.50.

10. Mini-Hang Seng Index Futures Contracts, Mini-Hang Seng Index Options Contracts and Mini-Hang Seng China Enterprises Index Futures Contracts

(L.N. 122 of 2008)

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of a Mini-Hang Seng Index Futures Contract, a Mini-Hang Seng Index Options Contract or a Mini-Hang Seng China Enterprises Index Futures Contract is— *(L.N. 122 of 2008)*

- (a) in the case of the seller, in the amount of \$0.10; or
- (b) in the case of the purchaser, in the amount of \$0.10.

11. Stock futures contracts

For the purposes of the compensation fund, the levy payable to the Commission for a sale and purchase of a stock futures contract or an option on such a contract is—

- (a) in the case of the seller, in the amount of \$0.10; or
 - (b) in the case of the purchaser, in the amount of \$0.10.
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Part 4

Manner of Payment and Incidental Matters

12. Payment of levies

- (1) A person who is liable to pay a levy under these Rules shall pay the levy to the Exchange Company on behalf of the Commission in such manner as may be specified from time to time in the rules of the Exchange Company.
- (2) The amount of any levy payable under this section is recoverable as a civil debt due to the Commission.

13. Exchange Company to collect and remit levy

The Exchange Company shall—

- (a) collect any levy paid to it under section 12; and
- (b) subject to section 21, pay the levy by way of remittance to the Commission by paying it into such bank account as may be specified by the Commission, on the 15th day of the month following the month of the collection of the levy, or where the 15th day is not a business day, on the next business day.

14. Exchange Company to deposit levies in bank pending remittance

Pending remittance to the Commission of any levy in accordance with section 13, the Exchange Company shall—

- (a) hold the levy on behalf of the Commission; and
- (b) deposit the levy in a bank within the meaning of the Banking Ordinance (Cap. 155) as soon as reasonably practicable after collection of the levy.

15. Returns relating to remittance

- (1) Within 7 days after the date of each remittance, the Exchange Company shall furnish to the Commission a return relating to the remittance.
- (2) A return furnished under subsection (1) shall—
 - (a) be in such form as may be specified by the Commission;
 - (b) be signed by a director of the Exchange Company authorized by the Exchange Company either generally or specifically for that purpose; and
 - (c) contain such information as may be specified by the Commission.

16. Adjustment of remittance and returns

A return or the amount of remittance to which it relates may be adjusted by the Exchange Company to reflect any error in a previous return or remittance (as the case may be).

17. Late remittance charge

- (1) If the Exchange Company fails to remit any levy when required under these Rules, it shall pay to the Commission a late remittance charge of 2% above the average of the best lending rate respectively quoted by each note-issuing bank within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65), on the amount of the levy, calculated on a daily basis commencing on the date of default until the remittance of the levy is made.
- (2) The late remittance charge payable under subsection (1) and the amount of the levy referred to in subsection (1) are recoverable as a civil debt due to the Commission.

- (3) The Commission shall pay the late remittance charge paid to it under subsection (1) into the compensation fund.

18. Accounts

The Exchange Company shall keep proper accounts in respect of all transactions relating to the collection and remittance of levies.

19. Inspection of accounts

For the purpose of ascertaining whether the Exchange Company is complying or has complied with any provision of these Rules, a person authorized in writing by the Commission may at any reasonable time, upon production of a copy of the authorization, inspect and make copies of the accounts kept under section 18.

20. Report

- (1) Subject to subsection (3), the Exchange Company shall, within one month after 31 March in each year or such longer period as may be specified by the Commission either generally or in a particular case, furnish to the Commission a report certifying that the returns furnished under section 15 and relating to all remittances made in the 12 months ending on 31 March in that year are correct and comply with these Rules, and that the levies to which the remittances relate have been paid in accordance with these Rules. (*L.N. 108 of 2005*)
- (2) The report furnished under subsection (1) shall be—
- (a) in such form as may be specified by the Commission; and
 - (b) prepared and certified, at the expense of the Exchange Company, by an auditor appointed by the Exchange Company under the Companies Ordinance (Cap. 622) or the relevant Ordinance. (*Amended 28 of 2012 ss. 912 & 920*)

- (3) The Exchange Company is not required to furnish a report under subsection (1) in respect of any 12 month period specified in that subsection if—
- (a) no person is required to pay any levy under these Rules during that period; and
 - (b) no refund, adjustment, collection or remittance of levy was made or has fallen due under these Rules during that period. (*L.N. 108 of 2005*)

21. Refund of levy

- (1) Where a person has paid a levy, he may apply to the Commission for the refund of such levy on the ground that—
- (a) he was in fact not liable to pay the levy; or
 - (b) he subsequently became not liable to pay the levy.
- (2) An application under subsection (1) shall be—
- (a) in writing; and
 - (b) accompanied by all relevant information.
- (3) If the Commission is satisfied that an applicant was or became not liable to pay a levy paid by him, it shall refund the levy to the applicant.

22. Notification of failure to pay levy

Where the Exchange Company is aware that any person has failed to pay a levy payable by him, it shall as soon as reasonably practicable notify the Commission in writing of the failure.

23. Provision of information

- (1) The Commission may by notice in writing require the Exchange Company to provide information specified in the notice relating to the collection, deposit and remittance of levies.

Securities and Futures (Investor Compensation—Levy) Rules

Part 4

4-10

Section 23

Cap. 571AB

- (2) Where a notice is given under subsection (1), the Exchange Company shall as soon as reasonably practicable provide the information specified in the notice.
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Part 5

No Payment of Levy under Exemption Notice

(Part 5 added L.N. 108 of 2005)

24. Commission to cause financial statement to be audited

- (1) Subject to subsection (3), where the latest unaudited financial statement prepared in respect of the accounts of the compensation fund and made up to (and including) the last day of any month shows that the net asset value of the compensation fund exceeds \$3 billion as at that day, the Commission must as soon as reasonably practicable appoint an auditor to audit, and prepare an auditor's report in respect of, the financial statement and to submit the report to the Commission. *(L.N. 131 of 2019)*
- (2) Subject to subsection (4), where the latest unaudited financial statement prepared in respect of the accounts of the compensation fund and made up to (and including) the last day of any month shows that the net asset value of the compensation fund is below \$2 billion as at that day, the Commission must as soon as reasonably practicable appoint an auditor to audit, and prepare an auditor's report in respect of, the financial statement and to submit the report to the Commission. *(L.N. 131 of 2019)*
- (3) Subsection (1) does not apply if at the date of receiving the latest unaudited financial statement—
 - (a) the Commission has published an exemption notice under section 25(1) but has not published a termination of exemption notice relating to it under section 26(1);
 - (b) the Commission has received an auditor's report prepared in respect of a previous unaudited financial

- statement and, as a result, the Commission is required to publish an exemption notice under section 25(1);
- (c) the Commission has appointed an auditor, and is awaiting receipt of an auditor's report to be prepared under subsection (1) in respect of a previous unaudited financial statement; or
 - (d) an unaudited financial statement made up to (and including) the last day of the month referred to in subsection (1) is required to be audited, and an auditor's report in respect of the financial statement is required to be prepared, under section 240 of the Ordinance.
- (4) Subsection (2) does not apply if at the date of receiving the latest unaudited financial statement—
- (a) the Commission has not published an exemption notice under section 25(1);
 - (b) the Commission has published an exemption notice under section 25(1) and has published a termination of exemption notice relating to it under section 26(1);
 - (c) the Commission has received an auditor's report prepared in respect of a previous unaudited financial statement and, as a result, the Commission is required to publish a termination of exemption notice under section 26(1);
 - (d) the Commission has appointed an auditor, and is awaiting receipt of an auditor's report to be prepared under subsection (2) in respect of a previous unaudited financial statement; or
 - (e) an unaudited financial statement made up to (and including) the last day of the month referred to in subsection (2) is required to be audited, and an auditor's report in respect of the financial statement is required to be prepared, under section 240 of the Ordinance.

25. Commission to publish exemption notice

- (1) Subject to subsections (3) and (4), where the auditor's report prepared under section 240 of the Ordinance or section 24(1) confirms (whether expressly or impliedly and whether by reference to any financial statement attached to it or otherwise) that the net asset value of the compensation fund exceeds \$3 billion, the Commission must by an exemption notice published in the Gazette declare that no person is required to pay any levy under Part 2 or 3 in respect of a sale or purchase of securities or futures contract that takes place at any time—
 - (a) on or after the date specified in the exemption notice, which date may not be earlier than one month after the date of publication of the exemption notice in the Gazette; and
 - (b) before the date to be specified by a termination of exemption notice published under section 26(1).
- (2) Notwithstanding anything in these Rules, where an exemption notice is published in the Gazette, no person may be required to pay the levy as declared to be not payable by the exemption notice.
- (3) No further exemption notice may be published if a previous exemption notice has been published by the Commission under subsection (1) but a termination of exemption notice relating to it has not been published under section 26(1).
- (4) Subject to subsection (5), the Commission may, after consultation with the Financial Secretary, refrain from publishing an exemption notice under subsection (1) if it has reason to believe that the net asset value of the compensation fund will fall below \$2 billion within 6 months from the date of receiving the auditor's report.

- (5) The Commission having refrained from publishing an exemption notice is required to ascertain the net asset value of the compensation fund and if the Commission subsequently reasonably considers that the net asset value of the compensation fund will not fall below \$2 billion within the 6 month period, it must proceed to publish the exemption notice.
- (6) An exemption notice is not subsidiary legislation.

(L.N. 131 of 2019)

26. Commission to publish termination of exemption notice

- (1) Subject to subsection (3), where—
 - (a) the auditor's report prepared under section 240 of the Ordinance or section 24(2) confirms (whether expressly or impliedly and whether by reference to any financial statement attached to it or otherwise) that the net asset value of the compensation fund is below \$2 billion; and
 - (b) the Commission has published an exemption notice under section 25(1) but has not published a termination of exemption notice relating to it under this subsection, the Commission must by a termination of exemption notice published in the Gazette specify a termination date for the exemption notice, which date may not be earlier than 2 months after the date of publication of the termination of exemption notice in the Gazette.
- (2) The publication of a termination of exemption notice does not revive the obligation to pay any levy which has been declared to be not payable by the exemption notice relating to it.
- (3) Subject to subsection (4), the Commission may, after consultation with the Financial Secretary, refrain from publishing a termination of exemption notice under subsection (1) if it has reason to believe that the net asset value of the

compensation fund will exceed \$3 billion within 6 months from the date of receiving the auditor's report.

- (4) The Commission having refrained from publishing a termination of exemption notice is required to ascertain the net asset value of the compensation fund and if the Commission subsequently reasonably considers that the net asset value of the compensation fund will not exceed \$3 billion within the 6 month period, it must proceed to publish the termination of exemption notice.
- (5) A termination of exemption notice is not subsidiary legislation.

(L.N. 131 of 2019)

27. Exemption notice published on 11 November 2005

- (1) The Commission's declaration that no person is required to pay any levy under Part 2 or 3, by the exemption notice published on 11 November 2005 under section 25(1), continues to have effect until the date to be specified for the exemption notice by a termination of exemption notice published under section 26(1).
- (2) To avoid doubt, subsection (1) applies—
 - (a) despite the amendments made to this Part by sections 9, 10 and 11 of the Securities and Futures (Investor Compensation—Levy) (Amendment) Rules 2019; and
 - (b) regardless of the net asset value of the compensation fund on 1 January 2020.

(L.N. 131 of 2019)