

CHAPTER 4

FINANCIAL RESOURCES RULES AND ACCOUNTING REQUIREMENTS

Financial Resources Rules

Exchange Participants' Obligation to Comply with the Financial Resources Rules

401. (1) Every Exchange Participant shall at all times comply with the Financial Resources Rules and where applicable the financial resources requirements made under Rule 408.
- (2) [Repealed]
402. [Repealed]
- 402A. [Repealed]
403. [Repealed]
- 403A. [Repealed]
404. [Repealed]
- 404A. [Repealed]
405. [Repealed]

Application of the Financial Resources Rules at the Time of Admission

406. Any applicant for Exchange Participantship shall demonstrate to the satisfaction of the Board that it is able to comply with the Financial Resources Rules at the time of admission.
407. [Repealed]

Board's Power to Increase the Minimum Financial Resources Rules Requirements

408. Notwithstanding the Financial Resources Rules and Rule 406, the Board may increase the requirements thereunder in respect of any Exchange Participant to suit the circumstances of a particular case or of Exchange Participants generally, if it deems that circumstances so justify. Such increased requirements may be subsequently varied by the Board as various circumstances may exist which require the Board to make ad hoc decisions. However, every Exchange Participant must still comply with the Financial Resources Rules.
- 408A. The Exchange shall ensure that changes in the prevailing minimum financial resources requirements determined pursuant to Rule 408 are promptly notified to all

relevant Exchange Participants in such manner as the Board may specify.

- 408B. The Exchange shall ensure that the Commission is notified of all prevailing minimum financial resources requirements as determined by the Board pursuant to Rule 408 and shall notify the Commission immediately of any changes in the minimum financial resources requirements prevailing from time to time.
- 408C. If any discrepancy exists between the financial resources requirements set forth in these Rules and those set forth in the Financial Resources Rules, the level which is higher or more stringent shall prevail.
- 409. [Repealed]
- 410. [Repealed]
- 411. [Repealed]
- 412. [Repealed]
- 412A. [Repealed]
- 413. [Repealed]

Exchange Participant’s Duty to Notify the Exchange and the Commission of Details of Inability to Comply with the Financial Resources Rules and of Changes in Circumstances

- 414. (1) An Exchange Participant shall immediately notify the Exchange and the Commission in writing whenever it becomes aware of any of the matters that require notification to be given to the Commission under section 146 of the Ordinance and/or sections 54 and 55 of the Financial Resources Rules to the extent that they are applicable to a licensed corporation licensed to carry on Type 1 regulated activity.
 - (a) [Repealed]
 - (b) [Repealed]
 - (c) [Repealed]
 - (d) [Repealed]
 - (e) [Repealed]
 - (f) [Repealed]
 - (g) [Repealed]
 - (h) [Repealed]
 - (i) [Repealed]

- (2) In addition to giving the aforesaid notification, an Exchange Participant shall, where it becomes aware of the matter stated in section 146(1) of the Ordinance, cease dealing in securities otherwise than for the purpose of completing such transactions as the Commission may permit under section 146(1) of the Ordinance, or unless otherwise permitted by the Commission under section 146(2) of the Ordinance.
- (3) [Repealed]
- (4) [Renumbered as Rule 414(9)]
- (5) [Repealed]
- (6) [Repealed]
- (7) [Repealed]
- (8) [Repealed]
- (9) An Exchange Participant is and shall be deemed to have been aware of any of the matters which require notification under Rule 414(1) above if it or any of its Responsible Officers is or would, with the exercise of reasonable diligence, have been aware of such matters.

414A. [Repealed]

Power of the Board to Take Necessary Action in Case of Exchange Participant's Inability to Comply with the Financial Resources Rules

415. Where the Board has reasonable grounds for the belief that an Exchange Participant may be unable to comply with the Financial Resources Rules and the financial resources requirements made under Rule 408 it may, whether or not a notification has been given under Rules 414(1), take any action as it thinks fit, including but not limited to an order for the Exchange Participant to suspend or restrict its trading activities immediately including but not limited to Exchange Traded Options Business.

Exchange to Notify the Commission of Any Non-Compliance with Financial Resources Rules, and any Appearance of Financial Irregularities

- 416. (1) The Exchange is required to notify forthwith the Commission if it becomes aware:-
 - (a) that an Exchange Participant is unable to comply with the financial resources requirements made under Rule 408 or the Financial Resources Rules; and
 - (b) of any financial irregularity or other matter which, in the opinion of the Exchange, indicates or may indicate that the financial standing or integrity of an Exchange Participant is in question.

- (2) If the Exchange notifies the Commission pursuant to section 21(5) of the Ordinance upon becoming aware of any matter referred to in Rule 416(1)(a) or (b) then even if the Exchange Participant concerned subsequently establishes that it is not the case, such Exchange Participant shall not be entitled to claim against the Exchange or the Board or any recognized exchange controller which is the controller of the Exchange for any loss or damage whatsoever.

Accounting Requirements

417. [Repealed]

418. [Repealed]

418A. (1) The Exchange or the Commission may require an Exchange Participant to obtain a report from a Professional Accountant in the form specified by the Exchange or the Commission from time to time.

(2) When a Professional Accountant is appointed by the Exchange Participant to prepare a report required under Rule 418A(1):-

(a) the Exchange Participant shall provide to the Professional Accountant a written appointment letter specifying the terms and conditions of the appointment and the duties of the Professional Accountant including but not limited to the following provisions:-

(i) that the Professional Accountant is thereby authorised and required to submit to the Exchange and the Commission such report as required under the appointment;

(ii) that the Professional Accountant is thereby authorised and required to disclose to the Exchange and the Commission all information obtained whilst performing his duties under the appointment concerning the purpose(s) for which he is appointed, provided that this paragraph shall not require the Professional Accountant to disclose any particular part of such information where that particular part also relates to a third party and may not be communicated by the Professional Accountant as stipulated in this paragraph by virtue of a legal obligation owed by the Professional Accountant to that third party which prevents such communication;

(iii) that the Professional Accountant is thereby authorised and required to include with any qualification of his report to the Exchange and the Commission under Rule 418A(2)(a)(i), a statement specifying the relevant requirements of the Exchange and the Commission and the reasons why the opinion expressed in such a report is qualified; and

- (iv) the terms upon which the Exchange Participant appoints a Professional Accountant under Rule 418A(1) must provide, inter alia, that :-
- (A) the Professional Accountant is authorised and required, within 5 business days of the resignation of his duties as a Professional Accountant for an Exchange Participant, to provide the Exchange and the Commission with :-
- (i) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the Exchange and the Commission; or
- (ii) a statement of any such aforesaid circumstances;
- (B) if, in his capacity, or in the performance of his functions, as the Professional Accountant of the Exchange Participant, the Professional Accountant acquires information tending to suggest, or the Professional Accountant is of the opinion, that the Exchange Participant has not complied, or may not be able to comply, with any relevant legislation, Rules or Regulations governing its accounting system, financial affairs or operational system, then the Professional Accountant shall thereby be authorised and required :-
- (i) to communicate such information or opinion to the Exchange and the Commission, regardless of whether he has been requested by the Exchange or the Commission to do so; and
- (ii) should the Professional Accountant consider it appropriate to do so, to communicate such information or opinion to any person, other than the Exchange and the Commission, to whom reference is made in Rule 418C(1);

provided that this paragraph shall not require the Professional Accountant to disclose any particular part of such information where that particular part also relates to a third party and may not be communicated by the Professional Accountant as stipulated in this paragraph by virtue of a legal obligation owed by the Professional Accountant to that third party which prevents such communication; and

(C) in the event of the Professional Accountant complying in good faith with the requirements of this Rule, he shall be deemed not to be in breach of any duty which he might otherwise have, and shall not thereby incur any liability, to the Exchange Participant; and

(b) the Exchange Participant shall obtain written confirmation of acceptance of the terms and conditions of the appointment from the Professional Accountant.

418B. The Exchange Participant shall pay all its accounting and auditing costs.

Meetings Between Exchange Participants, Auditors, Professional Accountants, the Exchange and the Commission

418C. (1) An Exchange Participant, any auditor of an Exchange Participant, including an auditor appointed under Rule 422(6), any Professional Accountant appointed under Rule 418A(1) or 422(7), or any other auditor or Professional Accountant who has acted for the Exchange Participant for any period not earlier than 9 months before the date of the notice the Exchange or the Commission, may, by notice in writing to the other parties mentioned herein, request a meeting between those parties to discuss matters relating to the Exchange Participant.

(2) Any meeting to be held in pursuance of a notice under Rule 418C(1) may proceed notwithstanding the non-attendance of not more than one of the parties served with that notice.

419. [Repealed]

420. [Repealed]

421. [Repealed]

Keeping of Records

422. (1) [Repealed]

(2) [Repealed]

- (3) [Repealed]
- (4) [Repealed]
- (5) [Repealed]
- (6) Every Exchange Participant shall make all books, records or documents required to be kept under the Ordinance available to the Board for inspection or audit by any auditor appointed by the Board to do so.
- (7) If such books, records or documents are not kept sufficiently up to date, as required by these Rules, the Exchange may require the Exchange Participant to appoint a Professional Accountant approved by the Exchange, at its own expense, to immediately take such action as is necessary to bring such books, records or documents sufficiently up to date. The Exchange Participant shall issue a letter of appointment to the Professional Accountant setting out the terms of the appointment and stipulating the authorisation and the requirements which must be met by the Professional Accountant to discharge his duties under the appointment, and obtain a written confirmation from the Professional Accountant of his acceptance of the terms of the appointment.

423. [Repealed]

424. [Repealed]

Exchange Participants Not to Make False or Misleading Records

425. An Exchange Participant shall not record or provide the Exchange and the Commission with any account, return, submission or other information that is false or misleading.

426. [Repealed]

426A. [Repealed]

426B. [Repealed]

427. [Repealed]

427A. [Repealed]

427B. [Repealed]

428. [Repealed]

Monitoring of Financial and Accounting Requirements

Right to Demand Documents

429. (1) Every Exchange Participant shall within 14 calendar days, or such other

period as the Board or any designated HKEX staff may specify, of the receipt of a written demand from the Board or the designated HKEX staff, submit to the Board or any designated HKEX staff such books, records and other documents as the Board or any designated HKEX staff may demand.

(2) [Repealed]

Power to Carry Out Inspection

430. (1) Any designated HKEX staff or such persons appointed by the Board may from time to time inspect and copy the books, records and documents maintained by the Exchange Participant relating to its business and financial position. Every Exchange Participant shall provide or allow such designated HKEX staff or appointed persons access to its premises, books, records and documents necessary for the discharging of his or their duty whether such inspection is with or without prior notice.
- (2) Any expenses incidental to or consequential upon an inspection under Rule 430(1) shall be borne by the Exchange Participant concerned unless the Board otherwise determines.
- (3) An Exchange Participant shall not be entitled to claim against the Exchange, the Board, any designated HKEX staff or any appointed person for any loss or damages whatsoever relating to the inspection under Rule 430(1).

Power and Obligation of the Person Authorized by the Exchange to Carry Out Inspection

431. (1) Any person who carries out the inspection under Rule 430(1) shall be deemed to have been authorized by the Exchange Participant concerned to obtain direct from such Exchange Participant's auditor or a Professional Accountant appointed under Rule 418A(1) or 422(7) any information or explanation which he may consider necessary for the purpose of carrying out his duties.
- (2) In any case where the information obtained under Rule 430(1) or 431(1) or any other matter arising out of his enquiries leads the person who carries out the inspection under Rule 430(1) to consider that further information should be obtained by the Board regarding the Exchange Participant's state of affairs, he shall report accordingly to the Board.
- (3) All accounts and other information obtained by the person who carries out the inspection under Rule 430(1) under these Rules shall be retained by the Exchange and shall be regarded as confidential and disclosure of information contained or derived therefrom shall not be made to any body or persons without the prior approval of the Exchange Participant except that the Board may disclose the information without such prior approval:-
- (a) whenever the Board has a statutory obligation to disclose the information;

- (b) to the Commission;
 - (c) to an authority in a place outside Hong Kong which exercises functions in that place corresponding to the functions of the Exchange or the Commission, where in the opinion of the Board, it is desirable or expedient that the information should be so disclosed in the interests of investors or in the public interest and in the case of an overseas authority, such authority is subject to adequate secrecy provisions;
 - (d) in the form of a summary compiled from similar or related information obtained from other Exchange Participants if the summary is so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any Exchange Participant being ascertained from it;
 - (e) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or investigation, whether under the Ordinance or otherwise, in Hong Kong;
 - (f) in connection with any civil proceedings arising out of the Ordinance or otherwise in Hong Kong;
 - (g) to the Market Misconduct Tribunal established by section 251 of the Ordinance;
 - (h) to HKSCC;
 - (i) to SEOCH;
 - (j) to any recognized exchange controller;
 - (k) to any company of which a recognized exchange controller is a controller;
 - (l) to the chief executive or the chief operating officer of HKEX for the time being appointed or deemed to have been appointed in accordance with the Ordinance or, as the context may require, their designees; and
 - (m) to any exchange, regulatory authority or any organization (whether within or outside Hong Kong) with which HKEX or the Exchange has entered into an information sharing arrangement or agreement.
- (4) Information may only be disclosed under Rule 431(3)(c) on terms that the person to whom the information is disclosed and any person obtaining that information directly or indirectly from the first named person shall not disclose that information to any other person without the consent of the Exchange Participant concerned.
- (5) [Repealed]

Disclosure of Information

432. (1) The Exchange may supply information about an Exchange Participant to the Commission, any recognized exchange company under the Ordinance, any clearing house, any recognized exchange controller and any company of which a recognized exchange controller is a controller, and any such supply of information shall not be treated as a publication for the law of defamation, and the Exchange and a recognized exchange controller which is the controller of the Exchange shall not incur any liability as a consequence of supplying any such information.
- (2) The Commission may demand from the Exchange such information, including information relating to the affairs of any Exchange Participant, as the Commission may reasonably require for the performance of its statutory functions, and the supply of such information by the Exchange shall not be treated as a publication for the law of defamation, and the Exchange and a recognized exchange controller which is the controller of the Exchange shall not incur any liability as a consequence of supplying any such information.