

## CHAPTER 12

### INVESTORS' COMPENSATION

#### (UNIFIED EXCHANGE COMPENSATION FUND)

##### **General**

1201. These Rules set out the obligations of the holders of Stock Exchange Trading Rights in relation to the Unified Exchange Compensation Fund ("Compensation Fund") as established under Part X of the repealed Securities Ordinance.
1202. The Compensation Committee shall exercise on behalf of the Board such of the powers, duties and functions of the Exchange in relation to the Compensation Fund as may from time to time be delegated to the Compensation Committee by the Board.

##### **Compensation Fund Reserve Account**

1203. Each person shall deposit with the Exchange, a sum of \$50,000.00 in cash for every Stock Exchange Trading Right transferred or issued to him or it on or after the Scheme Effective Date. For the avoidance of doubt, contribution by the holders of Stock Exchange Trading Rights to the Compensation Fund is mandatory. The Exchange shall make deposits in respect of the Stock Exchange Trading Rights with the Commission and shall maintain an account, known as the Compensation Fund Reserve Account ("Reserve Account"), for all receipts and payments by the Exchange in relation to the Compensation Fund, including any deposits-in-transit, interests accumulated in the Reserve Account, interests received from the Commission, and any amounts lawfully paid into the Reserve Account.
- 1203A. The deposit made by a holder of a Stock Exchange Trading Right prior to the Scheme Effective Date shall for the purposes of these Rules be deemed to be a deposit for the purposes of the Compensation Fund.
1204. The funds in the Reserve Account shall in all circumstances be applied for the making of deposits with the Commission in respect of the Compensation Fund and for the refund to a past holder of a Stock Exchange Trading Right or as allowed by the Rules.
1205. The Exchange shall have absolute discretion in dealing with the funds in the Reserve Account which is not immediately required for making deposits with the Compensation Fund or refund to a past holder of a Stock Exchange Trading Right, including but not limited to the following manners:-
- (1) placing the money in any kind of deposit or investment as the Board shall deem fit;
  - (2) applying the money towards the amount required of the Exchange to replenish the Compensation Fund;
  - (3) repaying holders of Stock Exchange Trading Rights if in the exceptional

circumstances the Board thinks it fit to do so and any repayment shall be in the manner as determined by the Board.

### **Replenishment**

1206. Upon any payment out of the Compensation Fund in order to satisfy any claim, all Members of the Exchange or holders of Stock Exchange Trading Rights as at the day when the notice calling for such claim was issued by the Exchange shall contribute to replenish the Compensation Fund by depositing with the Exchange a sum (unless reduced under Rule 1207) equivalent to the amount of compensation payment divided by the number of Stock Exchange Trading Rights, and all such Members or holders of Stock Exchange Trading Rights shall be liable to meet such calls to contribute whenever made. Unless the Compensation Committee determines otherwise, any holder of a Stock Exchange Trading Right shall not be liable to contribute for the claims lodged against the Compensation Fund, the notice calling for which is issued subsequent to his or its date of cessation as a holder of a Stock Exchange Trading Right.
1207. The Board shall have absolute discretion to reduce the sum to be contributed by Members or holders of Stock Exchange Trading Rights under Rule 1206 by applying all or part of the funds in the Reserve Account towards the amount required of the Exchange to replenish the Compensation Fund.
1208. The Exchange shall call upon the Members or holders of Stock Exchange Trading Rights under Rule 1206 to contribute to replenish the Compensation Fund where the Commission, having exhausted all rights of action and other legal remedies subrogated to it by the claimants, requires replenishment of the Compensation Fund from the Exchange.
1209. The Board may require any further or additional payments to the Reserve Account in circumstances as it deems necessary, including but not limited to the increase of the maximum limit of payment out of the Compensation Fund.

### **Refund**

1210. Where a person has deposited or deemed to have deposited a sum of money with the Exchange under Rule 1203 or 1203A in respect of a Stock Exchange Trading Right and thereafter such person ceases to be the holder of a Stock Exchange Trading Right, he or it, his personal representatives, successors and assigns, trustees in bankruptcy or its liquidator (the "retiring holder") shall be entitled to withdraw from the Compensation Fund in respect of that Stock Exchange Trading Right provided that the Compensation Committee is satisfied that such retiring holder has no outstanding liabilities (actual or contingent) in relation to a claim against the Compensation Fund in respect of that Stock Exchange Trading Right or his or its former Membership, and a refund shall be made after the expiration of 3 months from the date of such retiring holder's cessation as the holder of a Stock Exchange Trading Right and until the monies representing his or its contribution are refunded to the Exchange by the Commission pursuant to the repealed Securities Ordinance of an amount being the lesser of firstly the amount of \$50,000 and secondly the sum attributable to the retiring holder calculated by dividing the amount comprising the Compensation Fund at the time (less such amount as the Compensation Committee may for the time being set aside as payment of any claims for which the retiring

holder is liable to replenish, actual or contingent) by the number of Stock Exchange Trading Rights (including that of the retiring holder).

1211. The Compensation Committee shall have absolute discretion to withhold any or all withdrawals from the Compensation Fund if in the circumstances it thinks fit to do so.

### **Interest and Income**

1212. Interests of the deposits received in respect of the Compensation Fund shall be accumulated in the Reserve Account and together with any other income generated from the application of funds in the Reserve Account shall form part of the pool of funds in the Reserve Account.

### **Powers**

1213. The Compensation Committee may from time to time issue circulars to holders of Stock Exchange Trading Rights and any instructions, requirements or directions stated in such circulars shall be observed or complied with by such holders of Stock Exchange Trading Rights and shall be conclusive and binding on all such holders of Stock Exchange Trading Rights. Without prejudice to any disciplinary powers conferred by these Rules, any holder of a Stock Exchange Trading Right who is in default of any Rules or requirements or calls made under these Rules (the “defaulting holder”) shall be liable to be expelled by the Board from Exchange Participantship (if such defaulting holder is an Exchange Participant) and all amounts (if any) standing to the credit of the defaulting holder in the Reserve Account shall (regardless of whether the defaulting holder is an Exchange Participant) in the meantime be held in a suspense account. The Board shall have full discretion to apply the funds of the defaulting holder standing in the suspense account to the satisfaction of all liabilities owing or due by the defaulting holder to the Exchange, any recognized exchange controller which is the controller of the Exchange, or any company of which a recognized exchange controller which is a controller of the Exchange is a controller, the balance thereof (if any) shall be refunded to the defaulting holder.

### **Miscellaneous**

1214. [Repealed]
1215. The Rules in this Chapter shall be binding on the personal representatives, successors and assigns, trustees in bankruptcy or liquidators of all holders of Stock Exchange Trading Rights.
1216. Any repayment, refund or distribution made under these Rules which remains unclaimed after six years from the date of notice of such repayment, refund or distribution may be forfeited by a resolution of the Board. Any forfeiture of unclaimed amount shall be deemed an income of the Reserve Account for the purpose of Rule 1212.