

《證券及期貨(投資者賠償——申索)規則》
(第 571 章, 附屬法例 T)

Securities and Futures (Investor Compensation—Claims) Rules
(Cap. 571 sub. leg. T)

版本日期
Version date
1.1.2020

經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

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條文 Provision	頁數 Page number	最後更新日期 Last updated date
第 1 部 Part 1	1-1—1-10	1.1.2020
第 2 部 Part 2	2-1—2-6	1.1.2020
第 3 部 Part 3	3-1—3-8	1.1.2020
第 4 部 Part 4	4-1—4-4	16.11.2017

尚未實施的條文 / 修訂 ——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<https://www.elegislation.gov.hk>) 閱覽。

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制定史

本為 2002 年第 215 號法律公告 —— 2004 年第 7 號，2015 年第 12 號，
2017 年第 4 號編輯修訂紀錄，2019 年第 130 號法律公告

Enactment History

Originally L.N. 215 of 2002 — 7 of 2004, 12 of 2015, E.R. 4 of 2017, L.N.
130 of 2019

《證券及期貨(投資者賠償——申索)規則》

Securities and Futures (Investor Compensation—
Claims) Rules

(第 571 章, 附屬法例 T)

(Cap. 571 sub. leg. T)

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《證券及期貨(投資者賠償——申索)規則》

Securities and Futures (Investor Compensation—Claims) Rules

(第 571 章第 244(2) 條)

(Cap. 571, section 244(2))

(略去制定語式條文——2017 年第 4 號編輯修訂紀錄)

(Enacting provision omitted—E.R. 4 of 2017)

[2003 年 4 月 1 日] 2003 年第 12 號法律公告
(格式變更——2017 年第 4 號編輯修訂紀錄)

[1 April 2003] L.N. 12 of 2003
(Format changes—E.R. 4 of 2017)

第 1 部

Part 1

導言

Preliminary

1. (已失時效而略去——2017 年第 4 號編輯修訂紀錄)

1. (Omitted as spent—E.R. 4 of 2017)

2. 釋義

2. Interpretation

在本規則中，除文意另有所指外——

In these Rules, unless the context otherwise requires—

互聯互通市場 (Stock Connect market) 指由上海證券交易所或深圳證券交易所營辦的證券市場；(2019 年第 130 號法律公告)

appointed day (指定日期) means the date appointed under section 13;

互聯互通安排 (Stock Connect arrangement) 指聯交所與某互聯互通市場的營辦者之間的安排，而該項安排透過傳遞證券買賣指示及處理與該等證券有關的事宜的設施，以便利市場互通；(2019 年第 130 號法律公告)

associated person (相聯者) has the meaning given by section 236(2) of the Ordinance; (L.N. 130 of 2019)

互聯互通證券 (Stock Connect securities) 指符合以下說明的證券——

claimant (申索人) means a qualifying client who makes a claim under section 4;

(a) 在或將會在互聯互通市場上市或交易；及

default (違責), in relation to a specified person or an associated person of the specified person, means—

(b) 根據聯交所規章，容許透過互聯互通安排下的北向通傳遞買賣指示；(2019 年第 130 號法律公告)

(a) the insolvency, bankruptcy or winding up of the specified person or associated person of the specified person; or

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北向通 (northbound link) 就某互聯互通安排而言，指聯交所在該安排下，為用作以下用途而提供或安排的設施——

- (a) 傳遞證券買賣指示，以在有關的互聯互通市場執行該等指示；及
- (b) 處理與該等證券有關的事宜；(2019 年第 130 號法律公告)

申索人 (claimant) 指根據第 4 條提出申索的合資格客戶；

合資格客戶 (qualifying client) 就任何指明人士而言，指獲該指明人士提供服務的人，但不包括——

- (a) 持牌法團；
- (b) 認可財務機構；
- (c) 認可交易所、認可控制人或認可結算所；
- (d) 根據本條例第 95(2) 條獲認可提供自動化交易服務的人；
- (e) 根據《保險業條例》(第 41 章) 第 8 條獲授權的保險人；(2015 年第 12 號第 146 條)
- (f) 根據本條例第 104(1) 條獲認可的集體投資計劃的經理人或營辦人；
- (g) 本條例附表 1 第 1 部第 1 條**集體投資計劃**的定義的第 (iii) 段提述的安排的經理人或營辦人；
- (h) 就進行某項證監會認為是與 (a) 至 (g) 段提述的人進行的活動相同或相近的活動而獲在香港以外的某司法管轄區的主管機關認可或授權、發給牌照或執照或豁免的人；
- (i) 該指明人士的相聯者，而該相聯者——
 - (i) 是法團；或
 - (ii) 犯有違反信託、虧空、欺詐或不當行為，或協助該指明人士或該指明人士的其他相聯者犯有違責；

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- (b) any breach of trust, defalcation, fraud or misfeasance committed by the specified person or associated person of the specified person,

which occurs on or after the appointed day;

northbound link (北向通), in relation to a Stock Connect arrangement, means the facilities provided or arranged by the Stock Exchange Company under the arrangement—

- (a) for routing orders for the sale or purchase of securities for execution on the relevant Stock Connect market; and
- (b) for handling matters relating to those securities; (L.N. 130 of 2019)

qualifying client (合資格客戶), in relation to a specified person, means a person for whom the specified person provides a service but does not include—

- (a) a licensed corporation;
- (b) an authorized financial institution;
- (c) a recognized exchange company, a recognized exchange controller, or a recognized clearing house;
- (d) a person authorized to provide automated trading services under section 95(2) of the Ordinance;
- (e) an insurer authorized under section 8 of the Insurance Ordinance (Cap. 41); (12 of 2015 s. 146)
- (f) a manager or operator of a collective investment scheme authorized under section 104(1) of the Ordinance;
- (g) a manager or operator of an arrangement referred to in paragraph (iii) of the definition of **collective investment scheme** in section 1 of Part 1 of Schedule 1 to the Ordinance;
- (h) a person who is authorized, licensed or exempt by a competent authority in a jurisdiction outside Hong Kong

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- (j) 特區政府或香港以外任何地方的政府；及
- (k) 以 (a) 至 (j) 段提述的人、計劃或安排的受託人或保管人身分行事的人；

有連繫資產 (related assets) 指與指明證券或期貨合約的——

- (a) 購買；
- (b) 售賣；
- (c) 持有；
- (d) 質押；
- (e) 調整；
- (f) 行使；或
- (g) 期滿，

有關的款項及其他財產；(2019 年第 130 號法律公告)

指定日期 (appointed day) 指根據第 13 條指定的日期；

指明人士 (specified person) 具有本條例第 236(2) 條所給予的涵義；

附註——

請亦參閱第 2A 條。(2019 年第 130 號法律公告)

指明證券或期貨合約 (specified securities or futures contracts) 具有本條例第 236(2) 條所給予的涵義；

附註——

請亦參閱第 2B 條。(2019 年第 130 號法律公告)

相聯者 (associated person) 具有本條例第 236(2) 條所給予的涵義；(2019 年第 130 號法律公告)

違責 (default) 就任何指明人士或其任何相聯者而言，指該指明人士或其相聯者在指定日期或之後——

- (a) 有無償債能力情況、破產或清盤；或
- (b) 犯有違反信託、虧空、欺詐或不當行為；

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for any activity that in the opinion of the Commission is the same as or similar to any of the activities carried on by a person referred to in paragraphs (a) to (g);

- (i) an associated person of the specified person—
 - (i) which is a corporation; or
 - (ii) who has committed any breach of trust, defalcation, fraud or misfeasance or assisted in the commission of a default by the specified person or any other associated person of the specified person;
- (j) the Government or a government of any place outside Hong Kong; and
- (k) a person in his capacity as a trustee or custodian of a person, scheme or arrangement referred to in paragraphs (a) to (j);

related assets (有連繫資產) means money and other property that relate to the——

- (a) purchase;
- (b) sale;
- (c) holding;
- (d) pledge;
- (e) adjustment;
- (f) exercise; or
- (g) expiry,

of specified securities or futures contracts; (L.N. 130 of 2019)

securities margin financing (證券保證金融資) has the same meaning as in Part 2 of Schedule 5 to the Ordinance except that paragraph (v) of the definition of that expression does not apply;

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第 2A 條

審裁處 (Tribunal) 指本條例第 216 條設立的證券及期貨事務上訴審裁處；

證券保證金融資 (securities margin financing) 的涵義與本條例附表 5 第 2 部中該詞的涵義相同，但該詞的定義的第 (v) 段並不適用。

(2017 年第 4 號編輯修訂紀錄)

2A. 為指明人士的定義而訂明的人士

提供證券保證金融資的認可財務機構，是為施行本條例第 236(2) 條中**指明人士**的定義 (c) 段而訂明的。

(2019 年第 130 號法律公告)

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specified person (指明人士) has the meaning given by section 236(2) of the Ordinance;

Note—

See also section 2A. (*L.N. 130 of 2019*)

specified securities or futures contracts (指明證券或期貨合約) has the meaning given by section 236(2) of the Ordinance;

Note—

See also section 2B. (*L.N. 130 of 2019*)

Stock Connect arrangement (互聯互通安排) means the arrangement between the Stock Exchange Company and the operator of a Stock Connect market that facilitates mutual market access through facilities for routing orders for the sale or purchase of securities and for handling matters relating to those securities; (*L.N. 130 of 2019*)

Stock Connect market (互聯互通市場) means a stock market operated by the Shanghai Stock Exchange or the Shenzhen Stock Exchange; (*L.N. 130 of 2019*)

Stock Connect securities (互聯互通證券) means any securities—

- (a) that are listed or traded or to be listed or traded on a Stock Connect market; and
- (b) in respect of which an order for sale or purchase is permitted to be routed through the northbound link of a Stock Connect arrangement under the rules of the Stock Exchange Company; (*L.N. 130 of 2019*)

Tribunal (審裁處) means the Securities and Futures Appeals Tribunal established by section 216 of the Ordinance.

2A. Prescription of persons for definition of specified person

An authorized financial institution that provides securities margin financing is prescribed for the purposes of paragraph (c) of the definition of **specified person** in section 236(2) of the Ordinance.

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第 2B 條

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2B. 為指明證券或期貨合約的定義而訂明的市場

互聯互通市場，是為施行本條例第 236(2) 條中**指明證券或期貨合約**的定義 (b) 段而訂明的，但僅限於在該市場與互聯互通證券有關的範圍內。

(2019 年第 130 號法律公告)

2B. Prescription of markets for definition of *specified securities or futures contracts*

A Stock Connect market is prescribed for the purposes of paragraph (b) of the definition of ***specified securities or futures contracts*** in section 236(2) of the Ordinance, but only to the extent that the market relates to Stock Connect securities.

(L.N. 130 of 2019)

第 2 部

賠償申索

3. 邀請提出申索的公告

- (1) 證監會如有理由相信某指明人士或其任何相聯者犯有違責，該會可刊登公告，籲請該公告所指名的指明人士的相信本身已因該項違責蒙受損失的合資格客戶提出賠償申索。該公告須於在香港每日出版且普遍行銷的中文或英文報章各一份或多於一份刊登。
- (2) 根據第 (1) 款刊登的公告須指明可根據第 4 條提出賠償申索的最後日期，該日期不得早於該公告刊登後 3 個月屆滿之日。

4. 提出賠償申索

- (1) 除第 (1AA) 及 (1A) 款另有規定外，如——
 - (a) 某指明人士的合資格客戶蒙受損失，而該損失是由——
 - (i) 該指明人士；或
 - (ii) 該指明人士的相聯者，
在指定日期或之後，就任何指明證券或期貨合約或有連繫資產所犯的違責所導致；
 - (b) 該指明證券或期貨合約或有連繫資產是交託予該指明人士或該相聯者的，或由該指明人士或該相聯者收取的；及

Part 2

Claims for Compensation

3. Notice inviting claims

- (1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting a qualifying client of the specified person named in the notice who believes he has sustained loss as a result of such default to claim for compensation. Such a notice shall be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.
- (2) A notice published under subsection (1) shall specify a date, not being earlier than 3 months after publication of the notice, on or before which a claim for compensation may be made under section 4.

4. Making a claim for compensation

- (1) Subject to subsections (1AA) and (1A), if—
 - (a) a qualifying client of a specified person sustains a loss, as a result of a default committed on or after the appointed day by—
 - (i) the specified person; or
 - (ii) an associated person of the specified person,
in relation to any specified securities or futures contracts or related assets;

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- (c) 該合資格客戶對該指明證券或期貨合約或有連繫資產享有權，或該合資格客戶對該指明證券或期貨合約或有連繫資產享有實益權益，
則該合資格客戶可就該損失向賠償基金提出賠償申索。
(2019 年第 130 號法律公告)
- (1AA) 就互聯互通證券或與互聯互通證券有關的有連繫資產而言，除非該等證券是、應是或將會是透過互聯互通安排下的北向通——
- (a) 購買；或
(b) 以其他方式取得，
否則合資格客戶不得向賠償基金提出賠償申索。(2019 年第 130 號法律公告)
- (1A) 指明人士的合資格客戶不得就已從《存款保障計劃條例》(第 581 章)第 14 條所設立的存款保障計劃基金中向該合資格客戶支付補償款額的任何損失向賠償基金提出賠償申索。(2004 年第 7 號第 55 條)
- (2) 根據第 (1) 款提出的申索，可包含為提出和證明該申索而合理地招致和附帶的費用的申索。
- (3) 根據第 (1) 款提出的申索——
- (a) (如第 3(1) 條所指的公告已刊登)須於該公告指明的日期或之前向證監會提交；或
(b) (如沒有刊登該公告)須於有關申索人首度察覺該項引致該申索的違責當日後的 6 個月內向證監會提交。
- (4) 除非證監會另有決定，否則沒有在第 (3) 款規定的限期內提交的申索一律禁止提出。

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- (b) the specified securities or futures contracts or related assets are entrusted to or received by the specified person or the associated person; and
- (c) the qualifying client is entitled to, or has a beneficial interest in, the specified securities or futures contracts or related assets,
the qualifying client may claim compensation from the compensation fund in respect of the loss. (L.N. 130 of 2019)
- (1AA) In relation to Stock Connect securities or related assets that relate to Stock Connect securities, a qualifying client must not claim compensation from the compensation fund unless the securities were or were to be—
- (a) purchased; or
(b) otherwise acquired,
through the northbound link of a Stock Connect arrangement. (L.N. 130 of 2019)
- (1A) A qualifying client of a specified person shall not claim compensation from the compensation fund in respect of any loss in respect of which he has been paid an amount of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (Cap. 581). (7 of 2004 s. 55)
- (2) A claim under subsection (1) may include a claim for the costs reasonably incurred in and incidental to the making and proving of the claim.
- (3) A claim under subsection (1) shall be lodged with the Commission—
- (a) if a notice under section 3(1) has been published, on or before the date specified in the notice; or

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5. 呈交申索

- (1) 除第 (2) 款另有規定外，根據第 4(1) 條提出的申索須——
 - (a) 採用證監會根據本條例第 402(1) 條為施行本條而指明的表格提交；
 - (b) 按照該表格所附的指示及指令而填具和簽署；及
 - (c) 附有該表格指明的文件。
 - (2) 證監會可接受以並非按照第 (1) 款的方式提交的申索。
-

(b) if no such notice has been published, within 6 months after the day the claimant first became aware of the default giving rise to the claim.

- (4) A claim which is not lodged within the time limit provided in subsection (3) is barred, unless the Commission determines otherwise.

5. Submission of claims

- (1) Subject to subsection (2), a claim under section 4(1) shall be—
 - (a) lodged in the form specified by the Commission under section 402(1) of the Ordinance for the purposes of this section;
 - (b) completed and signed in accordance with such directions and instructions as are included in the form; and
 - (c) accompanied by such documents as are specified in the form.
 - (2) The Commission may accept a claim lodged otherwise than in accordance with subsection (1).
-

第 3 部

申索的處理

6. 證監會可要求交出紀錄

- (1) 證監會可藉向某人送達書面通知而要求該人向證監會交出——
 - (a) 該會在與根據第 4(1) 條提出的賠償申索有關連的情況下合理地要求的紀錄的正本或副本；或
 - (b) 該會為協助——
 - (i) 該會行使它在本條例第 243 條下的代位權；或
 - (ii) 某認可投資者賠償公司行使它在本條例第 87 條下的代位權，
 而合理地要求的紀錄的正本或副本。
- (2) 第 (1) 款所指的通知須指明所要求的紀錄，以及獲送達通知的人須向證監會提交該等紀錄的最後日期。

7. 證監會的裁定

- (1) 證監會須就某項賠償申索裁定——
 - (a) 有關的指明人士或其相聯者曾否犯有違責；
 - (b) 該項違責(如有的話)的發生日期；及
 - (c) 申索人是否有權獲得賠償基金的賠償。
- (2) 證監會如裁定——
 - (a) 任何指明人士或其相聯者曾犯有違責；及
 - (b) 申索人有權獲得賠償基金的賠償，

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Processing of Claims

6. Commission may require records

- (1) The Commission may, by notice in writing served upon a person, require the person to produce to the Commission originals or copies of such records as the Commission may reasonably require—
 - (a) in connection with a claim for compensation made under section 4(1); or
 - (b) for the purpose of assisting—
 - (i) the Commission in the exercise of its rights of subrogation under section 243 of the Ordinance; or
 - (ii) a recognized investor compensation company in the exercise of its rights of subrogation under section 87 of the Ordinance.
- (2) A notice under subsection (1) shall specify the records required and the date by which the person served with the notice is to furnish them to the Commission.

7. Determination by Commission

- (1) The Commission shall, in relation to a claim for compensation, determine—
 - (a) whether there has been a default by the specified person concerned or any associated person of the specified person;
 - (b) the date of the default (if any); and
 - (c) whether the claimant is entitled to compensation from the compensation fund.

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證監會須按照第 (3) 款裁定暫定賠償款額。

- (3) 證監會須在考慮以下事宜後，裁定第 (2) 款提述的暫定賠償款額——
- (a) 證監會信納申索人因違責所導致損失的指明證券或期貨合約及任何有連繫資產在違責發生當日的市值減去——
- (i) 證監會信納該申索人欠該指明人士的款額；及
- (ii) 在違責的發生日期後交還該申索人的指明證券或期貨合約或有連繫資產；及 (2019 年第 130 號法律公告)
- (b) 證監會信納的該申索人為根據第 4 條提出和證明其賠償申索而合理地招致和附帶的費用。

8. 裁定通知

- (1) 在符合第 (2) 款的規定下，證監會如根據第 7 條作出裁定，該會須在作出裁定後，在切實可行的範圍內，盡快向申索人發出裁定通知。
- (2) 除非證監會已給予申索人作出陳詞的合理機會，否則該會不得發出指明暫定賠償款額是少於申索賠償的裁定通

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- (2) If the Commission determines that—
- (a) there has been a default by a specified person or any associated person of the specified person; and
- (b) the claimant is entitled to compensation from the compensation fund,
- the Commission shall determine a provisional amount of compensation in accordance with subsection (3).
- (3) The provisional amount of compensation referred to in subsection (2) shall be determined by the Commission having regard to—
- (a) the market value, as at the date of the default, of the specified securities or futures contracts and of any related assets that the Commission is satisfied the claimant has lost as a result of the default less—
- (i) any amount that the Commission is satisfied was due from the claimant to the specified person; and
- (ii) any specified securities or futures contracts or related assets that have been returned to the claimant after the date of the default; and (*L.N. 130 of 2019*)
- (b) any costs that the Commission is satisfied were reasonably incurred by the claimant incidental to the making and proving of his claim for compensation under section 4.

8. Notice of determination

- (1) Subject to subsection (2), where the Commission makes a determination under section 7, it shall issue a notice of determination to the claimant as soon as practicable thereafter.
- (2) The Commission shall not issue a notice of determination specifying a provisional amount of compensation that is

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知，而證監會如決定發出該裁定通知，該會須在該通知中給予其理由。

- (3) 證監會如裁定申索人應獲付賠償，該會須在裁定通知中指明——
- (a) 被發現犯有違責的人的姓名或名稱；
 - (b) 有關違責的發生日期；
 - (c) 根據第 7 條裁定的暫定賠償款額；
 - (d) 任何有關的指明證券或期貨合約或有連繫資產；及
 - (e) 根據本規則須支付的賠償款額。

9. 支付賠償

- (1) 在第 (2) 款及第 11 條的規限下，以下款額須從賠償基金撥款支付——
- (a) 根據第 8(3)(e) 條在裁定通知中指明須支付予申索人的賠償；
 - (b) 因應審裁處或上訴法庭根據本條例第 XI 部所作決定而須支付的賠償；及
 - (c) 審裁處或上訴法庭因應 (b) 段提述的決定而判給申索人的費用。
- (2) 根據第 (1)(a) 及 (b) 款須支付予一名申索人的賠償總額，不得超逾根據本條例第 244(1) 條訂立的規則所訂明的最高賠償金額。
- (3) 證監會在裁定根據第 (1)(a) 及 (b) 款支付予申索人的賠償總額時，以及在施行根據本條例第 244(1) 條訂立的規則所訂明的最高賠償金額上限時，如信納某申索人或某些

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less than the compensation claimed unless it has given the claimant a reasonable opportunity of being heard and, where the Commission decides to issue such a notice, it shall give its reasons in the notice of determination.

- (3) Where the Commission determines that compensation should be paid to a claimant, it shall specify the following in the notice of determination—
- (a) the name of the person found to be in default;
 - (b) the date of the default;
 - (c) the provisional amount of compensation as determined under section 7;
 - (d) any relevant specified securities or futures contracts or related assets; and
 - (e) the amount of compensation payable under these Rules.

9. Payment of compensation

- (1) Subject to subsection (2) and section 11, the following amounts shall be paid out of the compensation fund—
- (a) any compensation payable to a claimant as specified in the notice of determination under section 8(3)(e);
 - (b) any compensation payable following a decision of the Tribunal or the Court of Appeal, under Part XI of the Ordinance; and
 - (c) any costs awarded in favour of a claimant by the Tribunal, or the Court of Appeal, following a decision referred to in paragraph (b).
- (2) The total amount of compensation payable to a claimant under subsection (1)(a) and (b) shall not exceed the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance.

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申索人提出的獨立賠償申索或該等申索的某些部分代表
某一人因同一項違責而蒙受的損失，則可將該等申索或
該等部分合併計算。

- (4) 證監會如決定分期支付賠償屬需要或適當，可分期支付。
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- (3) In determining the total amount of compensation to be paid to a claimant under subsection (1)(a) and (b), and in applying the limits on the maximum amount of compensation prescribed by rules made under section 244(1) of the Ordinance, the Commission may aggregate separate claims for compensation by a claimant, or a number of claimants, or parts of those claims, if it is satisfied that the separate claims, or parts of those claims, represent the losses sustained by one person arising out of the same default.
- (4) The Commission may pay compensation by instalments if it determines that it is necessary or appropriate to do so.
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第 4 部

雜項條文

10. 財務安排

證監會可安排該會認為適當的保險、擔保、保證或其他財務安排，以便利賠償基金的管理。

11. 在賠償基金的可動用款項不足以應付申索的情況下的規定

- (1) 如證監會在任何時間決定賠償基金的可動用款項，不足以支付在當其時——
 - (a) 根據本規則；及
 - (b) 在第 9(1)(b) 條提述的情況下，
 須或相當可能須支付予各申索人的賠償總額，則賠償基金的可動用款額須按證監會決定的方式，攤分予各申索人。
- (2) 如因為證監會決定須根據第 (1) 款進行攤分，以致第 9(1) 條提述的任何款額仍未支付，該欠款在賠償基金有足夠的可動用款項時支付。

12. 申索的解除

根據本規則裁定須支付予某申索人的款額一經全數支付，該申索人就有關申索及違責針對賠償基金所享的權利即告絕對解除。

Part 4

Miscellaneous

10. Financial arrangements

The Commission may arrange for such insurance, surety, guarantee or other financial arrangements as it considers appropriate to facilitate the administration of the compensation fund.

11. Provision where the money available to the compensation fund is insufficient to meet claims

- (1) If, at any time, the Commission determines that the amount of money available to the compensation fund is insufficient to pay the total amount of compensation then payable to the claimants, or likely to become so payable—
 - (a) under these Rules; and
 - (b) in the circumstances referred to in section 9(1)(b),
 the amount available to the compensation fund is to be apportioned among the claimants in such manner as the Commission may determine.
- (2) In the event that any amounts referred to in section 9(1) remain unpaid because the Commission has determined that an apportionment shall be made under subsection (1), the amounts are to be paid when there is sufficient money available to the compensation fund.

12. Discharge of claims

Upon payment of the full amount determined to be payable to a claimant under these Rules, the rights of the claimant against the compensation fund in relation to the claim and the default are absolutely discharged.

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13. 指定日期

為施行本規則，證監會可藉憲報公告指定一個日期為指定日期。

13. Appointed day

The Commission may by notice published in the Gazette appoint a date as the appointed day for the purposes of these Rules.