

Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000

**Summary of Public Comments and Administration's Response on
Parts I and II of the Securities and Futures Bill**

Clause no.	Respondent	Respondent's comments	Administration's response
<i>Part I- Preliminary</i>			
<i>Part II – Securities and Futures Commission</i>			
4(a) regulatory objectives	HKISD	The efficiency of the industry should be a matter for the relevant exchanges. As long as a competitive market is maintained, it should be left to the market to seek the best efficiency. This has always been the free market spirit adopted in Hong Kong.	We believe that the SFC should have a role in maintaining and promoting an efficient market. With globalization, it would especially be the case that a market cannot be competitive if it is not efficient. It would be illogical if the SFC were to have a role in the competitiveness of the market, but not its efficiency. In addition, the exchanges are commercial enterprises whereas one of the SFC's primary functions is to safeguard the interests of investors.
4	Charles Schwab	The regulatory objectives for the SFC are agreed.	Noted.
5(1)(m) (i) & (ii)	HKISD	A suitable system should be put in place so as to ensure that when the SFC enforces these provisions, it should in principle take into account the business turnover and staff size of the regulated entity in formulating appropriate internal controls and risk management systems for the company. It is because excessive internal controls and risk management systems will substantially increase the operational costs of the stockbroker concerned, thus making it more difficult for the stockbroker to conduct its business.	We agree that the appropriateness of internal controls and risk management systems should be a function of, among other things, business turnover and staff size of, and cost to, the relevant regulated entity. By way of illustration, internal control procedures and risk management systems are prescribed under clause 128(2)(c) as one of the relevant factors in determining whether an intermediary is "fit and proper". The factors referred to are covered in the Management, Supervision and Internal Controls Guidelines, published by the SFC in May 1997, which are in line with international standards.
5 and 6	Charles Schwab	Certain of the items listed in clauses 5 (Functions and powers of Commission) and 6 (General Duties of Commission) should be elevated to the status of regulatory objectives (clause 4). This is particularly true of promoting an 'understanding by the public of the importance of making informed decisions regarding transactions or activities related to financial products and of taking responsibility therefor'.	We have carefully calibrated the contents of clauses 4, 5 and 6. Clauses 5 and 6 seek to support the implementation of clause 4. The regulatory objectives of the SFC cover the regulatory focus in broad terms, presentation of which is consistent with, for example, that of the Financial Services Authority prescribed in the recently enacted Financial Services and Markets Act. The regulatory objectives are to be achieved through the exercise of the more detailed functions referred to in clause 5, and in the manner as set out in clause 6. By way of illustration, the function referred to in the market comment is in connection

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		<p>Similarly we feel that 'facilitating innovation' is so central to the health and development of the financial markets that it, too, should be identified as one of the SFC's regulatory objectives.</p>	<p>with the broad objective to promote understanding by the public of the operation and functioning of securities and futures industry.</p> <p>As for the facilitation of innovation, we do not consider that it should itself be a primary focus of exercise of regulatory functions by the SFC. Facilitating particular areas of innovation would however be a by-product of exercise by the SFC of its regulatory functions if they are conducive to the maintenance and promotion of the efficiency and competitiveness of the securities and futures industry, which is a regulatory objective of the SFC. Clause 6(2)(b) requires that in pursuing its regulatory objectives and performing its functions, the SFC should have regard to the desirability of facilitating innovation in connection with financial products and activities regulated by the SFC under any of the relevant provisions. We are of the view that this clause puts the regulator's role in the facilitation of innovation in an appropriate perspective.</p>
5 and 6	Charles Schwab	<p>Each reference to the 'securities and futures industry' in the clause should be reformulated to refer to the 'securities and futures market'. Use of the word 'industry' might be too narrowly interpreted as a reference limited to the providers of financial services. It is felt that the SFC has a wider range of concern that includes persons who are not licensees – whether sanctioning individual officers or directors of an issuer engaged in insider dealing or educating investors about the risks of information learned in an online 'chat room' sponsored by a non-licensed entity.</p>	<p>“Securities and futures industry” is defined in Schedule 1 of the SF Bill to mean “the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants”.</p> <p>This definition should have addressed the concern of the respondent.</p>