

SECURITIES AND FUTURES (KEEPING OF RECORDS) RULES

SECURITIES AND FUTURES (KEEPING OF RECORDS) RULES

CONTENTS

Section		Page
	PART 1	
	PRELIMINARY	
1.	Commencement	1
2.	Interpretation	1
	PART 2	
	KEEPING OF RECORDS	
	Division 1 - General rules	
3.	General record keeping requirements for intermediaries	3
4.	General record keeping requirements for associated entities	5
	Division 2 - Particular rules	
5.	Additional requirements for dealing in securities	7
6.	Additional requirements for carrying on leveraged foreign exchange trading	7
7.	Additional requirements for advising on securities or futures contracts	8
8.	Additional requirements for advising on corporate finance	9
9.	Additional requirements for providing securities margin financing and financial accommodation and effecting margined transactions	9
10.	Additional requirements for carrying on asset management	10

Section		Page
	PART 3	
	MISCELLANEOUS	
11.	Form in which records are to be kept	11
12.	Record retention period	11
13.	Reporting of non-compliance with these Rules	12
14.	Penalties	12
Schedule 1	Records to be kept by intermediaries	13
Schedule 2	Records to be kept by associated entities	17

SECURITIES AND FUTURES (KEEPING OF RECORDS) RULES

(Made by the Securities and Futures Commission under section 147(1) of the Securities and Futures Ordinance ([] of 2002))

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part VI of the Securities and Futures Ordinance ([] of 2002).

2. Interpretation

In these Rules, unless the context otherwise requires -

"advising on corporate finance" (就機構融資提供意見), "advising on futures contracts" (就期貨合約提供意見) and "advising on securities" (就證券提供意見) have the meanings respectively assigned to them in Part 2 of Schedule 6 to the Ordinance;

"keep" (備存), in relation to a record, also means cause to be kept;

"margin value" (保證金價值), in relation to each description of securities collateral, means the maximum amount of money which a client of an intermediary is generally permitted to borrow (or otherwise secure other forms of financial accommodation) from the intermediary against that

particular description of securities collateral;

"margined transaction" (保證金交易) means a securities, futures or leveraged foreign exchange transaction entered into in Hong Kong by an intermediary with or on behalf of a client of the intermediary which requires the client to -

- (a) pay margin to the intermediary; or
- (b) provide security to the intermediary to meet the client's obligations,

other than an arrangement where financial accommodation is provided to the client by the intermediary;

"marked to market" (按照市值計算差額) means the method or procedure of adjusting the valuation of open positions to reflect current market values;

"systems of control" (監控系統), in relation to an intermediary or an associated entity of the intermediary, means the internal controls and trading, accounting, settlement and stock holding systems it has implemented to ensure its compliance with the Ordinance and any Rules made under the Ordinance.

PART 2

KEEPING OF RECORDS

Division 1 - General rules

**3. General record keeping requirements
for intermediaries**

An intermediary must -

- (a) keep the records specified in Schedule 1;
- (b) keep such accounting, trading and other records

as are sufficient to -

- (i) explain, and reflect the financial position and operation of, its business;
- (ii) enable profit and loss accounts and balance sheets which give a true and fair view of its financial affairs to be prepared from time to time;
- (iii) (where applicable) account for all orders or instructions concerning securities, futures contracts or leveraged foreign exchange contracts that it receives or initiates;
- (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;

- (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;
- (vii) enable all movements of such client assets to be traced through its accounting and, where applicable, stock holding systems;
- (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
- (ix) demonstrate compliance with its systems of control and all applicable

provisions in the Ordinance and any

Rules made under the Ordinance;

- (c) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and
- (d) make entries in those records in accordance with generally accepted accounting principles.

4. General record keeping requirements for associated entities

An associated entity of an intermediary must -

- (a) keep the records specified in Schedule 2;
- (b) 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;
 - (ii) enable all movements of such client assets to be traced through its accounting and, where applicable, stock holding systems;
 - (iii) show separately and account for all receipts, payments, deliveries and other uses or applications of client assets effected by it, or on its behalf,

and on whose behalf such receipts, payments, deliveries or other uses or applications of client assets have been effected;

(iv) 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

(v) demonstrate compliance with its systems of control and all applicable provisions in the Ordinance and any Rules made under the Ordinance;

(c) keep those records in such manner as will enable an audit in respect of client assets to be conveniently and properly carried out; and

(d) make entries in those records in accordance with generally accepted accounting principles.

Division 2 - Particular rules**5. Additional requirements for dealing in securities**

In addition to the requirements of section 3, an intermediary licensed or exempt for dealing in securities must keep such records as are sufficient to show separately particulars of all underwriting and sub-underwriting transactions entered into by it, including particulars showing when it entered into such transactions.

6. Additional requirements for carrying on leveraged foreign exchange trading

In addition to the requirements of section 3, a corporation licensed for carrying on leveraged foreign exchange trading must keep such records as are sufficient to show -

- (a) in relation to each such transaction -
 - (i) particulars of its recognized counterparties; and
 - (ii) compliance with the Securities and Futures (Recognized Counterparty) Rules (L.N. of 2002); and
- (b) for each business day -
 - (i) the marked to market position at the end of each business day for its own accounts and the accounts of each of its clients and recognized

counterparties;

(ii) for each contract executed by it -

(A) the bid and offer prices quoted by it to the client;

(B) the price at which the contract is executed; and

(C) the bid and offer prices at the time of execution of the contract as quoted and disseminated to the public, or to subscribers, by a reputable financial information services organization; and

(iii) the interest rate differentials which are charged or paid by it for being long or short, one currency against another.

7. Additional requirements for advising on securities or futures contracts

In addition to the requirements of section 3, 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.

8. Additional requirements for advising on corporate finance

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.

9. Additional requirements for providing securities margin financing and financial accommodation and effecting margined transactions

(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.

(2) 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;

(b) with whom and on whose behalf such securities are deposited, showing separately the quantity and market value of -

(i) those securities deposited for safe custody; and

(ii) those securities deposited as security for financial accommodation provided to the intermediary;

(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.

10. Additional requirements for carrying on asset management

In addition to the requirements of section 3, an intermediary licensed or exempt for carrying on asset management which holds client assets must keep such records as are sufficient to show, in respect of each client, particulars of the client's assets and liabilities, including any commitments

and contingent liabilities.

PART 3

MISCELLANEOUS

11. Form in which records are to be kept

(1) All records required by these Rules must be kept -

- (a) in writing in the Chinese or English language; or
- (b) in such a manner as to enable them to be readily accessible and readily convertible into written form in the Chinese and English language.

(2) An intermediary and each associated entity of an intermediary must adopt all reasonably necessary procedures to -

- (a) guard against falsification of any of its records;
- and
- (b) facilitate discovery of any such falsification.

12. Record retention period

(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.

(2) 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 section 3(b)(iii);
- (b) each contract note made out to the intermediary

as principal;

- (c) each contract note created by the intermediary as agent; and
- (d) statements of account referred to in section [] of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (L.N. of 2002) which have been created by the intermediary or its associated entity.

13. Reporting of non-compliance with these Rules

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.

14. Penalties

An intermediary, an associated entity of an intermediary or a corporation, as the case may be, that contravenes section 3, 4, 5, 6, 7, 8, 9(2), 10, 11 or 12 -

- (a) without reasonable excuse commits an offence and is liable -
 - (i) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years; or
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 6

months; or

(b) with intent to defraud commits an offence and is liable -

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or

(ii) on summary conviction to a fine of \$500,000 and to imprisonment for 1 year.

SCHEDULE 1

[s. 3]

RECORDS TO BE KEPT BY INTERMEDIARIES

1. An intermediary must keep -

(a) records showing particulars of -

(i) all money received by it, whether or not such money -

(A) belongs to it; or

(B) is paid into accounts kept by it or on its behalf;

(ii) all income received by it, whether such income relates to charges made by it for the provision of services, commissions, brokerage, remuneration, interest or otherwise;

(iii) all expenses, commissions and interest incurred or paid by it;

(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 -

(A) the securities margin lending policy and margin call policy applied by the intermediary to that client; and

(B) the client collateral deposited as security for, or to facilitate, the provision by the intermediary of such financial accommodation or securities margin financing, or the effecting of margined transactions;

(v) all disposals of client securities or securities collateral initiated by it, showing in the case of each disposal -

(A) the name of the client;

(B) when the disposal was effected;

(C) the name of the intermediary which effected the disposal;

(D) the charges incurred for effecting the disposal; and

- (E) the proceeds of the disposal and how such proceeds were dealt with;
- (vi) its assets and liabilities, including commitments and contingent liabilities;
- (vii) all securities belonging to it, identifying -
 - (A) with whom such securities are deposited;
 - (B) when they were deposited; and
 - (C) whether they are held as security for loans or advances or for any other purpose;
- (viii) all securities held by it but not belonging to it, separately identifying -
 - (A) for whom such securities are held and with whom they are deposited;
 - (B) when they were deposited;
 - (C) those securities which are deposited with a third party for safe custody; and
 - (D) those securities which are deposited with a third party as security for loans or advances made to it or its associated entity or for any other purpose;

(ix) all bank accounts held by it, separately identifying segregated accounts as required under the Securities and Futures (Client Money) Rules (L.N. of 2002);

(x) all other accounts held by it; and

(xi) all off-balance sheet transactions or positions;

(b) 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;

(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);

(iii) documents evidencing -

(A) any authority given to it by clients, including any authority referred to under the Securities

and Futures (Client Securities) Rules (L.N. of 2002) and the Securities and Futures (Client Money) Rules (L.N.

of 2002), showing the period for which such authority is valid; and

- (B) any renewal of such authority; and
- (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).

SCHEDULE 2

[s. 4]

RECORDS TO BE KEPT BY ASSOCIATED ENTITIES

1. An associated entity of an intermediary must, in respect of client assets of the intermediary, keep -

(a) copies of all -

- (i) contracts, order forms, confirmations, statements, registers, records, memoranda and correspondence created or received by it in connection with receiving, holding or dealing with client assets of any intermediary with

which it is in a controlling entity relationship; and

- (ii) 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).

Chairman,
Securities and Futures Commission

2002

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 147(1) of the Securities and Futures Ordinance ([] of 2002) and prescribe the records that intermediaries and their associated entities and corporations must keep, and the manner in which they must be kept.